

***Case No COMP/M.2050 -  
VIVENDI / CANAL+ /  
SEAGRAM***

Only the English text is available and authentic.

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

---

Article 6(2) NON-OPPOSITION  
with undertakings

Date: 13/10/2000

*Also available in the CELEX database  
Document No 300M2050*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.10.2000  
SG (2000) D/107536

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(2) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.2050- Vivendi/Canal+/Seagram**

Notification of 14 July 2000 pursuant to Article 4 of Council Regulation (EEC) No 4064/89

1. On 14 July 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> as last amended by Regulation (EC) No 1310/97<sup>2</sup> by which Vivendi S.A. ("Vivendi"), within the meaning of Article 3 (1)(b) of the Regulation, acquire sole control over The Seagram Company Ltd. ("Seagram"). As Vivendi is the ultimate company requiring control of Seagram and Canal+ S.A. ("Canal+") is controlled by Vivendi, Canal+ is for the purpose of this transaction not considered as a notifying party, cf. Art. 4 of the Council Regulation (EEC) No 4064/89. Likewise, Seagram cannot be considered as a notifying party as this company is the target of the operation cf. Art. 4 of the Council Regulation (EEC) No 4064/89.
2. On 9 August 2000, the Commission declared the notification incomplete. The notifying parties completed the notification on 31 August 2000.
3. 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 raises serious doubts as to its compatibility with the common market and with the EEA Agreement.

---

<sup>1</sup> OJ L 395, 30.12.1989, p.1, corrigendum; OJ L 257, 21.9.1990, p.13.

<sup>2</sup> OJ L 189, 9.7.1990, p.1, corrigendum; OJ L 40, 13.2.1998, p.17.

## I. THE PARTIES

### Vivendi

4. Vivendi is the ultimate parent company of a group active in France and internationally. Its main activities are the communications industry and in utilities. Vivendi provides telecommunications networks and related services, including data network operation and value added network services, principally through its 44% controlling interest in Cegetel. Vivendi has sole control of Cegetel<sup>3</sup>. Cegetel has a 80% stake in SFR<sup>4</sup> which is the second mobile operator in France. The remaining 20% of SFR is held by Vodafone Airtouch Plc, Vodafone Airtouch and Cegetel jointly control SFR. Vivendi is active both within fixed and mobile telephony markets. Vivendi has also joint control over AOL France (an Internet service provider (“ISP”)), BOL France (seller of French language books via the Internet), @Viso (a venture capital Internet investor) and Scoot Europe (an information intermediary company, primarily active on the Internet). In addition, Vivendi controls (i)France, a French Internet website that is developing into a portal. Moreover, Vivendi is active in publishing and multi-media through its wholly owned subsidiary Havas which offers a variety of products and services ranging from books and magazines to CD-ROMs.
5. Vivendi is also active in cinema and television through its 49% equity interest in Canal+, its 25% equity interest in BSkyB (a British pay-TV operator), and its 100% of Havas Images. The Vivendi group's activity in the production and the distribution of films, video, TV programming and pay-TV channels is limited to its shareholding in Canal+ as it does not exercise any sole or joint control over BskyB or UGC. Through Havas Images, Vivendi has a majority stake (75%) in CDCA, a company which holds film catalogues and licenses broadcasting rights to French television channels.

Vivendi has a 49% shareholding in Canal+. The other major shareholders are Caisse des Dépôts et Consignations with 3,5% and Société Générale with 0,6%. Vivendi has sole control of Canal+ as recognised by the notifying party.

### Canal+

6. Canal+, is a French company active in France, Belgium, Holland, Spain, Italy, Germany, and the Nordic countries<sup>5</sup> through its subsidiaries. Canal+ is primarily active in the production of pay-television channels, distribution and marketing of bouquets of television channels and services by cable and satellite, production and distribution of feature films and audio-visual works and acquisition and licensing of broadcasting rights for films, audio-visual works and sports events. It develops activities relating to multimedia and the Internet.
7. Canal+ is present in the distribution of films and the licensing of broadcasting rights through its subsidiary StudioCanal. Canal+ owns 82.92% of outstanding shares and has sole control over StudioCanal. StudioCanal is active in the distribution of films in

---

<sup>3</sup> The other shareholders are BT and Mannesmann.

<sup>4</sup> See case No IV/M.1055 - *Cegetel/ Vodafone Airtouch – SFR*.

<sup>5</sup> Meaning Denmark, Sweden, Finland and Norway.

France, Spain, and Germany through its 80% interest in BAC Distribution, its 60% interest in Tobis, and its 21% interest in Sogecable. Sogecable produces also theme channels as well as Multithématiques<sup>6</sup>, and Euromusic MCM<sup>7</sup>, firms controlled by Canal+ through its respective 27.4%, and 49% interest. StudioCanal is also indirectly active in the licensing of broadcasting rights through a minority stake of 35.1% of Ellipse/Expand shares. The Canal+ group is also active in Europe in distributing multi-channel packages via cable (NC NumériCâble in France) and satellite (Canal Statellite or other Canal+'s bouquets). Another delivery channel is Vizzavi, the "portal" jointly created by Canal+, Vivendi, and Vodafone AirTouch<sup>8</sup>. As a multi-access "portal" Vizzavi will distribute content services across multiple distribution platforms such as mobile telephones, digital set-top boxes, and PCs.

### Seagram

8. Seagram is a Canadian-based company active within two core segments; entertainment and beverages. Since its beginning in the wine and spirits industry, Seagram has progressively diversified into cinema, television, music and theme parks, most notably through the acquisition of Universal and PolyGram<sup>9</sup>. Following the merger between Seagram and PolyGram in December 1998, Seagram's music activities are now conducted through the Universal Music Group. Universal Music Group has also acquired Rondor Music, a German music group, in July 2000. Universal's film and television activities are conducted through Universal Studios Inc. ("Universal"). Universal is one of the six major Hollywood studios. Universal produces feature films intended for initial theatrical exhibition and television programming.
9. Theatrical distribution throughout the rest of the world (including Europe) is conducted by United International Pictures ("UIP") which is a joint venture between Universal, MGM, and Paramount Universal. UIP has exited almost entirely from television production and has sold essentially all of its television production business to USA Networks. Today, Universal operates the following television channels in Europe: *The Sci-Fi Channel* (in the U.K.), *13<sup>th</sup> Street* (in France, Germany and Spain) and *Studio Universal* (in Italy). Licensing of broadcasting rights in the European Community is conducted by United Studios International B.V ("USI").

## **II. THE OPERATION AND THE CONCENTRATION**

10. The operation involves the acquisition of sole control over Seagram by Vivendi.
11. Vivendi will contribute its 15% shareholding in Canal+ to its wholly owned subsidiary Sofiee, which already owns 34% of Canal+. Canal+ will transfer all of its business to its wholly owned subsidiary (NewCo1) which will immediately transfer them to NewCO2, a wholly owned subsidiary of NewCO1. NewCO2 will become the holding

---

<sup>6</sup> The other controlling shareholders of Multithématiques are Lagardère (27.4%) and Liberty Media (27.4%), Minority shareholders include Havas Images (9.09%).

<sup>7</sup> The other partner is Lagardère which hold 51%.

<sup>8</sup> Case No COMP/JV.48 - *Vodafone/Vivendi/Canal+*.

<sup>9</sup> Case No IV/M.1219 - *Seagram/Polygram*.

company of the new Canal+ Group, which will manage all of the film and television activities of the merged entity, including the 49% interest in the French pay-TV channel. Vivendi and NewCO1 will be merged into Sofiee, to be renamed “Vivendi Universal”, which will become the ultimate parent company of the new group. Vivendi Universal will acquire the control of Seagram whereby upon the approval of Seagram's shareholders, all Seagram’s shareholders will receive shares of Vivendi Universal in exchange for their Seagram shares. Following the closing of the transaction the shareholding of Vivendi Universal will be 59% to Vivendi’s shareholders, 29% to Seagram’s shareholders and 12% to Canal+ shareholders.

12. The foregoing steps will be carried out concomitantly and they constitute as such one single transaction. The notified operation will therefore result in the acquisition of sole control in the meaning of Article 3(1)(b) of the Council Regulation (EEC) No 4064/89.

### **III. COMMUNITY DIMENSION**

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>10</sup> (Vivendi: € [...], and Seagram: € [...].) The aggregate Community wide turnover of each party exceeds €250 million (Vivendi: € [...], and Seagram: € [...]). 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 within Article 1 of the Council Regulation (EEC) No 4064/89.

### **IV. OVERVIEW AND THE RELEVANT MARKETS**

#### **Introduction**

14. The structure of the media industry is multidimensional and complex. Indeed, different players such as content providers, right holders, content distributors, operate in the value chain from the production of content such as films, pay-TV programming, and music, to its delivery via theatres, pay-TV channels or Internet “portals”.
15. The merging parties belong to these different categories of players. In terms of content, the merging parties will have the world’s second largest film library<sup>11</sup>, the second largest library of TV programming<sup>12</sup> in the EEA, and a substantial part of theme channels production in France, Germany, Italy, and Spain<sup>13</sup>. Futhermore, the merged entity is the first acquirer of output deals signed with the US studios. With regard to music content, the merged entity will be number one in recorded music combined with

---

<sup>10</sup> 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.

<sup>11</sup> Kirch: 16 000 films ; StudioCanal+Universal: [5000-15 000] films; Time Warner: 7 500 films.

<sup>12</sup> Made-for-TV programming: Kirch, 52 500; StudioCanal+Universal, [15 000-25 000].

<sup>13</sup> Respectively, 15, 4, 6, 7 theme channels in France, Germany, Italy, and Spain.

a non negligible position in publishing rights in the EEA<sup>14</sup>. In terms of distribution, the parties are the leading on pay-TV operator in a number of Member States and are likely to become a leading player on Internet distribution via the multi-access portal Vizzavi. The transaction will lead to overlaps in horizontally affected markets, in certain Member States, in film distribution to theatres and in the licensing of broadcasting rights. Vertical issues arise through the interaction of content providers and delivery operators such as pay-TV operators and multi-access “portals” such as Vizzavi. Consequently, there are three markets which are vertically affected by the proposed transaction: the pay-TV market, the emerging market for portals and the emerging market for online music.

### **Film distribution to theatres**

16. Filmed entertainment can be divided into different activities from production to distribution via the licensing of rights. The distribution of films to theatres is generally carried out at different stages. First, film producers license the distribution rights for one country or a territory to a local distributor or to international distributors who acquire the rights for some countries. Secondly, local distributors or international distributors sub-license directly the exhibition rights to exhibitors, i.e. theatre operators. The distribution of films to theatres is the last stage of the cinema chain and can be regarded as a separate product market. This market is essentially because of cultural reasons national in scope.

### **Licensing of broadcasting rights**

17. Once produced, films can be traded by selling broadcasting rights. Besides TV rights to sport events, the market investigation in the present case revealed that the market may be separated into a market for broadcasting rights for feature films and a market for broadcasting rights made-for-TV programmes<sup>15</sup>. From a demand side point of view, these rights are not interchangeable from a pay-TV operator’s perspective. The reason is that feature films and made-for-TV programmes do not have the same value in terms of consumers’ attractiveness. From the supply side, these rights are traded under different pricing structures and do not have the same economic value. Licensing agreements are generally concluded in a particular country or in a particular language (for example grouping together rights for the Nordic countries or for the German-speaking area). Therefore, the geographic market is considered to be national or in certain cases regional.

### **Premium films/First-window/Pay-TV**

18. Generally speaking, films for pay-TV are exhibited under different timing and windows. After a time period of theatrical exhibition (up to 8 months), and of video rentals (usually a 6 months period), films reach pay-TV consumers through a pay-per-

---

<sup>14</sup> Recorded music in the EEA: Universal, [20-30]%; EMI, [15-20]%; Sony, [15-20]%; Time Warner and Bertelsmann, [10-15]% each. Music publishing in the EEA: in average [10-20]%. Other competitors are EMI, Time Warner, Bertelsmann, and Sony.

<sup>15</sup> Animation, documentaries, and fiction.

view<sup>16</sup> period (usually a 3 months period). Films can be thereafter be released on first-window (usually a 6 months period) and then on second-window (usually a 6 months period). Finally, they become part of the major library and available for the free TV market. The market investigation has shown that besides major sporting events premium films are one of the most important drivers in attracting subscribers to a pay-TV channel. Within premium films, it is necessary to distinguish between films that are produced by the US Hollywood studios (Universal, MGM, Paramount, Sony (Columbia), Disney (Buena Vista, Touchstone, Miramax), Twentieth Century Fox, and Warner) and those produced by other studios. This is because most of the premium films are produced by the majors US studios<sup>17</sup>.

19. The first-window is the first period of premium films availability on pay-TV<sup>18</sup>. A pay-TV operator which does not have any first-window films can only offer an “old” premium film a so-called second-window film. A second window film will be regarded as “second quality” by the pay-TV operator’s subscribers and the pay-TV operator may be forced to reduce its subscription price to differentiate itself accordingly. The second-window content signifies lower value from a consumer’s point of view and consumers do not consider that first and second-window films are interchangeable in terms of novelty. From a supply side point of view, it is not possible to substitute a first-window film by a second-window film as second-window fees represents in average [5-25]% of the first-window fees. Consequently, first-windows films seem to constitute an “essential” input both from the demand side point of view and from the supply side.
20. The Commission has in previous decisions<sup>19</sup> defined pay-TV as a separate market<sup>20</sup>. Because pay-TV operators are usually financed through subscription, the pay-TV market is distinct from free access television which is usually financed by advertising or by State contributions. Both the pay-TV market and the free TV market can be viewed as national or regional in scope in particular for cultural and linguistic reasons.
21. In order to increase the attractiveness of pay-TV and the level of subscriptions, it is necessary for a pay-TV operator to acquire key quality inputs such as premium films. Consequently, the attractiveness of pay-TV is largely dependent on the corresponding

---

<sup>16</sup> Pay-per-view is an another service where in addition to paying a pay-TV subscription, the client has to pay on a film by film basis to see the content. Pay-per-view contracts are generally concluded on a non-exclusive basis.

<sup>17</sup> The majors US studios supply more than 70% of the films sold in the EEA.

<sup>18</sup> After the film has been shown in the theatres, been available on videos and offered on a pay-per-view concept. The first-window films are more recent than the second-window films. After the second-window films are available for free television.

<sup>19</sup> See decisions in cases :

- IV/M.410 - *Kirch/Richmond/Telepiù*.

- IV/M.469 - *MSG Media Service*.

- COMP/M.1574 - *Kirch/Mediaset*.

- COMP/JV.37 - *B SKY B/Kirch Pay-TV*.

<sup>20</sup> In addition, and because digital pay-TV is only a further development of analogue pay-TV, the Commission concluded that the pay-TV market cannot be subdivided into analogue and digital pay-TV.

availability rights, and access to first-window premium films appears, therefore, essential.

### **Emerging market for Portals**

22. In case COMP/JV.48 - Vodafone/Vivendi/Canal+, the Commission identified an emerging pan-European market for horizontal portals providing WAP based Internet access. A portal serves as a gateway through which consumers and businesses can have access to a range of online services and the wider Internet. A portal aggregates a large number of recurring Internet users and/or subscribers around specific types of services.
23. Competition between portals is based on attractiveness and functionality (i.e. context, content, commerce, communications, connectivity and community). In the above decision, a distinction between portals having a broad focus (horizontal) and portals with a narrow focus (vertical) was made. The Vizzavi portal was characterised as a horizontal portal.
24. Vizzavi will exist on a variety of access mechanisms and will be delivered over mobile telephones and digital TV set top boxes as well over PCs. Such portals will serve a distinct customer demand. There are people who wish to be able to be contacted continuously and/or those who wish to have Internet access without a PC only through mobile phones and digital set top boxes. This may be desirable for those people who are unwilling to commit themselves to the purchase price of a PC.
25. During the investigation of this case, the existence of a distinct market for horizontal portals has been confirmed. A further segmentation of the portal market into a portal market accessible via mobile phones, via set-top boxes or PCs, can, however, be left open as the final assessment of the case will be the same regardless of the market definition chosen.

### **Emerging market for online music**

26. Third parties have argued that there is an emerging market for online music delivery comprising music downloading and music streaming<sup>21</sup>. Online music will be one of the services offered by Vizzavi. Music downloading is a new form of distribution of music to consumers over the Internet. It is a technology permitting the electronic transfer of an entire music file to a device before playback is allowed. As a result of music downloading, such file remains on that person's device as a permanent copy as opposed to a transient one (i.e. streaming). Music downloading is based on the distribution of digital music files and should not be confused with e-tailing, which involves a physical sale through the Internet.
27. There are several significant differences between downloadable music and music distributed on physical carriers that makes downloadable music a separate market. From the demand side, consumers can access or buy music immediately from any computer with Internet access and special software<sup>22</sup> to play music without having to visit a store. Consumers can download on individual tracks, instead of buying the entire

---

<sup>21</sup> See case No COMP/M.1845 - AOL/Time Warner.

<sup>22</sup> e.g. MP3, Windows Media Audio, G2, AAC, ATRAC.



album or a single and create customised compilations. From the supply side, the distribution structure of on-line music is different from the physical distribution of music. Music downloading does not involve manufacturing, physical sales and distribution. Moreover, the pricing structures of downloadable and physical music are different, and the pricing and volumes of CDs seem not to be affected today by the emergence of downloadable music.

28. Another type of online music is streaming which is a method of transmitting audio over the Internet. The main difference between downloading and streaming is that with the former a music file is transmitted from one computer to another, is stored locally and is accessible directly on the recipient's computer; with the latter the audio is only temporarily transferred to the user's playing device. Streaming is at present free of charge and is financed out of Internet advertising revenues.
29. Some third parties have argued that music downloading and music streaming constitute two separate product markets. It is, however, for the purpose of this transaction not necessary to decide on this issue, as the final assessment of the case will be the same. Consequently, in the light of the above, it can be concluded that there is an emerging separate market for online music.
30. Some third parties have furthermore argued that within the emerging market for online music there is a separate emerging market for online music delivery to mobile customers.
31. Today online music cannot be supplied over the existing GSM networks. This form of distribution will be possible when the existing GSM networks have been upgraded due to technologic developments such as GPRS<sup>23</sup> and EDGE<sup>24</sup> in order to allow for significant higher data speeds and data transfer. Moreover, this new service will require new handsets in order to allow for the full range GPRS and EDGE technologies to be used. These handsets will be commercially available to customers within the next few years. These new technologies will include pan-European offering of Internet mobile services and wireless location services for mobile users.
32. The delineation of a separate emerging market for online music delivery to mobile customers seems, however, to be premature as it is difficult to predict the future features of the emerging market for online music to mobile customers. The reason is that it is not possible today to receive downloadable music or streaming over a normal GSM mobile phone, and during the first phase of this service under the GPRS technology the quality is likely to be rather poor. In addition, mobile customers'

---

<sup>23</sup> General Packet Radio Service (GPRS) technology is developed for GSM networks to allow enhanced rates of data transfer with theoretical maximum speeds of up to 115,2 kbps (today's speed of GSM is 9,6kbps). GPRS makes use of free radio capacity left by circuit switched traffic. Basic GPRS capable terminals will be available in commercial quantities from start of 2001.

<sup>24</sup> EDGE (an abbreviation of Enhanced Data GSM Environment or Enhanced Data Rates for Global Evolution), is a radio based high-speed mobile data standard. It allows data transmission speeds of 384 kbps and gives incumbent GSM operators the opportunity to offer data services at speeds that are near to those available on UMTS networks. EDGE could offer an alternative route for GSM operators who will not have third generation licenses and EDGE could be used as an interim data technology between GPRS and UMTS (Universal Mobile Telephone System). EDGE is expected to be available commercially in 2001/2.

demand regarding online music is at present unclear. For the purpose of this case, it is not necessary to decide whether the emerging market for online music should be further segmented as the competitive assessment will be the same.

33. The market investigation reveals different opinions as to the geographic scope of the emerging market for online music. Some third parties indicate that the geographic scope is cultural and linguistic determined and thus national, whereas others tend to believe that the geographic scope of the emerging market for online music is at least pan-European. On the other hand, the possibilities offered by digital technology imply a geographic market definition which certainly extends beyond national borders and which could at least be the EEA. However, for the purposes of this case the relevant geographic market can be left open since the assessment of the transaction would be the same regardless of whether the market is considered as pan-European or national.

## V. COMPETITIVE ASSESSMENT

### **Film distribution to theatres**

34. The markets are fragmented into a large number of local and international distributors who compete for access to screen space. Local distributors are the national ones<sup>25</sup> while the international ones are the US studios. Typically, distributors compete either for release dates and screens. Therefore, it appears that the markets for film distribution to theatres are subject to a certain degree of competition between a large number of competitors.
35. The merging parties operate in the film distribution to theatres in France, Spain, and Germany. The combined market share of the parties<sup>26</sup> will be [10-20]% in France (Universal: [5-10]%, and Bac Distribution, [5-10]%), [10-20]% in Spain (Universal: [5-15]%, and Sogecable, [0-5]%), and [5-15]% in Germany (Universal: [5-15]%, and Tobis, [0-5]%). In the light of these market shares, the transaction does not raise serious doubts regarding film distribution to theatres.

### **Licensing of broadcasting rights**

36. The activity of trading rights is exercised by the merging parties by respectively StudioCanal, Sogepaq, CDCA, and Universal (feature films rights), and by StudioCanal, Expand/Ellipse and Universal (made-for-TV programmes rights).
37. The parties were unable to assess the total market size of both markets. Nevertheless, the Commission estimates that the combined market shares of the parties for the licensing for made-for-TV programmes is [5-15]% and [0-10]% respectively for the French and the German market. In view of these market shares, the transaction does not raise competition concerns regarding made-for-TV programmes.
38. As to the made-for-TV programmes market, the parties were unable to assess the total size of the market for broadcasting for feature films. However, based on market data including the market shares of all US majors, which account for a large majority of

---

<sup>25</sup> Such as Pathé in France, Kinowelt, Constantin in Germany, Laurenfilms, Aurum Producciones in Spain.

<sup>26</sup> Canal+'s, Universal's and other distributors' market share are calculated based on gross box office revenue.

broadcasting rights for feature films. The Commission estimates that the combined market shares of the parties is respectively less than [10-30]% in Spain, and less than [10-30]% in France. Therefore, the operation does not raise competition concern regarding broadcasting for the feature films.

### **Premium films/First-window/Pay-TV**

39. The principal activity of Canal+ is the provision of pay-TV services. It offers these services in France, Belgium divided into French-speaking Belgium and Dutch-speaking Belgium, Italy, The Netherlands, Spain, and the Nordic countries (Denmark, Finland, Norway, and Sweden). Canal+ has a market share in terms of subscribers in excess of [60-85]%, [60-85]%, and [60-85]%, respectively in France, Spain, and Italy. In Belgium and the Netherlands, Canal+ is the only pay-TV operator while in the Nordic countries Canal+ has a market share of [40-50]%. Canal+ is consequently already dominant in France, Spain, Italy, Belgium and The Netherlands, and Canal+ has a strong position in the Nordic countries. Universal is not present in retail pay-TV in any Member State.
40. With regard to premium film rights, Canal+ has managed to sign output deals with the majority of US studios. These output deals include long-term first-window agreements signed on an exclusive basis. As a results Canal + has obtained access to recently US released films representing approximately up to 80-90%<sup>27</sup> of the total number of US films released and of the total number of theatre viewers in France, Italy, and Spain. Thus, Canal+, especially in the countries listed below, enjoys a *de facto* near monopoly position on premium films for pay-TV<sup>28</sup>.
41. The current contractual situation with regard to exclusive first-window rights is summarised in the following tables.

<b>US majors</b>	<b>France</b>	<b>Spain</b>	<b>Italy</b>
Universal	C+, expiry [2000-2005]		under negotiation
MGM	TPS, expiry [2000-2005]	Via digital, expiry [2000-2005]	C+, expiry [2000-2005]
Paramount	TPS, expiry [2000-2005]	C+, expiry up <sup>29</sup> to [2005-2010]	C+, expiry [2000-2005]
Columbia	C+, expiry [2000-2005]	C+, expiry up <sup>30</sup> to [2005-2010]	C+, expiry [2000-2005]
Disney	C+, expiry [2000-2005]	C+, expiry [2005-2010]	C+, expiry [2005-2010]
Fox	C+, expiry [2000-2005]	C+, expiry up <sup>31</sup> to [2005-2010]	C+, expiry [2000-2005]
Warner	C+, expiry [2000-2005]	C+, expiry [2005-2010]	C+, expiry [2000-2005]

<sup>27</sup> Source: Le Film Français, 1999.

<sup>28</sup> See also COMP/JV.37 - *B SKY B/Kirch Pay-TV* for the same conclusion.

<sup>29</sup> [...]

<sup>30</sup> [...]

<sup>31</sup> [...]

<b>US majors</b>	<b>French-speaking Belgium</b>	<b>Dutch-speaking Belgium, The Netherlands</b>	<b>Nordic Countries (Denmark, Finland, Norway, and Sweden)</b>
Universal	C+, expiry [2000-2006]	C+, expiry [2000-2006]	C+, expiry [2000-2006]
MGM	-	C+, expiry [2000-2006]	C+, expiry [2000-2006]
Paramount	-	C+, expiry [2000-2006]	C+, expiry [2000-2006]
Columbia	C+, expiry [2000-2006]	-	Viasat <sup>32</sup> , expiry [2000-2005]
Disney	-	-	Viasat, expiry [2000-2003]
Fox	C+, expiry [2000-2006]	C+, expiry [2000-2006]	C+, expiry [2000-2006]
Warner	C+, expiry [2000-2006]	C+, expiry [2000-2006]	C+, expiry [2000-2006]

Table 1: The Canal+ group's ("C+") exclusive first-window contract

42. Given its current dominant position in a number of Member States, in particular in terms of customer base, given its links through its share holding interest in BSkyB with the pay-TV operators in Europe, given its ability to leverage its combined European leading position in the negotiation of output deals with the US majors, Canal+ was, already before the proposed merger, ideally placed to renew its existing contracts with the majors. In this context it must be stressed that the price of pay-TV rights is usually determined by reference to the total numbers of subscribers, subject to a stated minimum. Consequently, Canal+'s competitors face additional disadvantages because of their relatively limited customer base compared to that of Canal+.
43. *Post-merger*, one may expect that because of its vertical integration Canal+ will secure permanently the renewal of its contracts with Universal in France, Belgium, The Netherlands, Spain, and the Nordic countries and will obtain the right to Universal's films in Italy, preventing thus pay-TV rivals/new entrants from having access to these rights. This is likely to strengthen its position as a pay-TV supplier. However, the impact of the proposed transaction will go beyond the elimination of Universal as a source of supply for competing pay-TV operators. Indeed, as explained below, Universal's acquisition by Vivendi is likely to have a significant impact on the ability of Canal+ both to renew its existing contracts with the majors and to enter into new contracts with those majors who have not signed with it yet.
44. The Commission's market investigation has shown that following the acquisition of Universal, Canal+ will be in an even better position than pre-merger both to renew its existing contracts with the majors and to enter into new output deals with the other US studios. This will result from the different structural links and arrangements such as film co-financing that the other major US studios have with Universal.
45. Due to increasing costs, the production of film requires higher budgets. In order to spread the inherent risk linked to film production, the US studios resort more and more frequently to the co-financing of films with other US studios or with other financial

<sup>32</sup> Viasat is part of the Swedish Modern Times Group.

partners. Broadcasting rights are then split between the co-financing partners on a territory by territory basis.

46. During the last years Universal has thus co-financed a high number of lucrative films such as “*Gladiator, Erin Brokovich, Shakespeare in Love, Twister,...,etc.*” with other US studios (Columbia, Disney, Warner, Fox and MGM). Because of its know-how and financial strength, Universal is a leader in terms of film production and one of the most attracting partners in terms of co-financing. For instance, co-financing represents to date [...] % of its 2000 total film production, while the other studios co-finance to a lesser extent than Universal (in average, other US studios co-finance less than 15% of their total film production). According to the market investigation, this trend is not likely to decrease.
47. As a co-financing partner of a US studio, it is highly likely that Universal would obtain these rights for France, Belgium, Italy, The Netherlands, Spain, and the Nordic countries and because of its vertical links with Vivendi, favour Canal+. Even if Universal does not obtain these rights for the concerned countries, it is highly likely that the US studio partner would prefer to sign output deals for its film distribution with Canal+. The reason is that the US studio would prefer to secure its co-financing with Universal at the production level rather than selling the first-window rights to a pay-TV operator other than Canal+. This is so because the estimated first-window fees represent only [0-10] %<sup>33</sup> of the total estimated returns of a film.
48. In addition, Canal+ has provided funding as associated financial partner, for the production of many US films with the majors, for example “*The Sixth Sense, Numbers,...,etc.* This policy has allowed Canal+ to bypass exclusive first window output deals signed by, for example, Paramount and Disney, with Viasat, for the Nordic countries, and with TPS, for France. Indeed, co-financed films rights are not subject to the exclusivity provision of existing output deals. Following this transaction, it can be expected that together with Universal, Canal+ will be in an even better position to co-finance an increasing number of films subject to exclusive output deals with competing pay-TV operators.
49. Furthermore, prior to the proposed operation, Canal+ was only to a limited extent connected with the major US studios through structural links<sup>34</sup>. Following the acquisition of Universal, Canal+ will be linked through UIP<sup>35</sup> to both Paramount and MGM in the sale of films for theatrical distribution in Europe. Given that first window contracts only represent [10-20] % of UIP’s theatrical distribution revenues and that Universal constitutes a significant partner in the growing segment of co-financed films, it is likely that Paramount and MGM will tend to favour Canal+ in signing output deals in the future. In addition, as Vivendi controls 25% of BskyB, which itself controls Fox, the parties will be linked to another studio, Fox.

---

<sup>33</sup> In average for the French and the Spanish market.

<sup>34</sup> Disney’s 5% interest in the acquisition of CanalSatélite Digital; the 50:50 joint venture between Warner and the Canal+ group for an exclusive distribution of films; the creation of Fox Kid España, between the Canal+ group and Fox. The 25% stake held in BskyB which in turns belongs to the same group as Fox.

<sup>35</sup> UIP is active among other in France, Italy, Spain, and in nearly all EEA countries.

50. Therefore, *post-merger*, Canal+/Universal' bargaining power vis-à-vis the US studios will be increased. This will thus strengthen its position on the first-window premium films segment and further foreclose the pay-TV market where Canal+ is active. Consequently, there exist serious doubts that Canal+'s dominant position on the pay-TV market in France, Spain, Italy, Belgium and the Netherlands will be strengthened and that Canal+ due to the transaction will become dominant on the same market in the Nordic countries.

**Effect of the transaction on the emerging pan-European market for portals and the emerging market for online delivery of music**

51. During the Commission's market investigation a significant number of third parties have expressed concerns as to the possibility of the notifying parties to use the portal Vizzavi<sup>36</sup> as an exclusive or preferable outlet for the content, in particular music, supplied by Universal. Third parties expect that the Vizzavi portal will be a dominant player in Europe as it will be the preferred portal accessible by the parent companies and Vodafone Airtouch' significant mobile customer base. Moreover, some third parties claim the merged entity will obtain the control of Universal Music libraries and will because of its large customer base be able to launch the first comprehensive mobile online music service and thus obtain a first mover advantage. In addition, others could be deprived of the possibility to obtain access to Universal's music library in order to offer competitive services. Third parties argue that the merged entity will offer a large selection of content which will attract more users and which in turn will attract more content and users etc. Vivendi Universal will be the only company in a position to offer a comprehensive music site that can generate these networks effect. Finally, third parties claim that Vivendi Universal will have a considerable bargaining power compared to other portal competitors vis à vis third parties content providers because Vizzavi's higher qualitative and quantitative contents.
52. The notifying party submits that "with respect to an online market for the distribution of music content, Universal does not yet digitally distribute or publish music over the Internet in material quantities. It therefore does not have an appreciable number of customers nor an appreciable market share. Accordingly, the notified transaction has no affect on the market for the Internet distribution of paid-for music content".
53. The notifying party has, however, in their press-release dated 20 June 2000<sup>37</sup> made the following announcements; "The combined company will bring content from the world's largest music company, second largest film library, major film production studio, second largest destination theme park company, and global leader in reference, consumer and PC-based software game publishing with Vizzavi, Vivendi's new multiple access portal, and the combined global distribution capabilities of Vivendi, Seagram and Canal+. Vizzavi will be the default portal for 80 million mobile and interactive TV subscribers of Vivendi's 50-50 joint venture with Vodafone, and Canal+. Growth of the Vizzavi customer base will increase further with the infusion of

---

<sup>36</sup> See case No COMP/JV.48 – *Vodafone/Vivendi/Canal+*, approved on 20.7.2000. Vizzavi, a joint venture between Vivendi and Vodafone Airtouch, is a multi-access portal.

<sup>37</sup> [http://www.seagram.com/news/news\\_text.asp?contentID=798](http://www.seagram.com/news/news_text.asp?contentID=798)

content from the combined company covering global, local and personalised content drawn from all of the most popular entertainment and information formats.”

54. The question in this case is, inter alia, whether the position of Vizzavi will be strengthened on the market for portals via the addition of Universal’s music content. In case COMP/JV.48-Vodafone/Vivendi/Canal+ serious doubts were established in relation to the emerging pan-European market for portals. In the following it is examined whether the addition of Universal’s music content will raise serious doubts on the market for portals and more particularly on the emerging market for online music.
55. The multi-access portal Vizzavi<sup>38</sup> will be offering different services such as entertainment, including music; education, medical assistance, career development, online trading, customer news, e-mail, travel reservations and e-commerce. The addition of content from Seagram which is relevant for the assessment of this case is primarily the music content. Seagram is also an important player within the film business but this area does not appear to be of immediate concern as the market for downloading films is in an early stage of development. This is essentially because of the difficulties in terms of the capacity required for downloading an entire film.

#### **Development of Vizzavi’s customer base**

56. The parents of Vizzavi are Vivendi and Vodafone Airtouch and they are as well the parent companies of the French mobile operator SFR. Because of Vivendi and Vodafone Airtouch’s common ownership of Vizzavi and SFR they both have the incentive to push their customers to become future Vizzavi customers. The European mobile subscriber base of the notifying party and Vodafone Airtouch is per [...], [...] million, including SFR’s customers. In fixed telephony, Vodafone Airtouch’s subscriber base is [...] million per [...] and Vivendi [...] million, and Canal+’s European pay-TV subscriber base is [...] million per [...]. This gives at present a total European subscriber base for mobile and fixed telephony and pay-TV of approximately [...] million subscribers. Regarding third parties’ argument as to the possibility of converting this large subscriber base into Vizzavi’s subscribers, the notifying parties believe that the ability to migrate is rather modest. However, according to Vizzavi’s business plan, which has not yet been approved by the board of Vizzavi, the notifying parties believe that Vizzavi after a rather modest start up in terms of customers will reach in the year [...] [...] million customers. This is to be contrasted with other main portal competitors such as Yahoo!, AOL, and Wanadoo. As a multi-access portal Vizzavi’s customer base will grow exponentially compared to the other competitors in the market.

---

<sup>38</sup> Vizzavi will provide seamless access to the Internet from various devices including mobile and fixed telephony, cable, interactive TV and satellite.

(million)	[...]	[...]	[...]	[...]	[...]
Total mobile customer <sup>39</sup>	[...]	[...]	[...]	[...]	[...]
Active mobile <sup>40</sup> Vizzavi users <sup>41</sup>	[...]	[...]	[...]	[...]	[...]
Third party mobile Vizzavi users	[...]	[...]	[...]	[...]	[...]
TV active house-holds	[...]	[...]	[...]	[...]	[...]
PC users	[...]	[...]	[...]	[...]	[...]
Less multi-access visitors <sup>42</sup>	[...]	[...]	[...]	[...]	[...]
Unique visitors <sup>43</sup>	[...]	[...]	[...]	[...]	[...]
<b>Total</b>	[...]	[...]	[...]	[...]	[...]

Table 2: [...]

57. According to the notifying party, the preferred access form to Vizzavi will be primarily from mobile phones and from PC. Access via set top boxes will be relatively slow as Canal+ is currently developing a set top box that can be used for Internet access but this box is not yet commercially available. In any case, the notifying parties believe that the number of set top boxes suitable to access Vizzavi will amount to [...] million in [...] and remain stable.
58. The above table reveals that the notifying party might not be able to automatically “migrate” its customers as announced in their press release dated 20 June 2000. However, the notifying parties expect that Vizzavi will in the year [...] have a significant customer base of [...].
59. Although the above figures are estimations based on the notifying party’s business plan, the Commission is of the opinion that Vizzavi in all likelihood will have a significant customer base that other providers of portal related services are unlikely to replicate.

**The merged entity will control Universal’s music libraries**

60. The notifying party claims that it will not be in Universal’s commercial interest to limit its online music delivery in Europe only to Vizzavi as this will restrict the expansion of Universal’s music considerably. The notifying party explains that it is in Universal’s

---

<sup>39</sup> [...].

<sup>40</sup> [...].

<sup>41</sup> [...].

<sup>42</sup> [...].

<sup>43</sup> [...].



clear commercial interest to make its music available as broadly as possible to encourage the purchase of CDs. Therefore, there would be no exclusivity or preferential arrangements between Vizzavi and Universal. Furthermore, the notifying party argues that Universal accounts for approximately [...]% of all music content world-wide, and that Vizzavi if it is to be successful, want to offer the broadest possible choices in music meaning that Vizzavi will be open for other music content providers.

61. Universal is today one of the five majors within the market for music publishing, recording and distribution. The others are EMI, Time Warner, Sony and Bertelsmann. Universal's market share in the market for music publishing is between [...]% at an EEA level, and up to [10-30]% in certain Member States such as Germany, Portugal, and the Nordic countries<sup>44</sup>. At present, Vizzavi has concluded no contracts with music publishers, including Universal, in order to distribute online music.
62. Vizzavi will in all likelihood be a very attractive portal for customers, which is reflected by the notifying party's estimations regarding the customer base.
63. It is thus likely that other music content providers would be attracted by Vizzavi's high customer base and that consequently, they would offer their content to Vizzavi. It is questionable whether these contracts would be on exclusive or preferential terms. The notifying party and Vodafone Airtouch are likely therefore to be able to propose to their customers via Vizzavi access to the music libraries of the five major music labels; Sony, Time Warner, EMI, Bertelsmann and Universal. In order for competing portals to be comprehensive from a customers' and portals' point of view, a portal would have to be able to offer access to must-stock products<sup>45</sup>, that is to say to the major music libraries. Otherwise customers will turn themselves to the complete music catalogue of Vizzavi. As Universal is vertically integrated with Vizzavi, competitors are likely to loose access to Universal's music catalogues, and there is a risk that the remaining major music providers will be connected on exclusive or preferential terms to the merged entity.
64. The highly attractive content available on Vizzavi combined with the huge mobile and fixed telephony networks and pay-TV network could increase the number of Vizzavi customers. Consequently, the addition of Universal's music content to the very large distribution structure of Vivendi and Canal+ is likely to create networks effect to the detriment of competitors and to customers. Customers risk to be "walled in" and to pay higher price for the services due to the lack of competition.
65. The market investigation has revealed that Vizzavi is likely to obtain significant first-mover advantages due to its large distribution structure and multi-access system. First-mover advantages will concern Vivendi's and Vodafone Airtouch's abilities to introduce the new technologies such as GPRS<sup>46</sup> and EDGE<sup>47</sup> through Vizzavi.

---

<sup>44</sup> Denmark, Finland, Norway, and Sweden.

<sup>45</sup> The concept of must-stock products refers to the idea that ownership of a stock brand that can affect negatively competition.

<sup>46</sup> See footnote above.

66. Furthermore, the addition of Universal's music content to Vivendi and Canal+'s distribution structure provides Vizzavi with significant bargaining power compared to other portals because of its higher qualitative and quantitative content. Other portals will not be in a position to offer the same price and conditions to content providers as Vizzavi.
67. In the light of the above, Vizzavi's position is likely to be strengthened on the market for portals due to the addition of Universal's music content. The undertakings aiming at removing the serious doubts in the case COMP/JV.48 - Vodafone Airtouch/Vivendi/Canal+ are clearly insufficient to remedy the competition concerns identified above as they only allow other portal operators to access the mobile handsets of the Vodafone/Vivendi mobile customers and to allow other portal operators to access the set top boxes of Vodafone/Vivendi. These undertakings do not foresee the present situation where Vizzavi's strong position on the portals market will be further strengthened through the addition of Universal's music content. This content will in all likelihood not be accessible for competitors after the transaction and Vizzavi will be in the position where it is the only portal having the music must-stock products. Consequently, there are serious doubts that the present transaction leads to the creation of a dominant position on the emerging pan-European market for portals and on the emerging market for online music which the undertakings in the Vizzavi decision cannot remove.

#### **VI. UNDERTAKINGS**

68. In order to eliminate the serious doubts identified by the Commission, Vivendi proposed a package of undertakings to the Commission on 22 September 2000 in the form of a proposal to modify the operation in accordance with the terms of Article 6(2) of the Council Regulation (EEC) No 4064/89.
69. Regarding the pay-TV markets in France and Spain, Canal+ has an output deal with Universal Studios for the broadcasting of Universal films in the first pay-TV window in France and Spain. Upon the expiry of these agreements, Vivendi, Universal and Canal+ undertook that Universal should give to all interested pay-TV operators in France and Spain the opportunity to bid for a new output deal for Universal films for the first pay-TV window in France and Spain, and should conduct negotiations for the conclusion of this new output deal on an arm's length basis and in a fair and non-discriminatory manner. Following such negotiation, Universal undertook to award the contract to the best bidder.
70. In order to eliminate the serious doubts on the emerging market for online music, Universal undertook not to discriminate in favour of Vizzavi in the supply of music for downloading or streaming on the Internet to its subscribers in any EU Member State. Activity to promote music or artists was excluded from this undertaking. This undertaking should be effective from the date of the merger of Vivendi, Universal and Canal+ and remain in effect for a period of two years.
71. These undertakings were market-tested with competitors and customers in the relevant markets of concern. The results of the market test were not satisfactory.

---

<sup>47</sup> See footnote above.

### **Pay-TV market**

72. On the pay-TV market, the undertakings given were unsatisfactory because they were essentially behavioural. In addition, the notifying party offered what usually has to be done in a normal negotiation procedure but without any safeguard mechanism regarding the independent nature of the bidding process, nor a real evaluation of the best bid proposed. Furthermore, the bidding process could be distorted since all revenues produced by the bidding arrangement between Canal+ and Universal would always end up in the merged entity. Therefore, third party pay-TV operators would not have a real guarantee to access the first-window rights. Furthermore, the high majority of pay-TV competitors estimated that the undertakings given should be extended to Belgium, Italy, The Netherlands, and the Nordic countries.
73. However, in the course of the market test, it emerged that structural undertakings which would limit Canal+'s access to the films produced by Universal, would be sufficient to remove the serious doubts. After discussions with the parties, they submitted undertakings which fully respond to the competition concerns identified by the Commission in that they provide access to Universal's films, whether they are co-produced or not, and at the same time cut the link between Universal and Fox through the divestiture of Vivendi's participation in BskyB.
74. The notifying party undertakes not to grant to Canal+ the first-window rights covering more than 50% of Universal production and co-production, unless there should not be competing offers at fair market value. This undertaking covers the territories in where Canal+ is active (i.e. France, Belgium, Italy, The Netherlands, Spain, and the Nordic countries). This undertaking is limited to five years from the expiry of the current output deals because the market investigation reveals that during this period competitors will in all likelihood be in a position to adapt themselves to the new structure of the market.
75. The notifying party undertakes to divest its entire stake in BskyB. The severing of this link with both Fox, as a film supplier, and BskyB as a potential competitor will significantly reduce the impact of the acquisition of Universal as a partner to UIP and to existing and future co-financing deals.
76. This package corresponds to the indications that the Commission had received during the prior market test. The set of proposals reduces considerably Canal+ access to Universal's films and neutralises the negative competitive effects of the operation.

### **Emerging market portals and the emerging market for online music**

77. On the emerging market for portals and on the emerging market for online music, the result of the market test reveals that third parties considered the undertaking to be insufficient. The undertaking was considered to be behavioural with no structural effect and the undertaking did not provide any elements to determine the content of the non-discrimination principle of the undertaking. The two-year duration of the undertaking was too short as Vizzavi's customer base will increase substantially after the first two years. Finally, the undertaking did not provide for any arbitration mechanism in case of a dispute.
78. For these reasons, the Commission reached the conclusion that the undertaking was inadequate to remove serious doubts identified on the emerging market for portals and

on the emerging market for online music. In order to respond to the above comments, the notifying party has submitted a substantially amended undertaking which provides for access to Universal's music content on a non-discriminatory basis regarding the pricing and terms and conditions. Furthermore, the undertaking provides for an arbitration procedure in case of a dispute concerning the access conditions of the undertaking. The undertaking is limited to five years with the possibility of revision after three years.

79. This undertaking appears sufficient to remove the competition concerns linked to the creation of a dominant position for Vizzavi within the emerging market for horizontal portals and the merging market for online music. Indeed, following the implementation of these undertakings, third parties will be in a position to offer competing online music services and thus preventing the emergence of a dominant position on the provision of these services and on the emerging portal market. Given the fact that it cannot be excluded that the market will evolve significantly within some years, the Commission has accepted to review this undertaking after three years. The undertaking provides for access to Universal's music content and will thus have a structural effect<sup>48</sup> on the market in that they will make it possible to preserve a competitive structure of supply.

## VII. CONCLUSION

80. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the EEA Agreement. This decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89 subject to the condition of full compliance with the undertakings set out in the Annex to this decision.

For the Commission,

Mario Monti  
Member of the Commission

---

<sup>48</sup> Judgement of 25 March 1999, in Case T-102/96, Gencor Ltd/Commission.

**UNDERTAKING**

*Case Comp / M.2050 – Vivendi / Canal+ / Seagram*

On July 14, 2000, Vivendi, Canal+ and Seagram (hereafter, the "Parties") notified the proposed concentration by which Vivendi and Canal + intend to merge with the Seagram Company Ltd to the European Commission under Council Regulation 4064/89 on the control of concentrations between undertakings (hereafter, the "Merger Regulation").

The Parties offer the following undertaking to allow the Commission to approve the transaction pursuant to Article 6(2) of the Merger Regulation:

*"1. With respect to France, Spain, Italy, French-speaking Belgium, Dutch-speaking Belgium, The Netherlands, and the Nordic countries, Universal undertakes, upon the expiry of the relevant current output deal between Universal and Canal+, or its relevant affiliate, and for a duration of five years thereafter, not to grant to Canal+, or to its relevant affiliate, broadcasting rights for the first pay-TV window covering more than 50% of Universal film production for any given year both in number of films and in number of theatrical admissions in the relevant territory, unless there should be no competing offer at fair market value for all or part of the balance of Universal's film production. For purposes of this paragraph, "fair market value" shall mean no less than the best terms in the aggregate offered by the relevant competitor in comparable output deals with other US major studios in the relevant territory, and in the event of any disputes in this regard, the matter shall be finally determined by an independent auditing firm of international standing jointly appointed by the two parties.*

*In the absence of an existing output deal between Universal and the relevant Canal+ affiliate, this undertaking shall apply for a period of five years from the closing of the transaction.*

*2. Universal further undertakes for a period of five years from the closing of the transaction, with respect to each theatrical feature film it co-finances or co-produces with another major US motion picture studio and for which Universal obtains first window pay-TV rights in France, Spain, Italy, French-speaking Belgium, Dutch-speaking Belgium, The Netherlands, or the Nordic countries, to include such film for all purposes referred to in paragraph 1. above.*

*3. A trustee will be appointed for purposes of monitoring the foregoing undertakings according to the provisions set out below.*

*The Parties shall propose to the Commission, in due course, the names of at least two individuals or institutions, independent from the Parties, either of them, whom they consider appropriate to be appointed as trustee.*

*The Commission shall have the discretion to approve or reject one or both of the names submitted. If only one name is approved, the Parties shall appoint or cause the individual or institution concerned to be appointed as trustee. If more than one name is approved, the Parties shall be free to choose the trustee to be appointed from among the names approved.*

*If all the names submitted are rejected, the Parties will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection. If more than one further name is approved, the Parties shall be free to choose the trustee to be appointed from among the names approved. If only one name is approved, the Parties shall appoint or cause the individual or institution to be appointed as trustee.*

*If all further names are rejected by the Commission, the Commission shall nominate a suitable trustee which the Parties will appoint or cause to be appointed.*

*As soon as the Commission has given approval to one or more names submitted, or nominated a trustee to be appointed, the Parties shall appoint or cause the trustee concerned to be appointed within one week thereafter.*

*The trustee may be removed by the Parties with the prior approval of the Commission in the event that the trustee has not acted in accordance with the provisions of this undertaking or for any other good cause. Regarding the appointment of a new trustee, the same procedure applies as described above.*

*Following the Commission's approval of a proposed trustee, the Parties shall immediately enter into a mandate with the trustee, whose terms shall have previously been agreed with the Commission and which shall include the functions as set out hereunder:*

- (a) to monitor the satisfactory discharge by the Parties of the obligations entered into in this undertaking; and*
- (b) to provide written reports to the Commission about the trustee's mandate, identifying any respects in which the trustee has been unable to discharge his mandate. Such reports shall be provided on a yearly basis, or at such other time(s) or time periods as the Commission may specify."*

Executed on [...]

For VIVENDI

Jean-François Dubos

Secrétaire Général

VIVENDI

## **UNDERTAKING**

Case Comp / M.2050 – Vivendi / Canal+ / Seagram

On 14 July 2000, Vivendi, Canal+ and Seagram notified the proposed concentration by which Vivendi and Canal+ intend to merge with the Seagram Company Ltd, to the European Commission, under Council Regulation N° 4064/89 on the control of concentrations between undertakings (hereafter the “Merger Regulation”).

Vivendi offers the following commitment to allow the Commission to approve the transaction pursuant to Article 6(2) of the Merger Regulation.

This Undertaking shall take effect upon the date of the Commission Decision declaring the notified concentration compatible with the Common Market under Article 6(2) of Council Regulation No. 4064/89 as amended (the “Effective Date”), subject to the completion of the 3 way merger between Vivendi, Canal+ and Seagram (the “Completion Date”).

### **A. DIVESTITURE OF VIVENDI’S INTEREST IN BSKYB**

1. This undertaking involves the divestment of Vivendi's entire stake in BSKyB (with the exception of the [...] million underlying shares of the 3.00 per cent Exchangeable Bonds due 2003 of 50 pence each and of the 1.00 per cent Exchangeable Notes due 2003 of euros 24.22 nominal value each) (hereafter the "Interest").
2. Within [...] from the Completion Date, Vivendi undertakes to transfer the Interest by any means, including a sale thereof on the market, an issue of securities convertible, exchangeable or redeemable into such amount of shares of BskyB, a bought deal, a private placement, a tender into an offer or a sale to a single identified purchaser.
3. In the event that the Interest has not been transferred within the deadline of [...] specified in paragraph 2 above, Vivendi undertakes to immediately give the Trustee an irrevocable mandate to dispose of the Interest at a price of no less than [...] % below the average value of the closing price of the shares during the [...] immediately preceding the Effective Date, unless Vivendi agrees otherwise. If at the end of this [...] period, the Interest has not been transferred, the Trustee will dispose of the Interest at no minimum price.
4. Vivendi undertakes to appoint a Trustee in accordance with section C below, to carry out the functions defined in paragraph 3.
  - i) **Sale to a single identified purchaser**
5. To assist the Commission in determining whether any proposed purchaser of the Interest is suitable, Vivendi shall submit a fully documented and reasoned proposal enabling the Commission to verify *inter alia* that: (i) Vivendi does not own a material direct or indirect interest in the proposed purchaser; (ii) the sale allows

BSkyB to continue to operate as an active competitive force; and (iii) at the time of completion of the purchase, the proposed purchaser has, or can reasonably be expected to obtain, all necessary approvals for the purchase from the relevant competition authorities.

**B. CONFIDENTIAL INFORMATION**

6. Vivendi undertakes not to divulge any proprietary confidential information relating to BSKyB and received in or in relation to its capacity as shareholder of BSKyB to any of its shareholders or officers.
7. Immediately following the closing of the Transaction, Vivendi shall cause its member of the board of BSKyB to be replaced by the Trustee himself or by representatives of the Trustee.

**C. TRUSTEE**

8. A Trustee will be appointed according to the provisions set out below.
9. Vivendi shall propose to the Commission, within one week after the Effective Date, the names of at least two individuals or institutions, independent from Vivendi, either of whom Vivendi considers appropriate to be appointed as a Trustee.
10. The Commission shall have the discretion to approve (such approval not to be unreasonably withhold) or reject one or both of the names submitted. If only one name is approved, Vivendi shall appoint or cause the individual or institution concerned to be appointed as Trustee. If more than one name is approved, Vivendi shall be free to choose the Trustee to be appointed from among the names approved.
11. If all the names submitted are rejected, Vivendi will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection. If more than one further name is approved, Vivendi shall be free to choose the Trustee to be appointed from among the names approved. If only one name is approved, Vivendi shall appoint or cause the individual or institution to be appointed as Trustee.
12. If all further names are rejected by the Commission, the Commission shall nominate a suitable Trustee which Vivendi will appoint or cause to be appointed. In such case, the Trustee shall be an investment bank or accountancy firm of international standing.
13. As soon as the Commission has given approval to one or more names submitted, or nominated a Trustee to be appointed, Vivendi shall appoint or cause the Trustee concerned to be appointed within one week thereafter.
14. The Trustee may be removed by Vivendi with the prior approval of the European Commission in the event that the Trustee has not acted in accordance with the provisions of this undertaking or any other good cause. Regarding the appointment of a new Trustee the same procedure applies as described above.
15. Following the Commission's approval of a proposed Trustee, Vivendi shall immediately enter into a mandate with the Trustee whose terms shall have previously



been agreed with the Commission and which shall include the functions as set out hereunder:

(a) to monitor the satisfactory discharge by Vivendi of the obligations entered into in this Undertaking;

(b) to inform and advise the Commission as to the adequacy of the procedure for selecting, as the case may be, the single identified purchaser and as to the conduct of the negotiations;

(c) to inform and advise the Commission as to whether such single identified purchaser with whom Vivendi is or intends to negotiate is likely to satisfy the Commission's requirements.

(d) to inform and advise the Commission as to whether the agreements with such single identified purchaser will properly provide for a divestiture of the Interest as provided for herein.

(e) the Trustee shall be entitled to cause Vivendi to break off negotiations if it appears to the Commission that the negotiations concerned are being conducted with an unsuitable single identified purchaser.

(f) to provide written reports to the Commission about the Trustee's mandate, identifying any respects in which the Trustee has been unable to discharge his mandate. Such reports shall be provided at regular monthly intervals commencing one month after the date of his appointment, or at such other time(s) or time periods as the Commission may specify.

g) the Trustee shall be prohibited from forwarding any market related information an/or commercially sensitive information (including but not limited to business projects and strategies of BSKyB) to Vivendi. However if Vivendi requires any confidential information relating to BSKyB for the purpose of the disposal of the Interest, the Trustee will supply that information directly to Vivendi's legal accounting or banking advisors on condition that the information is not communicated to Vivendi. If this is not practicable, then the Trustee will apply to the European Commission for directions and will act in accordance with those directions.

16. Vivendi undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of such disposal.
17. The Trustee will provide Vivendi with all reasonable assistance required to ensure compliance with the Undertaking. Vivendi will always provide or cause to be provided to the Trustee all such assistance and information, including copies of all relevant documents accessible to Vivendi, as he may require in carrying out his mandate and to pay reasonable remuneration for his services as agreed in an engagement agreement.
18. At the Commission's reasonable request, Vivendi shall modify the proposed mandate, if necessary, to ensure that it is in accordance with the provisions of this Undertaking. Once the mandate has been executed, Vivendi shall not make any changes to such mandate without the Commission's approval. Any instruction or

request to the Trustee from Vivendi which conflicts with the Trustee's mandate will be considered null and void.

19. As soon as the specific remedy with which the Trustee has been entrusted has been implemented, the Trustee shall request the Commission to be discharged. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

#### **D. COMMISSION APPROVALS**

20. If the Commission has not within fifteen (15) working days following receipt of a fully documented and reasoned request rejected in writing any proposal submitted to it for approval pursuant to this Undertaking, the proposal shall be deemed to be approved.
21. Provided that the procedure for approval of a single identified purchaser has been complied with, Vivendi or the Trustee as the case may be shall be free to accept any offer or to select the offer it considers best in the event of a plurality of offers for the interests or assets to be divested.
22. Any requests or proposals requiring Commission approval shall be addressed to the Director of Directorate B of the Commission's Directorate General for Competition, 70 Rue Joseph II, 1000 Brussels.

Any communications to Vivendi shall be addressed to persons to be determined and communicated to the Commission before the Effective Date.

#### **E. GENERAL PROVISIONS**

23. The Undertaking is subject in all respects to the general duty of trust and good faith and to the terms of all agreements relating to the Interest, in particular shareholder agreements and the Articles of Association.
24. Vivendi shall submit progress reports in English on the implementation of each of the above remedies to the Commission each month from the Completion Date until the Undertaking is fully implemented.
25. At Vivendi's or at the Trustee's request, the Commission may extend any period in this Undertaking allowed for the conclusion of a binding contract for the divestiture of Vivendi's Interest. Such request shall specify the exceptional circumstances that in Vivendi's or the Trustee's opinion justify an extension.
26. Vivendi shall provide the Commission with such information as the Commission may require in connection with this Undertaking within ten (10) working days from receipt of the Commission's reasoned request.
27. Nothing in this Undertaking shall require Vivendi to take, or refrain from taking, any action, if such action or inaction would violate any applicable laws and regulations, nor shall it be interpreted so as to prevent Vivendi from gaining access to information which it needs to comply with its obligations under financial reporting, tax and securities laws.

IN WITNESS WHEREOF, the undersigned have caused this Undertaking to be executed  
as of [...]:

Jean-François Dubos

Secrétaire Général

Vivendi

## UNDERTAKING

### *Case Comp / M.2050 – Vivendi / Canal+ / Seagram*

On 14 July 2000, Vivendi, Canal+ and Seagram (hereafter “the Parties”) notified the proposed concentration by which Vivendi and Canal+ intend to merge with the Seagram Company Ltd, to the European Commission, under Council Regulation n 4064/89 on the control of concentrations between undertakings (hereafter the “Merger Regulation”)

The Parties offer the following commitment to allow the Commission to approve the transaction pursuant to Article 6(2) of the Merger Regulation:

#### “Definitions

*For the purpose of this Undertaking,*

*Universal shall mean the recorded music operations owned and controlled by Seagram.*

*Vizzavi shall mean the Joint Venture between Vivendi Group and the Vodafone Group aimed to develop, market and provide a multi-access horizontal portal.*

*Affiliated music content provider shall mean any music content provider that is related or affiliated with the Parties.*

*Unaffiliated music content provider shall mean a third party music content provider that is unrelated or unaffiliated with the Parties.*

#### Availability

*The parties shall not restrict the availability of music content on Vizzavi on the basis of whether it is supplied by an Unaffiliated music content provider and shall charge both Affiliated music content providers and Unaffiliated music content providers a fair market price for such availability.*

#### Non-Discrimination

*Universal undertakes to provide access to its music content on a non-discriminatory basis which shall mean that Universal shall not discriminate in favor of Vizzavi in the supply of music for downloading or streaming online to its subscribers in the EEA such that any differences in the conditions, including pricing and terms, upon which the music is made available to Vizzavi and the conditions, including pricing and terms, upon which such music content is made available to competitors of Vizzavi shall be based upon objective reasons and not on the basis that Vizzavi and Universal are both affiliated through common ownership with Vivendi. For the purpose of this Undertaking, objective reasons include but are not limited to the security of the systems operated by such competitors (e.g., systems that prevent unauthorized downloading, streaming or retransmission, such as those that may be proposed by the Secure Digital Music Initiative), the quality of their technology (e.g., technology that provides comparable audio quality), and their creditworthiness.*

*Universal further undertakes that it shall not discriminate in favor of Vizzavi on the basis that competitors of Vizzavi may use encryption technologies, music player software or devices commonly used in the music industry which are different than those used by Vizzavi, so long as the use of such technologies, software or devices does not require Universal to bear additional costs to supply its music for use with such technologies, software or devices, and is secure.*

*It is understood that this Undertaking does not prevent Universal from promoting music through early releases on any of the competing digital platforms, including Vizzavi.*

*Universal further undertakes that it shall maintain records to show the conditions upon which its music is made available to Vizzavi and the conditions upon which its music is made available to competitors of Vizzavi.*

### *Dispute Resolution*

*In the event that a dispute arises between Universal and a competitor of Vizzavi as to whether the material terms, taken as a whole, upon which Universal's music is being offered to that competitor are discriminatory within the meaning of this Undertaking, the complaining party shall have the right to arbitrate that dispute, provided that both the complaining party and Universal have used their best efforts to resolve the dispute through negotiation.*

*To initiate arbitration, the complaining party shall give written notice to Universal nominating an arbitrator and stating the specific nature of the claimed discrimination, the factual basis of its position and the relief requested. In such case, Universal shall appoint an arbitrator within 14 days after receipt of the written notice. The arbitrators so appointed shall appoint another arbitrator to be president of the arbitral tribunal within 7 days after both have been nominated.*

*The arbitration procedure shall follow the Rules of the Arbitral Court of the International Chamber of Commerce (ICC Rules). The arbitration shall be conducted in London. The language of the arbitration shall be English.*

*Any of the arbitrators will be entitled to request any relevant information from Universal or the complaining party. If information required to be kept by Universal pursuant to this Undertaking is not available, the arbitrators shall decide in favor of the complaining party having taken into account the significance of the information which is unavailable. The arbitrators shall be instructed not to disclose confidential information. The standard attributed to confidential information and business secrets are those as set out in accordance with European Community competition law.*

*The burden of proof in any dispute under this Undertaking shall be as follows: (i) the complaining party must produce evidence of a prima facie case, and (ii) if the complaining party produces evidence of a prima facie case, the arbitrator must find in favor of the complaining party unless Universal can produce evidence to the contrary.*

*The parties, in appointing the arbitrators, shall instruct the arbitrators to use their best efforts to make a decision concerning what relief, if any, is warranted in compliance with this Undertaking within one month of the appointment of the president of the arbitration panel. The arbitral tribunal shall fix the on account payment which shall be made by either or both parties towards the costs of arbitration. The arbitration award shall, in addition to dealing with the merits of the claim, impose the fees and costs of the prevailing party upon the party that is unsuccessful in the proceeding.*

## Reporting

*The Commission is to receive quarterly reports on the implementation of this Undertaking.*

## Duration

*This Undertaking shall be effective from the date of the merger of Vivendi, Universal and Canal+ and shall remain in effect for a period of five years.*

## Change in Circumstance

*Upon the completion of three years from the commencement of this Undertaking, Universal has the right under Community law to request that the Commission review this Undertaking, or any part hereof, in the event that Universal and Vizzavi can demonstrate to the Commission's satisfaction that either the conditions in the market for online distribution of music or the state of development of Vizzavi or its competitors have changed in such a way that makes this Undertaking, or any part hereof, unnecessary.*

## Trustee

*A trustee will be appointed for purposes of monitoring the foregoing undertakings according to the provisions set out below.*

*The Parties shall propose to the Commission, in due course, the names of at least two individuals or institutions, independent from the Parties, either of them, whom they consider appropriate to be appointed as trustee.*

*The Commission shall have the discretion to approve or reject one or both of the names submitted. If only one name is approved, the Parties shall appoint or cause the individual or institution concerned to be appointed as trustee. If more than one name is approved, the Parties shall be free to choose the trustee to be appointed from among the names approved.*

*If all the names submitted are rejected, the Parties will submit the names of at least two further such individuals or institutions within one week of being informed of the rejection. If more than one further name is approved, the Parties shall be free to choose the trustee to be appointed from among the names approved. If only one name is approved, the Parties shall appoint or cause the individual or institution to be appointed as trustee.*

*If all further names are rejected by the Commission, the Commission shall nominate a suitable trustee which the Parties will appoint or cause to be appointed.*

*As soon as the Commission has given approval to one or more names submitted, or nominated a trustee to be appointed, the Parties shall appoint or cause the trustee concerned to be appointed within one week thereafter.*

*The trustee may be removed by the Parties with the prior approval of the Commission in the event that the trustee has not acted in accordance with the provisions of*

*this undertaking or for any other good cause. Regarding the appointment of a new trustee, the same procedure applies as described above.*

*Following the Commission's approval of a proposed trustee, the Parties shall immediately enter into a mandate with the trustee, whose terms shall have previously been agreed with the Commission and which shall include the functions as set out hereunder:*

- (a) to monitor the satisfactory discharge by the Parties of the obligations entered into in this undertaking; and*
- (b) to provide written reports to the Commission about the trustee's mandate, identifying any respects in which the trustee has been unable to discharge his mandate. Such reports shall be provided on a yearly basis, or at such other time(s) or time periods as the Commission may specify.”*

Executed on [...]

---

Jean-François Dubos  
Secrétaire Général and  
Secrétaire du Conseil  
Vivendi

---

Daniel R. Paladino  
Executive Vice President  
Legal and Environmental Affairs,  
The Seagram Company Ltd.

Canal+