

***Case No COMP/M.2558 -  
HAVAS / TEMPUS***

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: 04/09/2001

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 04.09.2001  
SG (2001) D/291158

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

**Subject: Case No COMP/M.2558 – HAVAS / TEMPUS**  
**Notification of 03.08.2001 pursuant to Article 4 of Council Regulation No 4064/89<sup>1</sup>**

1. On 3 August 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Havas Advertising SA (“Havas”) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking Tempus Group PLC (“Tempus”) by way of a public bid announced on 19.07.2001.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

### **I. THE PARTIES**

3. Havas is a French company active in the provision of marketing communication services including general advertising, direct marketing, media planning and media buying. Havas is based in Paris and has a network of over 300 agencies in more than 65 countries. Havas’ shares have publicly traded on the Premier Marche of Euronext

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<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).

Paris SA (previously the Paris Bourse) since May 1985, and in the form of American Depository Shares on the Nasdaq National Market System since September 2000.

4. Tempus is a marketing and media communications group headquartered in the UK. It has been listed on the UK Stock Exchange since 1989. Tempus has almost 100 offices in 29 countries. Tempus achieves the majority of its turnover through media buying services.

## **II. THE OPERATION**

5. The operation involves the acquisition by Havas of a controlling shareholding in Tempus, by means of a public offer for all of Tempus' issued share capital.

## **III. CONCENTRATION**

6. The concentration concerns the acquisition by Havas of sole control of Tempus according to Article 3 (1) (b) Regulation 4064/89. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>2</sup> [Havas EUR 6,159m; Tempus EUR 3,396m]. Each of Havas and Tempus have a Community-wide turnover in excess of EUR 250 million [Havas EUR [...]; Tempus EUR [...]], but they do not both achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. COMPETITIVE ASSESSMENT**

### **Relevant Product Markets**

8. The parties are both active in the provision of a range of advertising and media communications services. In accordance with previous cases<sup>3</sup>, the notifying party submits that there are separate product markets for (i) media buying and (ii) marketing communications services.
9. *Media buying* includes planning and purchasing time and/or space in various media, including broadcast and cable television, radio, newspapers, magazines, billboards and the internet. The Commission has previously held that media buying is an activity which is distinct from other advertising services on the basis that it is not directly related to the creation and implementation of an advertising campaign, and that media buying cannot be subdivided according to the media concerned. The Commission has

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<sup>2</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>3</sup> See for example, IV/M.147 – Eurocom/RCSG, 15.11.1991; IV/M.1529 – Havas Advertising/Media Planning, 10.06.1999

also previously found that media buying activities cannot be divided into several markets according to the media in questions. These conclusions remain relevant for the purposes of the current assessment.

10. *Marketing communications services* comprise the range of advertising services provided by the advertising agencies, including consulting, development of marketing and branding campaigns as well as production and design of adverts, public relations, consumer relationship management/direct marketing, identity and design.
11. In a recent decision, WPP/Rubicam<sup>4</sup>, the Commission has not excluded that there may be a significant overlap between the activities of media buying and marketing communications services and that they should be considered as part of a single relevant market. The Commission noted that media buying will usually include media planning or strategic advice and that this blurs the boundaries between advertising and media buying. However, for the purpose of the present decision, it is not necessary to establish whether or not these two categories of services should be considered together, since the operation would not create or strengthen a dominant position even on the basis of two separate markets.
12. It is also relevant to consider the possibility that the supply of international marketing and communications services represents a distinct product market. Such services would be differentiated from national services on the basis that they require specific implementation requirements. For the purpose of this decision, the issue of whether or not international communications services constitute a separate product market may be left open, since regardless of the considered product market definitions, the concentration would not create or strengthen a dominant position.

### **Relevant Geographic Markets**

13. The Commission has previously considered that the relevant geographic markets for the various marketing communications and advertising markets are national in scope due to differences in language, tastes and perceptions of customers.
14. The notifying party has submitted that as multinational companies develop international advertising budgets and campaigns they increasingly insist upon service from agencies that are able to offer economies of scale and creative input on a matching international basis. Therefore, the notifying party submits that the markets for media buying and marketing communications may be broader than national and are at least EEA-wide.
15. For the purposes of this decision it is not necessary to decide whether the markets are national or wider, since however they are considered, the operation will not lead to the creation or strengthening of a dominant position on any market.

### **Effects on Competition**

16. The notifying party has calculated market shares on the basis [of] media billings of clients whose accounts are handled by advertising agencies, as opposed to advertising

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<sup>4</sup> COMP/M.2000, 24.08.2000.

turnover. This is because many advertising agencies are under no obligation to report their turnover figures. Data for media billings are provided by companies such as Zenith Media and Advertising Age as well as other national advertising research consultancies. The parties submit that these measurements overstate the market position of larger participants such as Havas and Tempus, since they exclude many of the smaller and newer advertising agencies in each country. Furthermore, the parties submit that the effects of the bias in these data is particularly notable due to the number of smaller companies in these sectors. For the purposes of the current assessment it is not necessary to look beyond the existing market data, since, even on the basis that the larger advertising agencies' market shares are overstated the operation will not lead to the creation or strengthening of any dominant positions.

17. The value of the media buying markets in 2000 and the corresponding market shares of Havas and Tempus are set out in Table 1, and those of the three largest competitors in Table 2.

Table 1 – Media Buying – Havas / Tempus Market Shares<sup>5</sup>

2000	Total Value M EUR	Havas Advertising		Tempus		Combined
		Value	%	Value	%	%
Spain	[...]	[...]	[10-20%]	[...]	[0-5%]	[15-25%]
France	[...]	[...]	[10-20%]	[...]	[0-5%]	[15-25%]
Portugal	[...]	[...]	[10-20%]	[...]	[0-5%]	[15-25%]
EEA	[...]	[...]	[0-5%]	[...]	[5-10%]	[5-15%]

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<sup>5</sup> The notifying party has used data for the calculation of these market sizes and market shares from RECMA June 2001 report No W6 – Billings and rankings in 2000, Infoadex, Zenith Media July 2000 – Advertising Expenditure Forecasts and Sabatina

Table 2 – Media Buying – Market Shares of main competitors

2000	Total Value	Carat		OMD		IPG		WPP		Publicis	
	M EUR	Value	%	Value	%	Value	%	Value	%	Value	%
Spain	[...]	[...]	[10-20%]	[...]	*	[...]	[10-20%]	[...]	*	[...]	[10-20%]
France	[...]	[...]	[20-30%]	[...]	[10-20%]	[...]	[10-20%]	[...]	*	[...]	*
Portugal	[...]	[...]	*	[...]	[10-20%]	[...]	[20-30%]	[...]	[10-20%]	[...]	*
EEA	[...]	[...]	[10-20%]	[...]	[5-10%]	[...]	[10-20%]	[...]	*	[...]	*

\* Market share below 10%

18. On the basis that the markets remain national, the parties' activities overlap to the extent that there are affected markets for *media buying* in Spain [Havas [10-20]%, Tempus [0-5]%), France [Havas [10-20]%, Tempus [0-5]%) and Portugal [Havas [10-20]%, Tempus [0-5]%). In Spain the combined Havas/Tempus business will become the market leader, however, no competition concerns arise. The fragmented nature of the markets is shown by the fact that this "Spanish No. 1" position will be achieved with a market share of less than [15-25]%. As shown in Table 2, the combined entity will continue to face a significant amount of actual competition. In each of Spain, France and Portugal there will continue to be three competitors with market shares of greater than 10%. Furthermore, entry barriers also appear to be low. In each of Spain and Portugal companies which have entered the markets in the last five years have achieved market shares of more than 5%. This is relatively high in the context of the fragmented market structures that these markets currently exhibit.
19. On the basis that the relevant market for media buying is EEA-wide, the parties' combined market share would be below 15% and there would be no affected market.
20. In relation to *marketing communications services*, the only affected market is in France, where, of a total market estimated at EUR 13 390m, Havas currently achieves a [15-25]% market share. This will not be significantly affected by the acquisition of Tempus, as Tempus only achieves billings of EUR [...] in France – less than [0-5]% of the market.
21. On the basis that the relevant market for marketing communications services is EEA-wide, the parties' combined market share would be below 15% and there would be no affected market.
22. Were a separate product market for international (as opposed to purely national) marketing communication services assumed to exist, it should be noted that several companies exist which would be able to provide these services. This includes all of those listed in Table 2 above. The proposed concentration would therefore not create any serious concerns as to the creation or the strengthening of a possible dominant position.

## **VI. CONCLUSION**

23. 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

Mario MONTI  
Member of the Commission