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***Case No COMP/M.2483 -  
GROUP CANAL + / RTL  
/ GJCD / JV***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 13/11/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13/11/2001

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No. COMP/M.2483 Canal+/RTL/GJCD/JV  
Notification of 26 September 2001 pursuant to Article 4 of Council Regulation No. 4064/89<sup>1</sup>**

**I. THE OPERATION**

1. On 29 June 2001, the Commission received a notification whereby Group Canal + S.A. ("Canal+") and RTL Group ("RTL") acquire within the meaning of Article 3(1)(b) of Regulation (EEC) No 4064/89 ("the Merger Regulation"), joint control of a joint venture ("JV") in which they merge their respective sports rights trading subsidiaries, Sport + SNC ("Sport+"), and UFA Sports GmbH ("UFA Sports") with a French undertaking active in the same sector, Groupe Jean-Claude Darmon S.A ("GJCD"). The resulting JV will be jointly controlled by RTL and Canal+ [...].
2. On 9 July 2001 the Commission declared the notification incomplete.
3. The parties submitted their complete response to the Commission's letter of incompleteness on 26 September 2001, so their notification became effective the following day.
4. The purpose of the transaction is to create a JV that will operate on a lasting basis as an independent sports rights agency, with its own resources and earning most of its revenues from transactions with independent third parties. Accordingly, the television activities of its

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

parents Canal+ and RTL including their purchase of sports broadcasting rights are intended to remain largely outside the JV.

5. At present Sport+, UFA Sports and GJCD trade for their own account re-selling the sports rights they acquire to various broadcasters throughout the EEA, including Canal+ and RTL – [10-30%] of Sport+'s turnover is from Canal+, [0-10%] of UFA Sports' turnover is from RTL. Moreover, although RTL has a minority stake in GJCD, [20-40%] of GJCD's turnover is from Canal+. This is due to the fact that whereas RTL's channels are largely general entertainment channels where sports form part of a wider programme offering, as a pay TV provider, Canal+ offers its subscribers thematic channels dedicated to sports. On the basis of these historic figures, the merged entity can be expected to transact at least [10-30%] of its business with its parents, [10-20%] with Canal+ and [0-10%] with RTL.

## II. THE PARTIES

6. Canal+ is solely controlled by the French group Vivendi Universal. Canal+ is active in the production, distribution and marketing of pay television channels and services by cable and satellite; the production and distribution of feature films and audio-visual works; and the acquisition and sub-licensing of programming and television sports broadcasting rights.
7. RTL Group is a jointly controlled venture between Bertelsmann Aktiengesellschaft ("Bertelsmann") and Groupe Bruxelles Lambert S.A ("GBL"). RTL is active in commercial broadcasting of television and radio programming; television programme production; and the acquisition and sub-licensing of programming including television and radio sports broadcasting rights.
8. Sport+ is a French firm active mainly in the trading of sports broadcasting rights. Canal+ owns 100% of the shares of Sport+. Sport+'s core business is the trading of audio-visual sports rights focusing on international broadcasting rights for national league football (TV rights make up [90-100%] of its business activity, whereby football constitutes [90-100%] of this, [30-40%] of the business is located in Western Europe and [15-30%] of the business is carried out with Canal+). In addition, it has some basketball and handball rights which figure in the top 5 most popular sports in certain EEA Member States as well as more limited sports related marketing and advertising activities. Its revenues in 1999 were (FRF '000) and in 2000 were (FRF '000).
9. UFA Sports is a German firm active in the trading of sports broadcasting rights, as well as the sale of various marketing services in relation to sports events. It was set up in 1988 as part of UFA Holding and became an independent GmbH since 1998. RTL owns 100% of the shares of UFA Sports. UFA Sports' rights portfolio focuses on the football rights to the qualifying matches of the UEFA Cup, the UEFA Champions League, the FIFA World Cup, and the European Championship of Nations. In addition it has rights to some tennis events which figure in the top 5 most popular sports in certain EEA Member States as well as some sports related marketing and advertising activities. Its turnover in 1999 was [...] (mDM) and in 2000 was [...] (mDM) (TV rights make up about [50-60%] of UFA Sports' revenues, whilst marketing accounts for [40-50%] of the revenues, the business with RTL

makes up [0-10%] of the revenues whereas international sales make up [40-50%] of the revenues).

10. GJCD is a French sports rights agency mainly active in the trading of television sports rights and a provider of marketing services for sports events. GJCD is principally controlled by Mr Jean-Claude Darmon (representing 36.8% of the shares and 52.9% of the voting rights) whereas RTL holds a non-controlling stake of 28.1%. GJCD is mainly active in France and Italy with the football rights<sup>2</sup> to clubs to the qualifying matches of the UEFA Cup and the Champions League. In addition, it has some rugby and tennis rights and is very active in the market for the provision of a variety of advertising services to right holders. Its turnover in 1998/1999 was (FRF '000), and in 1999/2000 was (FRF '000) (TV rights make up [50-70%] of the revenues whereas marketing accounts for [25-35%], [25-35%] of turnover is generated from Canal+).

### III. COMMUNITY DIMENSION

11. The combined aggregate worldwide turnover of the undertakings concerned exceeds EUR 5 000 million (Canal+: MEUR [...]; RTL: MEUR [...]; GJCD: MEUR [...]). The aggregate Community wide turnover of each party exceeds EUR 250 million (Canal+: MEUR [...]; RTL: MEUR [...]; GJCD: MEUR [...]). They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

### IV. THE RELEVANT MARKETS

12. According to the parties, the relevant markets in which the JV will be active are: the *advertising market* and the market for *sports broadcasting rights* which is vertically linked to the downstream market for *television broadcasting* where both parents are active. A further relevant market for the transaction is the market for the *mobile production of broadcasting signals*.

#### **Sports Broadcasting Rights**

13. On the market for *sports broadcasting rights*, both the JV and its parents will be active as “buyers” and “sellers”.
14. On the “buying-side”, (i.e. the market for the *acquisition of sports broadcasting rights* directly from right holders) the JV and its parents will compete with other sports rights intermediaries and/or broadcasters to buy rights from original right holders.
15. On the “selling-side” (i.e. the market for the *re-sale of sports broadcasting rights* acquired from rights holders), the JV and its parents will compete with other sports rights intermediaries and/or other broadcasters who re-sell sports broadcasting rights to broadcasters. Note that rights holders can also sell directly to broadcasters.

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<sup>2</sup> [Commercial rights (broadcasting and advertising)].

16. For the parties the geographic market for the *acquisition and re-sale of sports broadcasting rights* is at least EEA-wide and possibly world-wide for all sports rights due to the fact that such rights are acquired from right holders at least on an EEA-wide basis and even on a world-wide basis.
17. The Commission requested the parties to provide data for the “buying-side” and “selling-side” of sports broadcasting rights both on a national and EEA-wide basis. At national level, the Commission requested the parties to provide market share data for all sport rights divided into: (a) each of the “top-5 most popular sports”,<sup>3</sup> representing approximately 90% of the total value of all sports broadcasting rights, at national level,<sup>4</sup> and (b) a composite “other” for the remaining 10%.
18. The data supplied by the parties showed that: (a) there were national variations between different EEA Member States with regard to the popularity of different sports programmes;<sup>5</sup> and (b) football was the top leading sport in almost all EEA Member States.<sup>6</sup> Consequently, the Commission’s market investigation sought to ascertain whether the relevant product market encompassed *all sports broadcasting rights* as suggested by the parties or whether there were separate markets for *different types of sports* and *particularly football* where both the JV and its parents are currently mainly active.
19. Broadly speaking, the results of the Commission’s market investigation demonstrate that although *sports broadcasting rights* may constitute a distinct field from other television programming, it ought to be further sub-divided into other separate product markets. More particularly, the Commission’s market investigation suggests that, at least within the EEA, *football broadcasting rights* may not be regarded as substitutes to *other sports broadcasting rights*. This is due to football’s pre-eminence as the singularly most popular sport across most EEA Member States, regularly attracting wider audiences which are rarely matched by other sports.<sup>7</sup> In turn, this means that *other sports broadcasting rights* do not constitute a constraint on the pricing behaviour of the owners of *football broadcasting rights* which consistently attract higher prices compared to *other sports broadcasting rights* for right holders and sports rights intermediaries and may be expected to generate higher revenues for broadcasters.

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3 The MTF and the parties agreed to quantify these on a “weighted basis” by reference to the number of hours broadcast by individual broadcasters in each country in 1998 and 1999, multiplied by that broadcaster’s annual average audience in each year as available in Kagan’s report on European TV Sports of June 2000.

4 The percentages applied by the parties for valuing the size of the total market for the other top-4 sports were as follows: 10 % of the total sports broadcasting rights in France, Germany/Lichtenstein, Greece, Italy, Netherlands, Portugal, Spain and the UK; 20% of the total sports broadcasting rights in Belgium/Luxembourg, Denmark, and Ireland; and 30% of the total sports broadcasting rights in Austria, Finland, Norway, and Sweden.

5 This seemed to suggest differing television viewer demand patterns across EEA Member States and therefore varying supply opportunities across these Member States.

6 Except in Finland and in Ireland where the leading sports in terms of number of hours broadcast weighted for audience figures were Ice Hockey and Horse Racing respectively.

7 Save perhaps for the occasional major international sports event such as the Olympic Games run every four years.

20. As there are no overlaps between the parties concerning other sports rights, the present operation concerns essentially the football rights. The results of the Commission's market investigation show that there exist possible distinctions among *football broadcasting rights*. These include:

i) type of event (e.g. the World Cup, the European Championship of Nations, the UEFA Champions League, the UEFA Cup or the Premier League): not all events have the faculty to generate the same revenue due to a different timing. The Commission considers that two different types of events can be distinguished: the regular ones and the non regular ones.

#### Regular events

Some events take place on a regular basis every year such as the national league or cup competitions, the UEFA Champions League or the UEFA Cup. The national league competitions are national competitions that take place between clubs of the same league (principally First League) and are usually played on a regular basis each week. The cup competitions are presently organised on the basis of a number of rounds where different clubs of a same country compete. The Champions League is one of the most prestigious club competition. The Champions League is open to national associations' domestic champions; 51 national football associations are members of the UEFA and all, are in principle, entitled to enter at least one team in the Champions League. The number of clubs that each national association is entitled to enter varies from season to season and is determined by UEFA on the basis of each country's ranking. 72 clubs (both qualifying and final rounds) have been participating in the season 2000/2001. Clubs qualify in one of the following ways: by virtue of their final position in their national league and by the qualifying rounds. The UEFA Cup is also an important club competition. Clubs qualify in one of the following ways: By virtue of their final position in their national league; by winning their premier domestic cup competition; through the UEFA Inter-Toto Cup; by being awarded a place by UEFA in the qualifying rounds; by being eliminated from the Champions League at either the final qualifying rounds or the end of the first group stage. 145 clubs (both qualifying and final rounds) have been participating in the season 2000/2001.

It is true that some of these events such as the national 1<sup>st</sup> league and the UEFA Champions League might be a little bit more attractive than the national 2<sup>nd</sup> league or the UEFA Cup. However, this attractiveness depends mainly on the participating clubs, in particular of the Member States concerned, not only on the type of competition itself. Furthermore, all these rights generate a constant income streams and can therefore be considered as substitutes for the different broadcasters. For the same reasons, the qualifying rounds of the UEFA Champions League and the UEFA Cup cannot be split from the final rounds even if the broadcasting rights for the qualifying rounds are less valuable than the rights for the final rounds. The attractiveness of the qualifying rounds depends in the same way as the final rounds on the participating clubs and the qualifying rounds prolong the respective competition and thereby the constant revenue stream the broadcasters generate from the respective competition.

### Events that are played more intermittently

Some events take place once every few years such as the World Cup or the European Championship of Nations which take place every four years over a relatively short time period. Such events do not generate constant revenues and are particularly concentrated during the summer of the concerned periods.

ii) category of rights (e.g. pay TV<sup>8</sup> versus free TV): Pay TV rights and free TV rights are not interchangeable due to the fact that they are earmarked for free TV or pay TV respectively.

### Conclusion on the relevant market for sports broadcasting rights

21. The results of the Commission's market investigation show that pan-European and/or national football events that deliver regular matches over a broadcasting season are not substitutable to events that take place more intermittently. Indeed, and based on the above, the Commission considers that there exists markets for:

(a) the acquisition and re-sale of football broadcasting rights to events that are played regularly throughout every year. In practice, this involves matches to the national leagues (primarily the 1<sup>st</sup> Division) and cups, the UEFA Champions League and the UEFA Cup;

(b) the acquisition and re-sale of football broadcasting rights to events that are played more intermittently, every four years. In practice, this involves matches such as the FIFA World Cup and European Championship of Nations, each of this competition being very likely to be a separate market.

22. In terms of geographic scope, the results of the Commission's market investigation indicate that the market for the retail sale of rights ("the selling-side") is invariably national in scope since they are licensed to broadcasters for each national territory in which they operate, and where due to cultural factors demand for different matches featuring different clubs can vary from country to country. This is true for both markets (a) and (b). The geographical scope of the wholesale market ("the buying-side") is also national for market (a), since the rights for regular sports events are acquired on a national basis. Only for market (b) the geographic scope of the buying side may be wider than national

### **Television Broadcasting**

23. RTL and Canal+ are both television broadcasters who are active on the market for the acquisition of *football broadcasting rights* be it directly from right holders or indirectly through sports rights intermediaries.

24. RTL is present as a commercial broadcaster in Belgium, Luxembourg, France, Germany, the Netherlands, Spain and the United Kingdom, funded mainly through advertising

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<sup>8</sup> Including pay per view rights.

revenue. By contrast, Canal+ is active as a pay TV operator in Belgium, Luxembourg, France, Italy, the Netherlands, Spain and the Nordic countries,<sup>9</sup> funded mainly through subscription fees. As the Commission has already stated in previous decisions,<sup>10</sup> pay TV constitutes a relevant product market separate from free TV due primarily to differences in the conditions of competition between the two modes of broadcasting, resulting from differences in their sources of revenue.

25. As for the relevant geographic market, this has been found to be national or at least confined to linguistic regions,<sup>11</sup> due to varying national regulatory regimes, language barriers, cultural factors and other differing conditions of competitions prevailing in different countries (e.g. the structure of the market for cable TV).

### **Marketing Communications Services/Sports Marketing**

26. The parties submit that a relevant market in which the JV is active is the market for advertising. The JV will comprise the current activities in the field of sports advertising of GJCD (with a turnover of MEUR [...] for 2000) and of UFA Sports (with a turnover of MEUR [...]); Sports+ is not active in this field. These activities involve arranging shirt and equipment sponsoring, selling panel advertising (such as billboard advertising in the stadium) and a variety of activities generally categorised as “public relations” which involve organizing public relations and hospitality events. The JV will operate as an intermediary between players, teams, clubs and associations, on the one hand, and sponsors or advertisers on the other.
27. According to the notifying parties all the services described above fall within the scope of the same relevant market definition. This is in line with previous cases in which the Commission has taken the view that the market for marketing communications services encompasses a range of activities, in particular advertising, information and consultancy, public relations, direct marketing, and event management. The market investigation of the Commission in the present case has resulted in some indications that a separate market for marketing communications services in the field of sports may be considered. From a demand side perspective, sports events may be especially suitable to attract certain groups of customers. As regards the geographic scope the parties submit that the market is at least Europe-wide and more likely worldwide. However, for the purpose of the present case, the market definition may be left open as even on the basis of a national market and the narrowest possible product market definition, the proposed concentration would not lead to any affected markets.

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9 Nordic countries include Denmark, Finland, Norway and Sweden.

10 See for example, Commission Decision 94/922/EC, MSG Media Service, OJ L 364, 31.12.1994, p.1 paragraphs 32 and 33 and Commission Decision IV/M.993 Bertelsmann/Kirch/Premiere, OJ L 53/1, 27.02.1999 paragraph 18.

<sup>11</sup> See for example, Commission Decision 94/922/EC, MSG Media Service, OJ L 364, 31.12.1994, p.1 paragraph 46 and Commission Decision IV/M.993 Bertelsmann/Kirch/Premiere, OJ L 53, 27.02.1999, p. 1 paragraph 22.

## **Mobile Production of Broadcasting Signals**

28. According to the parties and the results of the Commission's market investigation there is a separate and distinct market for the mobile production of broadcasting signals. These services are provided by mobile production units that are used to film the live-event and produce a TV-signal on the spot. Mobile units consist of outside broadcasting vans which have all the necessary technical equipment on board to operate on the spot. The mobile production services are hired for the broadcasting of sports events as well as other outdoor events (concerts, political and social events (e.g. weddings)) and for the production of programs in studios where the studio lacks the necessary equipment for the production. All mobile production units services are substitutable from a demand as well as from a supply side perspective regardless whether these services are provided for an outside event or for the production of studio programs. Customers of such services are broadcasters.
29. The parties submit that the geographical scope of the market goes beyond the borders of individual Member States. They submit that French companies are active in Belgium, Luxembourg and Holland, while Spanish companies and Italian companies provide their services in France. However, the exact market definition can be left open as even if the market is considered to be national in scope no competition problems arise with regard to the countries (France and Luxembourg) in which subsidiaries of RTL group are active in the market for the mobile production of broadcasting signals.
30. Among the parties, only RTL is active via its subsidiaries Video Communication France ("VCF") based and only active in France and Broadcasting Center Europe ("BCE") based and only active in Luxembourg. As outlined below the markets in which VCF and BCE are active may potentially constitute vertically affected markets.

## **VI. ASSESSMENT**

### **Horizontal overlap in football broadcasting rights between the JV and its parents**

31. Horizontal overlaps between the parties occur only on market (a) that is to say the acquisition and re-sale of football broadcasting rights to events that are played regularly throughout every year - the national leagues (primarily the 1<sup>st</sup> Division) and cups, the UEFA Champions League and the UEFA Cup and their respective qualifying rounds. There are no overlaps between the parties in market (b) that is the acquisition and re-sale of football broadcasting rights to events that are played more intermittently, every four years - the FIFA World Cup and European Championship of Nations and their respective qualifying rounds.

### **Buying-side**

32. Canal+ and its subsidiary Sport+ are by far the largest purchaser of *sports broadcasting rights* particularly *football broadcasting rights* amongst the parties, second to them is GJCD followed by RTL and UFA Sports. This is best illustrated by looking at the value of EEA-wide purchases of the parties for 2000:

Buying-side 2000 – EEA Values (M€)	Canal+	RTL	Sport+	UFA Sports	GJCD	JV +parents
Football	400-450	0-50	50-100	0-50	50-100	550-600
Tennis	0-10	0-10	0-10	0-10	0-10	0-10
Formula One	0-10	0-10	0-10	0-10	0-10	0-10
Golf	0-10	0-10	0-10	0-10	0-10	0-10
Basketball	0-10	0-10	0-10	0-10	0-10	0-10
Other	15-25	5-15	0-10	0-10	0-10	25-35

Table 1 - Parties' EEA-wide Purchases on Buying Side

33. Viewed at an EEA level, the horizontal overlap between the parties (i.e. JV + parents) occurs exclusively in relation to football with the most significant overlap at Member State level occurring in France. There are no overlaps with respect to Tennis as Canal+'s rights [...] concern France whereas UFA Sports' rights concern Germany [...]. It can be seen that Canal+ alone accounts for [1/2;3/4] of the parties' combined purchases with the JV making up the remaining [1/4;1/2]. RTL's purchases are considerably less than those of Canal+. This is due to the fact that Canal+ is a pay-TV operator who specialises in the distribution of sport-based thematic channels for whom football in particular is a key input for attracting viewers. By contrast, RTL is a general entertainment broadcaster for whom football forms part of a much broader product mix.

34. According to figures supplied by the parties, their combined market shares (i.e. JV + parents), on the "buying-side" (i.e. the market for the (a) *acquisition of football broadcasting rights*), will be in excess of 15% in the following EEA Member States.

Buying-side 2000	Market Share Range Based on Different Estimates of Total Market Size	Value (M€) of Combined purchases of the JV and its Parents	Total Market Size by Value (M€) - Parties Best Estimate	Total Market Size by Value (M€) Lower End Range – Parties Best Estimate	Total Market Size by Value (M€) Lower End Range – MTF Method
Belgium/ Luxembourg	[10-60%]	[5-10]	[25-50]	[25-50]	[10-25]
France	[30-60%]	[230-280]	[500-1000]	[500-1000]	[50-500]
Italy	[20-60%]	[220-270]	[500-1000]	[500-1000]	[50-500]
Netherlands	[10-60%]	[10-20]	[50-100]	[50-100]	[25-50]
Spain <sup>12</sup>	[30-50%]	[220-270]	[500-1000]	[500-1000]	[500-1000]

Table 2 – Parties' Market Shares on Buying-Side

35. Market shares of the parties exhibit a non negligible range of variation. This is principally due to the percentage attributed to the football rights among the total sports rights. However, note that overlaps on the "buying-side" between the parties' activities in 2000 occurred principally in the Benelux and in France.:

<sup>12</sup> Market shares from Sogecable includes only their own purchases from Audiovisual Sport ("AVS"). AVS is a joint venture jointly control by Sogecable and Telefonica who controls Via Digital, the Spanish pay-TV operator.

Buying-side 2000 Values (M€)	Canal+	RTL	Sport+	UFA Sports	GJCD	JV +parents
Belgium/ Luxembourg	5-10	0-5	0-5	0-5	0-5	5-10
France	140-160	0-20	0-20	0-20	45-65	200-220
Netherlands	10-20	0-5	0-5	0-5	0-5	10-20

Table 3 – Parties’ Overlaps on Buying-Side

36. In France, Canal+ shares the pay TV rights for the French First division rights with TPS - obtained from the French league.<sup>13</sup> It also holds the pay TV rights for the Champions League (final rounds). Through UFA Sports, RTL and GJCD holds some free TV rights relating to the qualifying matches of the Champions League/UEFA Cup. When considering free TV and pay TV rights as being part of a separate market, no overlaps occur between the portfolio of Canal+, on the one hand, and RTL and GJCD, on the other hand.
37. These overlaps are limited either in qualitative values or quantitative terms - number of matches played. In terms of qualitative values, overlaps are less than [0-10%] of the market and represent less attractive football rights. In terms of matches, overlaps between UFA Sports’ clubs and the GJCD’s clubs represented [0-10%] of the total matches played in the qualifying rounds of the Champions League and the qualifying rounds of the UEFA Cup in the season 2000-2001.
38. Even on the basis that pay TV and free TV rights were part of the same market, the rights owned by RTL and GJCD are not sufficiently important to constitute a major contribution to Canal+’s repertoire.
39. In Belgium/Luxemburg, Canal+ holds the pay TV rights of the Belgian First division and cup rights (obtained from the Union Royale Belge des sociétés de football/Belgium football league BV) and the qualifying rounds of the Champions League/UEFA Cup. RTL (through UFA Sports) owns the free TV rights for the qualifying rounds of the Champions League/UEFA Cup obtained from [0-5] clubs, these rights represent less than [0-5] of the market. In the Netherlands, Canal+ obtained the pay TV rights for the Dutch First division (obtained from the Dutch football federation) and holds the pay TV rights for the qualifying rounds of the Champions League. RTL (through UFA Sports) holds the free TV rights for the qualifying rounds of the Champions League/UEFA Cup from only [0-10] Dutch clubs. On the basis of a separate market for free and pay TV, no overlaps occur. On the basis of the hypothesis of one market including pay TV and free TV rights, the overlaps represent less than [0-5] of the market.
40. The Commission considers therefore that overlaps in the buying-side are not significant and will not lead to the strengthening of the positions of parties as a result of the creation of the JV.

<sup>13</sup> TPS, the French pay TV operator is the main competitor to Canal+.

41. When evaluating the market position of RTL and GJCD in the Member States concerned, it has to be taken into account that (i) the number of clubs<sup>14</sup> are immaterial since not all these clubs qualify to participate in the UEFA Champions League and UEFA Cup (for instance, in the season 2000/2001, [0-10] GJCD clubs were qualified for the second round of the UEFA Cup); (ii) even if the clubs they have under contract do qualify, the value of the rights to their matches vary substantially depending on the kind of competition, the stage of the competition reached, and above all, the identity of the opposing club. A match between two Eastern European clubs is worth much less than a match between two Western European clubs.
42. Finally, according to the market investigation, the bargaining positions of rights holders have become stronger over the past years as the number of attractive football rights has increased very slowly compared with the rapid expansion of distribution capacity. Inevitably, increased downstream competition in television broadcasting distribution markets has fuelled demand in the upstream rights market – in particular in relation to attractive football rights. This demand could not be met by increased supply of content. As a result, the bargaining position of clubs vis-à-vis rights traders/broadcasters has become stronger.

#### Selling-side

43. On the “selling-side” (i.e. the market for the *re-sale of football broadcasting rights*), the combined market shares of the parties (i.e. JV + parents) will be in excess of 15% in the following EEA Member States:

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<sup>14</sup> The UFA Sports has the world-wide rights of the qualifying rounds of the UEFA Champions League and the qualifying matches of the UEFA Cup for approximately [200-300] clubs in some of the 51 countries that take part in UEFA. GJCD owns the television rights to the qualifying rounds of the UEFA Champions League and the qualifying matches of the UEFA Cup of [10-18] clubs of the 18 French 1<sup>st</sup> Division clubs. Generally speaking, most of the events regularly played such as the national leagues or cups are sold in block by their national league or federation. The final rounds of the UEFA Champions League, and the final match of the UEFA Cup are also licensed collectively via their governing bodies. It is only the qualifying rounds of UEFA Champions League/UEFA Cup which are licensed individually via the participating clubs.

Selling-side 2000	Market Share Range Based on Different Estimates of Total Market Size	Value (M€) of Combined purchases of the JV and its Parents	Total Market Size (M€) – Parties Best Estimate	Total Market Size Lower End Range (M€) - Parties Best Estimate	Total Market Size Lower End Range (M€) – MTF Method
Belgium/ Luxembourg	5-25%	1-3	[10-25]	[10-25]	[0-10]
France	10-50%	55-65	[100-500]	[100-500]	[100-500]
Netherlands	5-35%	4-6	[50-100]	[25-50]	[10-25]
Norway/ Iceland	15-40%	1-2	[0-10]	[0-10]	[0-10]
Spain <sup>15</sup>	20-30%	90-110	[100-500]	[100-500]	[100-500]
Sweden	70-100%	10-15	[10-25]	[10-25]	[0-10]

Table 4 - Parties' Market Shares on Selling Side

44. Just like for the buying-side, market shares on the selling-side exhibit a certain level of variation due to lack of precise information on the total football rights market. The parties hold non negligible market shares in France and Sweden. Overlaps between the parties' activities in 2000 were as follows:

Selling-side 2000 Values (M€)	Canal+	RTL	Sport+	UFA Sports	GJCD	JV +parents
Belgium/ Luxembourg	0-10	0-10	0-10	0-10	0-10	0-10
France	0-10	0-10	10-20	0-10	40-50	55-65
Netherlands	0-10	0-10	0-10	0-10	0-10	0-10
Spain	80-90 <sup>16</sup>	0-10	5-15	0-10	0-10	90-100
Sweden	0-10	0-10	10-20 <sup>17</sup>	0-10	0-10	5-15

Table 5 - Parties' Overlaps on Selling Side

45. Overlaps are *de minimis* in Belgium/Luxembourg, and in Sweden. In France, Sport+ holds the free and pay TV rights to the different domestic rights for the Premier League of foreign countries whereas GJCD owns the pay TV and free TV rights of the qualifying matches of the UEFA Cup. Even if the portfolio of Sport+ and GJCD is taken together, it is limited in value as it only includes rights which are relatively less attractive for the French viewer. In Spain, the broadcasting rights from all the 20 first division clubs have been pooled in AVS. AVS is a JV formed by Sogécable (i.e. Canal+'s subsidiary in Spain) and Telefonica. It redistributes these rights to different pay and free TV operators. [...] <sup>18</sup> It has to be noted that in Spain Canal+ shares its rights with its main competing operator Telefonica and that the value of the rights sold by UFA Sports is limited as it is shown in Table 5. In the Netherlands, Sport+ holds the pay TV rights for the different domestic rights for the Premier League of foreign countries which it licenses to Canal+. UFA Sports licenses the free TV rights of the UEFA Cup to different broadcasters. On

<sup>15</sup> Market shares from Sogecable include only their own purchases from Audiovisual Sport ("AVS"). AVS is a joint venture jointly control by Sogecable and Telefonica who controls Via Digital, the Spanish pay TV operator.

<sup>16</sup> [...]

<sup>17</sup> [...]

<sup>18</sup> [UFA Sports holds pay and free TV rights to UEFA Cup qualifying matches and Champions League qualifying rounds which it supplies to Spanish TV operators]

the basis of two separate markets, no overlaps occur. On the basis of a market included pay and free, the overlaps are negligible.

46. The Commission considers therefore that overlaps in the selling-side are not significant and will not lead to the strengthening of the positions of parties as a result of the creation of the JV.

**Vertical overlap between the JV’s position in football broadcasting rights and its parents’ television broadcasting activities**

The parties’ broadcasting activities

47. The market shares of Canal+ and RTL in the downstream markets for pay and free TV in 2000 were as follows:

Country	Pay-TV Canal+ (subscriber share)	Free-TV RTL (audience share)
Belgium/ Luxembourg	90-100%	15-60%
France	60-70%	5-30% <sup>19</sup>
Germany	-	15-55%
Italy	75-85%	-
Netherlands	90-100%	20-40%
Spain	75-85%	15-25%
Nordic Countries	55-65%	-

Table 6 – Canal+’s & RTL’s Market Shares & Audiences in Free and Pay TV

48. Based on the above figures, Canal+ is dominant in the downstream market for pay-TV in Belgium/Luxembourg, France, Netherlands, Italy, Spain and the Nordic countries, whilst RTL will have a significant presence in the market for free TV in Belgium/Luxembourg, Germany, and the Netherlands.
49. Moreover, both Canal+ and RTL are active on the market for the acquisition of broadcasting rights for sports in general and football in particular. The programming concept of Canal+ is based on cinema and sport with particular emphasis on football, whereas RTL is a provider of general entertainment channels with less dependency on these two segments alone.
50. Third parties raised concerns as to the combination of the powerful position of the parties on the downstream television broadcasting markets and their non negligible position on the upstream sports rights market. According to third parties, the JV may by virtue of its links with Canal+ and RTL be in a unique position to outbid other competitors not only in terms of its access to substantial financial resources but most importantly in terms of its access to the combined pay and free TV distribution platforms of its parents; the JV being used as a vehicle for joint bidding on the market for the acquisition of football broadcasting rights. Consequently, the JV may increase its market power vis-à-vis other sports rights traders which would in turn strengthen Canal+’s dominant position on the pay TV market and the RTL’s non negligible presence on the free TV market.

<sup>19</sup> These figures exclude RTL9 and TMC in which RTL has minority shareholdings.

51. For the reasons listed below, the Commission considers that the vertical concerns mentioned by third parties are not relevant. Indeed, there exist:

- i) only limited overlaps upstream;
- ii) powerful football rights traders competitors;
- iii) non negligible bargaining power of rights holders;
- iv) low entry barriers at the wholesale level.

Only limited overlaps upstream

52. The creation of the JV will not strengthen significantly the positions of the parties in the pay TV and free TV downstream distribution markets. This is already due to the fact that there are no substantial overlaps upstream that would allow such strengthening of the positions of Canal+ and RTL downstream, as it is shown by the analysis above. As mentioned above, the parties do not have any rights on the market (b) for one-off events.

Powerful football rights traders competitors

53. The JV and its parents will face fierce competition from other sports rights intermediaries and/or broadcasters which operate on a EEA-wide basis such as KirchMedia, and EBU. These entities are either vertically integrated or co-operate horizontally in the acquisition of the rights in question.

54. As seen in Table 7 below there are a certain number of highly powerful players with substantiate resources in the football rights for regular as for on-off events. The rights currently held by the JV (excluding its parents) represent only a part of the total value of the football competitions with the most valuable rights being held by other competitors. TEAM holds the rights to the final rounds of the UEFA Champions League for the years from 2000 through to 2003, whilst TEAM/EBU held the rights to the final match of the UEFA Cup for the years 1998 through to 2000, which pursuant to the parties are the most valuable rights in both events. In particular KirchMedia holds the rights to the 2002 and 2006 FIFA World Cups and has an option for 2010 whereas EBU holds the 2004 European Championships. Note that KirchMedia's sports rights intermediary activities are vertically integrated with its broadcasting operations, and Premiere in Germany. As for EBU, even though its geographic coverage in terms of broadcasting is greater than both Canal+ and RTL.

Competitors	Event
KichMedia	German 1 <sup>st</sup> Division UEFA Cup qualifying matches of various Eastern European clubs FIFA World Cup
EBU	European Championship of Nations
TEAM	UEFA Champions League final rounds UEFA Cup final match EURO World Cup (final tournament)
Octagon CSI	UEFA CUP English FA Cup
ISC	Portuguese Premier League Dutch Football
IEC IN Sport	English Premier League Scottish Premier League
Global NetSport <sup>20</sup>	Greek Football UEFA Champions League qualifying rounds of certain clubs UEFA Cup qualifying matches of certain clubs European Cup Winners Cup

Table 7 – Rights Portfolios of the main competitors

55. The current rights portfolios of the other competitors in the relevant market compared to the parties are substantial in terms of quantitative and qualitative values.

Event	Right holder/ Trader	Broadcaster in Belgium/ Luxembourg	Broadcaster in the Netherlands	Broadcaster in Spain	Broadcaster in France
UEFA Champions League (final rounds)	UEFA/ TEAM	RTL TVI	NOS	TVE/ Via Digital	TF1/ Canal+
UEFA Cup (final match)	UEFA/ TEAM/ EBU	VRT/ RTBF	NOS	TVE	TF1/Canal+ Eurosport
UEFA Cup (qualifying matches)	Clubs/ traders	VRT/RTBF	NOS/SBS/RTL	Via Digital Antena 3 Canal+ (1999)	TF1 Eurosport
UEFA Champions League (qualifying rounds)	Clubs/ traders	-	-	-	TF1
National Premier League	Direct @ Home/Sport+ Abroad	VTM/RTBF Canal+	NOS/Canal+	Sogecable/CSD/Vi a Digital/Antenna3/ ONO/Cableuropa/ Quieroi/AOC	Canal+/TPS/T F1
National Cup	Federations	VTM/Kanaal2/R TBF	SBS	TVE	TF1
European Championship of Nations	EBU (2000-2004)	RTBF (2000-2004)	-	TVE (2000-2004)	France TV/TF1 (2000-2004)
FIFA World Cup (final tournament)	FIFA/EBU (1998) FIFA/Kirch (2002-2006)	VRT/RTBF (1998)	NOS (1998 & 2002)	RTVE (1998) Via Digital (2002)	France TV/TF1/ Canal+ (1998)  Not yet decided (2002-2006)

Table 8 – Rights Portfolios of Canal+'s & RTL's Competitors in Free and Pay TV

<sup>20</sup> [Global Sportnet]

### Non negligible bargaining power of rights holders

56. The bargaining position of rights holders has become stronger over the past years. Thus, in the last five years, the increased penetration of pay TV across Europe, has meant that demand for football rights has out-stripped the supply of such rights resulting in exponential increases in the value of these rights, and in right holders wielding substantial market power vis-à-vis sports rights intermediaries and broadcasters particularly with respect to the most sought after so called “premium sports rights”.

### Low entry barriers at the wholesale level

57. Barriers to entry to operate wholesale trading as a sports rights intermediary are not so high as demonstrated by the success of GJCD itself as well as the many other independent sports rights intermediaries.<sup>21</sup>
58. To conclude, for the above reasons the proposed concentration will not lead to the strengthening of the positions of Canal+ and RTL downstream as a result of the vertical integration.

### Marketing Communication Services/Sports Marketing

59. Certain horizontal overlaps will occur by combining the activities of UFA Sports and GJCD in the market for marketing communication services/market for marketing communications in the field of sports marketing. The market share of the JV on a Europe-wide or national basis for all marketing communication services is negligible. Also on the basis of a separate market for marketing communication service in the field of sports on a national basis the overlaps of the entities being combined in the JV are negligible, the highest market share would be reached in France but even that will be below [5-15%]. Therefore, the proposed concentration will not lead to the creation or strengthening of a dominant position as a on this market as a result of which effective competition may be impeded either horizontally or vertically.

### Mobile Production of Broadcasting Signals

60. In the field of providing services for the mobile production of broadcasting signals the market share of RTL’s French subsidiary VCF in France lies according to the Commission’s market investigation around [15-30%] with a turnover of [...] MEUR. VCF has several competitors in France which have similar or even bigger market shares (up to more than 30%) and which are also subsidiaries of broadcasters or telecommunications undertakings. RTL’s subsidiary BCE is the only such undertaking in Luxembourg with a turnover of not more than [...] MEUR, from which only [...] MEUR were generated on the open market. RTL group considers BCE mainly as provider of in-house services. Mobile production services can be easily bought from other Member States in Luxembourg.

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<sup>21</sup> This is due to the fact that sports rights intermediaries can enter the market in two ways: either by acting as agent for the principal right holder who continues to own the rights in question or by purchasing the rights in question outright and re-selling them on their own account. Within the JV, UFA Sports and Sport + carry on their business on their own account whereas GJCD carries on its business as agent for the right holders concerned.

61. No competition concerns arise in the field of services for mobile production of broadcasting by the present transaction. The JV itself will not be a provider of such services nor will the JV be a significant purchaser of such services as broadcasters normally buy these services directly from mobile production unit operators. There is no horizontal overlap in the provision of mobile production services at the level of the parent broadcasters, as only the above mentioned two RTL subsidiaries provide these services. Even if the provision of mobile production services is considered as vertically related to the sale of broadcasting rights by the JV no competition concerns arise from that. First, broadcasters normally buy these services directly from mobile production units and not from rights traders as the JV. Second, VCF's market share in France does not justify foreclosure concerns in this respect, also given the strength of its competitors, neither does BCE's position in Luxembourg. Third, as only RTL is active in this field, the JV does not seem to have an incentive to favour only one of its parent companies by combining the sale of broadcasting rights with the provision of mobile broadcasting production services. Therefore, the proposed concentration will not lead to the creation or strengthening of a dominant position on this market as a result of which effective competition may be impeded either horizontally or vertically.

## VII. CONCLUSION

62. 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  
Michaele Schreyer  
Member of the Commission  
signed