

EN

***Case No IV/M.525 -
VOX (II)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 21/12/1994

*Also available in the CELEX database
Document No 394M0525*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21/12/1994

MERGER PROCEDURE
6 (1)(b) DECISION

PUBLIC VERSION

Registered with advice of delivery

To the notifying parties

Subject: Case No.IV/M.0525 - Vox (II)

Your notification of 21.11.1994 pursuant to Article 4 of Council Regulation No. 4064/89

1. This operation concerns the acquisition by Canal+ of a 24.9% stake in Vox, a German general interest TV channel. The notification was made jointly with News International and Bertelsmann, who own 49.9% and 24.9% respectively of the shares of Vox. The acquisition by News International of its stake in Vox was approved by the Commission in the decision *Bertelsmann/News International/Vox*⁽¹⁾ (referred to hereafter as "the previous decision").
2. After a preliminary examination of the notification, the Commission has concluded that the operation falls within the scope of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the EEA agreement.

I THE PARTIES

3. Canal+ SA and its subsidiaries are active in the sectors of television broadcasting, marketing of pay TV channels, and the production of TV programmes and movies.
4. News International plc (which is controlled by News Corporation Limited) has interests which include printing and publishing of national newspapers in the UK and the provision of satellite television in the UK and Republic of Ireland.
5. UFA is a subsidiary of Bertelsmann AG (which has 87.45%, the remaining 12.55% being held by the Jahr family) and holds Bertelsmann's businesses in the electronic media sector. Bertelsmann's other activities include book and magazine publishing and private television.
6. Vox is a general interest free access TV channel in Germany whose broadcasting licence restricts it to broadcasting information and entertainment programmes.

⁽¹⁾ Case No. IV/M.0489 - Bertelsmann/News International/Vox of 6.9.94

II THE OPERATION

7. The operation involves the acquisition by Canal+ of a stake of 24.9% in Vox. News International will retain 49.9% and Bertelsmann 24.9 % of the shares. The remaining 0.3% is held by DCTP, Entwicklungsgesellschaft für Televisions-Programme mbH, Düsseldorf (DCTP).

III CONCENTRATION

Joint control

8. In the previous decision, News International and Bertelsmann were considered to have joint control over Vox. Canal+, with its 24.9% stake, will have veto rights over major decisions and, as all other decisions require a majority of 80% of the shares, will have joint control with News International and Vox.

Autonomous economic entity

9. Vox was considered to be an autonomous economic entity in the previous decision. The operation being assessed does not change the autonomy of Vox in relation to its parents therefore Vox is an autonomous economic entity.

Absence of scope for co-ordination of competitive behaviour

10. The possibility of co-ordination between News International and Bertelsmann was examined in the previous decision. It is only necessary to examine in this decision the possible areas of co-ordination which have changed since that operation, whether or not as a result of the acquisition of joint control by Canal+.

(a) Free access TV

11. There is no possibility of Canal+ co-ordinating its competitive behaviour on the free access TV market with that of News International or Bertelsmann as Canal+ does not currently operate on this market apart from through Vox. Even though Canal+ could be seen as a potential competitor, there is currently no indication that Canal+ will enter the market in the near future other than through Vox.

(b) Pay TV

12. Canal+ has a 37.5% stake in Première, the German pay TV channel in which Bertelsmann also has a 37.5% stake. Given that pay TV is generally regarded as a separate market from free access TV the evidence available to us indicates that it is unlikely that the operation will enable Canal+ and Bertelsmann to co-ordinate their competitive behaviour in the pay TV market through Vox. Furthermore, any co-ordination between the two parent companies in the pay TV sector would result from their common interests in Première or from the recently concluded co-operation agreement between Canal+ and Bertelsmann concerning pay TV activities in Europe and would not arise through Vox.

(c) Film production/television rights

13. As to film and television production, Canal+ is active in the market for French speaking programmes produced mainly for French and Spanish speaking audiences. Only a very small amount is broadcast in Germany (through Premiere). Concerning television rights, the rights enjoyed by Canal+ in Germany are very limited and less than the 10% market share which it enjoys on the French market.
14. Therefore, there is no scope for coordination of the competitive behaviour of the parents between themselves and with the joint venture.

IV COMMUNITY/EEA DIMENSION

15. The concentration has a Community dimension. The combined aggregate worldwide turnover of Canal+, News Corporation and Bertelsmann in 1993 exceeded 5,000 million ecus. The aggregate Community-wide turnover of each of at least two of the undertakings was more than 250 million ecus. In addition the parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. The concentration is not an EEA "cooperation" case.

V COMPETITIVE ASSESSMENT

Relevant product and geographic markets

16. Vox operates exclusively on the free access TV market. As set out in the previous decision the relevant product market to be defined is the market for advertising in television broadcasting. The market for film rights is also concerned.
17. Shortly after the previous decision, the Commission decided in the case *MSG Media Service*⁽¹⁾ that advertising financed television constitutes a separate market from pay TV although some substitutability exists (see also previous decision). Furthermore, as set out in *MSG Media Service*, the mixed funding of television, which could blur the distinction between the two markets, is not expected in Germany in the near future.

Compatibility with the common market

18. The market shares for Vox (which do not exceed 2.5% by advertising revenue or by audience) have not changed since the previous decision and its position on the market has not significantly changed.
19. Canal+ has no presence on the German free access TV market. Therefore, the acquisition of Vox will not give rise to an addition of market shares let alone to the creation of a dominant position for Canal+. Since it is unlikely that Canal+ would have launched a German language programme on its own, it cannot be regarded as a potential competitor of Vox who would disappear as a consequence of the concentration. News International and Bertelsmann already have stakes in Vox so there is no change to its market position. Even given the financial strength of Canal+ and the other parents and the possibility for Vox to improve its market position following the completion of the operation neither the market structure nor the financial strength of the parent companies imply that the proposed concentration will create or strengthen a dominant position on the German market for advertising in television broadcasting.

⁽²⁾ Case IV/M.0469 - *MSG Media Service* of 9.11.94 (not yet published)

VII CONCLUSION

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

*
* *

For the reasons outlined above, the Commission has decided not to oppose the concentration and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation 4064/89.

For the Commission