

EN

***Case No COMP/M.6791 -
THE WALT DISNEY
COMPANY /
LUCASFILM***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 20/12/2012

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EUROPEAN COMMISSION

Brussels, 20.12.2012
C(2012) 9919 final

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PUBLIC VERSION

MERGER PROCEDURE
Article 6(1)(b)

To the notifying party

Dear Sir,

**Subject: Case No COMP/M.6791 – The Walt Disney Company/ Lucasfilm
Commission decision pursuant to Article 6(1)(b) of Council Regulation
No 139/2004¹**

1. On 16 November 2012, the European Commission received the notification of a proposed transaction pursuant to Article 4 of the Merger Regulation by which The Walt Disney Company acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Lucasfilm Ltd, by way of purchase of shares.

I. THE PARTIES

2. **The Walt Disney Company** ("TWDC" or "the Notifying Party") is a U.S. company traded on the New York stock exchange, active in motion pictures and television production, video games, merchandise licensing, music and book publishing. It also operates Disneyland Paris.
3. **Lucasfilm Ltd.** ("Lucasfilm") is a U.S. privately held company with activities in motion picture and television production, as well as in the visual effects, sound, video games and merchandise licensing business. TWDC and Lucasfilm together will be referred to in this decision as "the Parties".

¹ OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

II. THE CONCENTRATION

4. The notified transaction concerns the acquisition of sole control by TWDC of Lucasfilm by a scheme of arrangement dated 30 October 2012 whereby TWDC will indirectly acquire all of the voting securities of Lucasfilm through a multi-step transaction process. As a result of the transaction, Lucasfilm will become an indirect wholly-owned subsidiary of TWDC. The transaction is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

5. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 2 500 million. In three Member States (Germany, France, and the United Kingdom), the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million, and in these three Member States, the aggregate turnover of each of the undertakings concerned is more than EUR 25 million. The aggregate EU-wide turnover of TWDC and of Lucasfilm is more than EUR 100 million. However, they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
6. The notified transaction therefore has an EU dimension within the meaning of Article 1(3) of the Merger Regulation.

IV. RELEVANT MARKETS

7. In the EEA, the Parties are both active in home entertainment; publishing and distribution of gaming software; merchandise licensing; licensing of broadcasting rights; and theatrical distribution.

A. Home entertainment

8. The Parties distribute produced and/or acquired films for home entertainment in the EEA. Home entertainment releases may be distributed in both physical format (DVD and Blue-Ray discs) and electronic format (Apple iTunes, Playstation, X-Box, etc.).

Product market definition

9. In previous decisions, the Commission has considered, but ultimately left open, whether the home entertainment market, including both DVDs and Blu-Ray discs (BDs), should be segmented further between: (1) sales and rentals; (2) motion pictures and other types of content; and (3) motion picture new releases and catalogue.²
10. The Notifying Party did not express a view on the exact definition of the relevant product market for home entertainment.
11. The market investigation focused on whether the home entertainment market should be further subdivided on the basis of the following criteria: the genre (type of content), the type of distribution (sales and rentals), format (DVDs, BDs or electronic format) and type of releases (new release and catalogue). The results of the market investigation indicate that a distinction based on format is not relevant and was not

² Decision of the Commission, Case COMP/M.5779, *Comcast/NBC Universal*, 13 July 2010, Decision of the Commission, Case IV/M.1219, *Seagram/Polygram*, 21 September 1998.

conclusive as to whether the home entertainment market should be further subdivided based on the other criteria.

12. Regarding the type of content, film studios unanimously consider that motion pictures and other content are part of a single market. The film studios argued that all content has similar characteristics and intended uses (to entertain) and in that respect it is interchangeable for consumers.³ By contrast, the majority of distributors considers that in the market for home entertainment, motion pictures do not compete with other content such as drama, TV content, children's content and other specialised content.⁴ Hence, distributors argue that motion pictures should be distinguished from other content.
13. Regarding the type of distribution, film studios unanimously consider that rentals and sales should not be distinguished.⁵ The film studios consider that from a consumer perspective, rental and sales on DVD / BD format are simply amongst the many competing ways of accessing audiovisual content. By contrast, a narrow majority of distributors argued that the market for home entertainment should be further subdivided to rentals and sales.⁶
14. Regarding the type of format, TWDC distributes home entertainment releases in both physical (DVD and BD) format and electronic format. Lucasfilm derives the vast majority of its revenues from the distribution and sale of DVDs and BDs for home entertainment and only has minor revenues derived from electronic distribution. Both studios and distributors confirm that no distinction should be made between BDs and DVDs.⁷
15. Finally, regarding the type of releases of motion pictures, the majority of distributors expressing a view considers that a distinction should be made between new releases and catalogue. A number of distributors point out that the two segments require different pricing and marketing strategies.⁸ By contrast, the majority of studios does not differentiate between those two categories.⁹

³ Competitors' replies to the Commission's request for information sent on 21 November 2012, question 5 and Distributors' replies to the Commission's request for information sent on 21 November 2012, question 6.

⁴ Competitors' and Distributors' replies to the Commission's request for information sent on 21 November 2012.

⁵ Competitors' replies to the Commission's request for information sent on 21 November 2012, question 6.

⁶ Distributors' replies to the Commission's request for information sent on 21 November 2012, question 7.

⁷ Competitors' and Distributors' replies to the Commission's request for information sent on 21 November 2012.

⁸ Distributors' replies to the Commission's request for information sent on 21 November 2012, question 8.

⁹ Competitors' replies to the Commission's request for information sent on 21 November 2012, question 7.

16. However, for the purpose of the present decision, the precise product market definition for home entertainment can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

Geographic market definition

17. In previous decisions, the Commission considered that the market for home entertainment is national or occasionally regional in scope.¹⁰ In a past decision, the Commission considered that the geographic market for video sales and rentals is national in scope but ultimately left the issue open.¹¹
18. The Notifying Party did not express a view on the exact definition of the relevant geographic market for home entertainment.
19. The results of the market investigation point towards a national geographic scope of the market. As acknowledged by competitors¹², different factors support this view: (1) distribution rights are typically obtained for the whole of a national territory; (2) release dates are largely simultaneous throughout a national territory; (3) pricing is typically set on a national level; (4) film studios spend time and money in creating local language version DVDs/BDs; (5) the appeal of audiovisual content depends on national tastes, culture and preferences; and (6) marketing, promotion and advertising of audiovisual content tends to take account of national differences and consumer preferences and tends to be executed nationally. Some respondents to the market investigation consider that the geographic scope can sometimes be regional, along linguistically homogenous regions (e.g. Austria – Germany or France – Belgium).
20. The Commission therefore considers that that the geographic market for home entertainment is likely to be national and possibly regional along linguistically homogenous regions. However, for the purpose of the present decision, the precise geographic market definition for home entertainment can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

B. Publishing and distribution of gaming software

21. The Parties are active in the publishing and distribution of gaming software. In the EEA, TWDC operates in the publishing of both online and offline games, including gaming applications and so called ‘social games’. Lucasfilm is solely active in video games in the EEA through Activision (offline games) and Steam/Valve (online games), which manufacture and distribute gaming software on behalf of Lucasfilm.

¹⁰ Decision of the Commission, Case COMP/M.5779, *Comcast/NBC Universal*, 13 July 2010; Decision of the Commission, Case COMP/M.3595, *SONY/MGM*, 30 March 2005.

¹¹ Decision of the Commission, Case IV/M.1219, *Seagram/Polygram*, 21 September 1998.

¹² Competitors' replies to the Commission's request for information sent on 21 November 2012, question 16.

Product market definition

22. In previous decisions, the Commission distinguished between the markets for publishing and wholesale distribution of gaming software.¹³
23. Regarding the market for publishing of gaming software, the Commission considered, but ultimately left open, whether the market should be segmented between: (i) all games (comprising online and offline games, for all platforms, as well as for all game genres), (ii) online games, (iii) offline games for mobile handsets, and (iv) offline games for PCs, consoles and handhelds, together or per platform.¹⁴
24. Within the wholesale distribution of gaming software, the Commission distinguished between the wholesale distribution of gaming software and the provision of logistic services to game publishers.¹⁵
25. The Notifying Party did not express a view on the exact definition of the relevant product market for the publishing and distribution of gaming software.
26. For the purpose of the present decision, the precise product market definition for the publishing and distribution of gaming software can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

Geographic market definition

27. In previous decisions, the Commission considered, but ultimately left open, whether the market for the publishing of gaming software is EEA-wide or national in scope.¹⁶ Regarding the market for the wholesale distribution of gaming software, the Commission considered, but ultimately left open, whether the market is national or regional in scope.¹⁷
28. The Notifying Party did not express a view on the exact definition of the relevant geographic market for the publishing and distribution of gaming software.
29. For the purpose of the present decision, the precise geographic market definition for the publishing and distribution of gaming software can be left open since the proposed transaction does not raise competition concerns under any alternative market definition.

C. Merchandise licensing

30. TWDC develops and sells a wide variety of products based on existing and new TWDC characters and other TWDC intellectual property through its merchandise licensing. This activity comprises a broad array of consumer products, including toys,

¹³ Decision of the Commission, Case COMP/M.5008, *Vivendi/ Activision*, 16 April 2008.

¹⁴ Decision of the Commission, Case COMP/M.5008, *Vivendi/ Activision*, 16 April 2008.

¹⁵ Decision of the Commission, Case COMP/M.5008, *Vivendi/ Activision*, 16 April 2008.

¹⁶ Decision of the Commission, Case COMP/M.5008, *Vivendi/ Activision*, 16 April 2008.

¹⁷ Decision of the Commission, Case COMP/M.5008, *Vivendi/ Activision*, 16 April 2008.

clothing & footwear, electrical goods, pet care, sports & leisure, non-alcoholic drinks, household textiles, health & beauty care, watches and jewellery etc. Lucasfilm's licensing activities also focus on apparel and other consumer goods.

Product market definition

31. According to the Notifying Party, the market for merchandise licensing comprises all merchandise containing all types of contents.¹⁸ In its view, a distinction along product category (toys, clothing, and general merchandise, whether branded or not branded) and/or content (such as fictional characters, celebrities' names, sports teams, corporate logos, work of art, images and photographs) would not be appropriate.
32. The Notifying Party supports this view on demand-side and supply-side considerations such as: (i) the Parties compete not only with other licensors of contents but also with manufacturers and/or retailers of merchandise products either using their own contents or contents in the public domain, or developing new contents, or manufacturing consumer goods without content; (ii) vertically-integrated manufacturers and retailers have their own merchandise content or private labels; (iii) merchandise content is used across several product categories.¹⁹
33. For the purpose of the present decision, the precise product market definition for merchandise licensing can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

Geographic market definition

34. In previous decisions, the Commission considered, but ultimately left open, whether the market for retail operations is national or regional in scope.²⁰
35. The Notifying Party did not express a view on the exact definition of the geographic market for merchandise licensing.
36. For the purpose of the present decision, the precise geographic market definition for merchandise licensing can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

D. Licensing of broadcasting rights

37. The activities of licensing of broadcasting rights of the Parties encompass Pay-per-view (PPV)/Video on demand (VOD) exhibition window, licensing of premium motion pictures and TV programmes to pay-TV operators, the licensing of TV channels to pay-TV and free-TV operators.

¹⁸ Form CO submitted by the Notifying Party, paragraph 102.

¹⁹ Form CO submitted by the Notifying Party, paragraphs 102-106.

²⁰ Decision of the Commission, Case No. IV/M.890, *Blokker/Toys 'R' Us*, 26 June 1997; Decision of the Commission, Case IV/M.784, *Kesko/Tuko*, 26 April 1996.

Product market definition

38. In previous decisions, the Commission identified separate product markets for the licensing of broadcasting rights for the different exhibition windows, namely (1) VOD (2) PPV, (3) first pay-TV window, (4) second pay-TV window (where applicable) and (5) free-to-air ("FTA") TV.²¹
39. Moreover, within the market for licensing of broadcasting rights for pay-TV, the Commission found in previous decisions that, from a demand and supply-side perspective, certain types of content are not substitutable and has considered separate product markets for the licensing of broadcasting rights for (i) films, (ii) sport events and (iii) other TV content.²²
40. The Commission also considered in previous decisions that the market for the licensing of pay-TV broadcasting rights to films could be further divided into separate product markets for (i) films produced by Hollywood studios and (ii) films produced by independent studios.²³
41. In previous decisions, the Commission also identified a separate market for the wholesale supply of pay-TV channels for retail pay-TV.²⁴ In the past, the Commission left open whether this market should be further segmented by thematic content (such as premium films, sports, news, youth channels etc).²⁵
42. The Notifying Party did not express a view on the exact definition of the product market for the licensing of broadcasting rights.
43. For the purpose of the present decision, the precise product market definition for the licensing of broadcasting rights can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

Geographic market definition

44. In previous decisions, the Commission concluded that the markets for the licensing of broadcasting rights (film and other content) and for the wholesale supply of TV channels are national in scope or at most relate to linguistically homogeneous areas.²⁶

²¹ Decision of the Commission, case COMP/M.5932, *News Corp/BSkyB*, 21 December, 2010.

²² Decision of the Commission, case COMP/M.5932, *News Corp/BSkyB*, 21 December, 2010; Decision of the Commission, case COMP/M.5121 - *News Corp/Premiere*, 25 June 2008; Decision of the Commission, case COMP/M.3595, *SONY/MGM*, 30 March 2005.

²³ Decision of the Commission, case COMP/M.5932, *News Corp/BSkyB*, 21 December, 2010.

²⁴ Decision of the Commission, case COMP/M.6369, *HBO/ZIGGO/HBO Nederland*, 21 December 2011; Decision of the Commission, case COMP/M.5932, *News Corp/BSkyB*, 21 December, 2010; Decision of the Commission, Case COMP/M.3595, *SONY/MGM*, 30 March 2005.

²⁵ Decision of the Commission in Case COMP/M.5121 - *Newscorp/Premiere*, 25 June 2008; Decision of the Commission, Case COMP/M.4504 - *SFR/Télé 2*, 18 July 2007; Decision of the Commission, Case COMP/M.2876 - *Newscorp/Telepiù*, 2 April 2003.

²⁶ Decision of the Commission, case COMP/M.5932, *News Corp/BSkyB*, 21 December, 2010.

45. The Notifying Party did not express a view on the exact definition of the geographic market for the licensing of broadcasting rights.
46. For the purpose of the present decision, the precise geographic market definition for the licensing of broadcasting rights can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

E. Production, acquisition and distribution of motion pictures for theatrical release

47. The activities of TWDC and Lucasfilm encompass the production, acquisition and distribution of motion pictures for theatrical release.

Product market definition

48. In previous decisions, the Commission found that the production and distribution of motion pictures for theatrical release constitute separate markets.²⁷ The Commission also considered, but ultimately left open, whether the acquisition of motion pictures for theatrical release constitutes a separate market.²⁸
49. The Notifying Party submits that the market for the production of motion pictures involves the coordination of pre-production, production and post-production activities. Pre-production activities encompass shoot preparation, finding talented actors and directors, selection of locations and building of sets. Production activities include video production and shooting. Finally, post-production activities include the motion pictures' edition, production sound edition, composition performance and recording of music tracks, design and recording of sounds effects, and digital inclusion of other computer-graphic "visual effects".
50. In addition, the Notifying Party submits that motion pictures distribution is carried out in different stages. Motion pictures producers licence distribution rights to local or international distributors who acquire the rights for one or more countries and/or territories. Subsequently, distributors sub-license the exhibition rights to exhibitors/theatre operators.
51. The results of the market investigation support the view that pre-production, production and post-production shall not be distinguished, while they are not conclusive on the distinction between the production and acquisition of motion pictures for theatrical release and the distribution of motion pictures for theatrical release.
52. The Commission considers that the relevant product market for production and acquisition of motion pictures for theatrical release may constitute a separate market to the distribution of motion pictures for theatrical release.
53. However, for the purpose of the present decision, the precise product market definition for the production, acquisition and distribution of motion pictures for theatrical release can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

²⁷ Decision of the Commission, case COMP/M.5779, Comcast/NBC Universal, 13 July 2010; Decision of the Commission, Case IV/M.1219, Seagram/Polygram, decision of 21 September 1998;.

²⁸ Decision of the Commission, case COMP/M.3595, *Sony/MGM*, decision of 30 March 2005.

Geographic market definition

54. In previous decisions, the Commission considered that the geographic market for the production of motion pictures is at least EEA-wide and possibly worldwide.²⁹
55. Regarding the market for distribution of motion pictures for theatrical release, the Commission considered the relevant geographic market to be national or possibly regional along linguistically homogenous regions due to demand and supply considerations such as language differences, audience tastes, geographic organisation of distribution, and difference in national regulatory schemes. The exact scope of the geographic market was ultimately left open³⁰
56. The Notifying Party did not express a view on the exact definition of the geographic market for the production, acquisition and distribution of motion pictures for theatrical release.
57. The results of the market investigation point toward a national geographic scope of the market for distribution of motion pictures for theatrical release. As acknowledged by competitors, different factors supports this view³¹: (1) motion picture distribution rights are traditionally obtained for the whole of a national territory; (2) motion picture releases are largely simultaneous throughout the national territory; (3) the appeal of audiovisual content depends on national tastes, culture and preferences, (4) marketing, promotion and advertising of motion pictures tends to take account of national differences and consumer preferences and tend to be executed nationally; (5) Studios spend time and money in creating either subtitled or dubbed local language versions of motion pictures it distributes; and (6) the rental terms that Studios offer to exhibitors is directly involved in theatrical distribution) are, subject to commercial negotiations, broadly similar throughout the whole national territory. Some respondents to the market investigation consider that the geographic scope can sometimes be regional, along linguistically homogenous regions (eg Austria – Germany or France – Belgium).
58. Regarding the delineation of the market for production and/or acquisition of motion pictures the results of the market investigation are not conclusive.
59. The Commission therefore considers that the geographic market is likely to be national for the distribution and EEA-wide for the production and/or acquisition of motion pictures for theatrical release.
60. However, for the purpose of the present decision, the precise geographic market definition for the production, acquisition and distribution of motion pictures for theatrical release can be left open, since the proposed transaction does not raise competition concerns under any alternative market definition.

²⁹ Decision of the Commission, Case COMP/M.5779, *Comcast/NBC Universal*, 13 July 2010.

³⁰ Decision of the Commission, Case IV/COMP/M.1219, *Seagram/Polygram*, 13 December, 2010

³¹ Competitors' replies to the Commission's request for information sent on 21 November 2012, question 18.

V. COMPETITIVE ASSESSMENT

61. The Parties' activities overlap horizontally in the following markets:
 - a. Home entertainment
 - b. Publishing and distribution of gaming software
 - c. Merchandise licensing;
 - d. Licensing of broadcasting rights; and
 - e. Production, acquisition and distribution of motion pictures for theatrical release.
62. The activities of TWDC and Lucasfilm's also give rise to a vertical relationship between the upstream market for the production/acquisition for theatrical release and the downstream market for distribution of motion pictures for theatrical release.
63. The horizontally affected markets (ie product markets where the proposed transaction will lead to a combined market share of 15% or more) in this case are:

Home entertainment

- i. In the overall market for the distribution of motion pictures and other content for home entertainment in Denmark ([10-20]%), Finland ([10-20]%), Italy ([10-20]%), Norway ([10-20]%), Spain ([10-20]%) and Sweden ([10-20]%)
- ii. In the potentially narrower market for the distribution of only motion pictures for home entertainment (excluding other content) in Belgium ([10-20]%), France ([10-20]%), Italy ([20-30]%), Luxembourg ([10-20]%) and Spain ([10-20]%)
- iii. In the potentially narrower market for the distribution of other content for home entertainment (excluding motion pictures) in Italy ([10-20]%), and Spain ([10-20]%).

Production, acquisition and distribution of motion pictures for theatrical release

- iv. In the market for the distribution of motion pictures for theatrical release in Bulgaria ([20-30]%), Finland ([10-20]%), Hungary ([10-20]%), Norway ([10-20]%), Sweden ([20-30]%), and the UK and Ireland ([10-20]%).
64. The transaction does not give rise to any vertically affected markets (ie the product markets which are upstream or downstream of a product market in which any other party to the proposed transaction is engaged, and any of their individual or combined market share is 25% or more).

A. Home entertainment

65. TWDC distributes produced and acquired films for home entertainment both directly and through independent distributors. Lucasfilm also distributes its produced catalogue of the Star Wars series title and Clone Wars (an animated TV programme).

Overall market for the distribution of motion pictures and other content

66. In the overall market encompassing the distribution of motion pictures and other content (sporting events, music, drama, TV programmes, children's content, etc.) for home entertainment the combined entity's market shares in 2011, calculated on the basis of their

revenues at retail level, would remain below [...] % at EEA level and in each of the Member States where the Parties' activities overlap, except in Denmark ([10-20]%), Finland ([10-20]%), Italy ([10-20]%), Norway ([10-20]%), Spain ([10-20]%) and Sweden ([10-20]%). However, the increment in market shares would be limited in each of these Member States ([0-5]%) due to Lucasfilm's limited activity in this market.³²

67. [...] in all the affected markets/segments the combined entity, post-transaction, would continue to face competition from a number of well-established competitors, such as Fox, Paramount, Universal, Warner Bros and Sony.³³
68. In addition, the Notifying Party submits that Lucasfilm revenues in the home entertainment market are derived from its catalogue Star Wars series titles and Clone Wars (an animated TV programme) generating limited revenues amounting to [0-5] % market shares in 2011 in the overall market for the distribution of motion pictures and other content for home entertainment.³⁴
69. Against this background, the results of the market investigation confirm that the impact of the transaction is likely to be small in this overall market. The majority of respondents expressing a view considers that Lucasfilm is not a significant competitor in this market. Besides, the majority of market participants does not consider TWDC and Lucasfilm to be close competitors (in comparison with other competitors) in the market for the distribution of motion pictures and other content for home entertainment.³⁵
70. In the light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards the distribution of motion pictures and other content for home entertainment.

Distribution of motion pictures for home entertainment (excluding other content)

71. In the potential narrower market for the distribution of only motion pictures for home entertainment (excluding other content), the combined entity's market share in 2011, calculated on the basis of their revenues at retail level, would remain below [...] % at EEA level and in each of the Member States where the Parties' activities overlap, except in Belgium ([10-20]%), France ([10-20]%), Italy ([20-30]%), Luxembourg ([10-20]%) and Spain ([10-20]%). However, the increment in market shares would be limited in each of these Member States ([0-5] % in each Member State with the sole exception of France with [0-5] %) due to Lucasfilm's limited activity in this market.

³² Even in 2005, the year of last release of Lucasfilm's motion pictures (Star Wars Episode III: Revenge of the Sith), the Parties' estimated combined market share at EEA level remained below 15% and in each of the Member States where the parties activities overlap with the exception of Belgium (15%), Denmark (16%), Finland (20%), Italy (16%), Norway (21%), Spain (16%), and Sweden (16%). However, the increment in market shares was limited (1% in each Member State) due to Lucasfilm's limited revenues.

³³ [...]

³⁴ Form CO submitted by the Notifying Party, paragraph 61 and 62.

³⁵ Competitors' replies to the Commission's request for information sent on 21 November 2012, question 24 and Distributors' replies to the Commission's request for information sent on 21 November 2012, question 25.

72. Against this background, the results of the market investigation confirm that the impact of the transaction is likely to be small on this potential narrower market. The majority of respondents expressing a view considers that Lucasfilm is not a significant competitor on this potential market.
73. In the light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards the distribution of motion pictures for home entertainment (excluding other content).

Distribution of other content for home entertainment (excluding motion pictures)

74. In the potential narrower market for the distribution of other content for home entertainment, the combined entity's market share in 2011, calculated on the basis of their revenues at retail level, would remain below [...] % at EEA level and in each of the Member States where the Parties' activities overlap, except in Italy ([10-20]%) and in Spain ([10-20]%). However, the increment in market shares would be limited in these Member States ([0-5]%) due to Lucasfilm's limited activity in this market.
75. Against this background, the results of the market investigation confirm that the impact of the transaction is likely to be small in this potential narrower market. The majority of respondents expressing a view considers that Lucasfilm is not a significant competitor on this potential market.
76. In the light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards the distribution of other content for home entertainment (excluding motion pictures).
77. On the potential narrower segmentation for home entertainment into sales and rentals, as well as news and catalogue analysed below, the proposed transaction does not give rise to any affected markets.

Sales and rentals for the distribution of motion pictures and other content for home entertainment

78. Regarding a potential segmentation of home entertainment into sales and rentals, the Notifying Party was not able to provide revenue or share estimates separately for the two segments. The Notifying Party submits that the Parties' revenues in the rental segment constitute an immaterial portion of their revenues in home entertainment.³⁶ The Notifying Party submits that the combined entity's market shares in 2011 in each segment would be equal or lower to the combined entity's market shares in the overall market for the distribution of motion pictures and other content for home entertainment.
79. Against this background, the results of the market investigation confirm that the impact of the transaction is likely to be small on these two narrower markets for sales and for rentals. The majority of respondents expressing a view considers that Lucasfilm is not a significant competitor on either of these potential markets.
80. In the light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards to sales and rentals of motion pictures and other content for home entertainment.

³⁶ Form CO submitted by the Notifying Party, paragraph 81.

New releases and catalogue for the distribution of motion pictures and other content for home entertainment

81. *Motion pictures:* Regarding a potential segmentation of the market for the distribution of motion pictures for home entertainment into new releases and catalogue, the Notifying Party submits that Lucasfilm has insignificant sales and market shares.³⁷ The Notifying Party submits that even looking at a hypothetical split comprising catalogue (library) films only, the shares would not be materially different to the shares provided for the market for the distribution of motion pictures for home entertainment.³⁸
82. *Other content:* Regarding a potential segmentation of the market for the distribution of other content for home entertainment into new releases and catalogue, the Notifying Party did not submit data on the combined entity's market shares in 2011 split into new releases and catalogue. However, given the fact that Lucasfilm has insignificant sales and market share in the overall market for distribution of other content for home entertainment, the Commission considers that its market position is unlikely to change materially if the market is further segmented between new releases and catalogue.
83. Against this background, the results of the market investigation confirm that the impact of the transaction is likely to be small on these potential narrower markets. The majority of respondents expressing a view considers that Lucasfilm is not a significant competitor on either of these potential markets.
84. In the light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards new releases and catalogue of motion pictures and other content for home entertainment.

Overall conclusion for home entertainment

85. In view of the above, the Commission concludes that the proposed transaction does not raise competition concerns with regard to home entertainment under any alternative market definition and therefore considers that the notified transaction is equally unlikely to adversely affect cultural diversity in the EEA.³⁹

B. Publishing and distribution of gaming software

86. TWDC is active in the development and publishing of gaming software in the EEA. It also operates at wholesale level in the distribution of gaming software.
87. Lucasfilm is active in the development and publishing of gaming software in EEA which is manufactured by third party manufacturers and distributed through third party and distributors (Activision for offline games and Steam/Valve for online games).
88. The Parties' activities therefore overlap in the market for the development and publishing of gaming software.

³⁷ Form CO submitted by the Notifying Party, paragraph 82.

³⁸ Form CO submitted by the Notifying Party, paragraph 82.

³⁹ According to Article 167 (4) of the TFEU, "the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures".

89. There are also vertical links between, on the one hand, Lucasfilm's activities in the development and publishing of gaming software, and on the other hand, TWDC's activities in the distribution of gaming software.
90. On the basis of the Parties' market shares, there are no horizontally or vertically affected markets in relation to the publishing and distribution of gaming software under any potential market definition.

Horizontal aspects

91. In the market for the development/publishing of gaming software, encompassing all games, the combined entity's market share would remain below 15% at the EEA level and below 6% in each of the Member States where the activities of the Parties overlap. In addition, the increment brought about by the market shares of Lucasfilm is limited, amounting to [0-5]% at both EEA and national level.
92. Regarding the potential segmentation of the market for the development/publishing of gaming software of online games, offline games for mobile handsets, and offline games for PCs, consoles, and handhelds, together or by platform and/or brand, the Notifying Party submits that the combined entity's market share would remain below 15% at the EEA level and in each of the Member States where the activities of the Parties overlap. In addition, Lucasfilm does not publish games for mobile handsets.
93. In light of the above, the Commission concludes that the proposed transaction does not raise horizontal competition concerns as regards the development and publishing of gaming software under any alternative market definition.

Vertical aspects

94. As regards the potential vertical relationship between Lucasfilm's activities in the market for the development/publishing of gaming software and TWDC's activities downstream in the distribution of gaming software, the Notifying Party submits that TWDC does not distribute third party gaming software and its market shares in the market for the wholesale distribution of gaming software in 2011 are below 5% at the EEA level and in the majority of EEA Member States, with the exception of Sweden ([5-10]%). In addition, the market shares of Lucasfilm in the market for the development/publishing of gaming software are limited amounting to [0-5]% at both EEA and national level.
95. In light of the above, the Commission concludes that the proposed transaction does not raise vertical competition concerns in relation to gaming software.

Overall conclusion for the publishing and distribution of gaming software

96. In view of the above, the Commission concludes that the proposed transaction is compatible with the internal market with regard to the development and publishing of gaming software under any alternative market definition.

C. Merchandise licensing

97. TWDC is active in the development and distribution of consumer products based on existing and new TWDC characters and other TWDC intellectual property through its merchandise licensing, publishing and retail businesses. TWDC's merchandise licensing activities comprise a broad array of consumer products (including clothing & footwear,

electrical goods, fruit and vegetables, furniture & floorcovering, furniture & floorcoverings, health & beauty care, households textiles, non-alcoholic drinks, office, pet care, sports & leisure, stationery, toys, watches and jewellery).

98. Lucasfilm's merchandise licensing activities focus on apparel and other consumer goods.
99. In the overall market for merchandise licensing, the combined entity market shares in 2011 would remain below 5% at EEA level and in each of the Member States where the activities of the Parties overlap.
100. As regards a potential market segmentation according to merchandise content or type of goods, the Parties submits that the combined entity market shares in 2011 would remain below 15% at EEA level and in each of the Member States where the activities of the Parties overlap, with a limited increment in market shares (up to 1%) due to Lucasfilm's limited activities in this market.
101. On the basis of the Parties' market shares, there are no horizontally affected markets in relation to merchandise licensing under any potential market definition.
102. In light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards merchandise licensing under any alternative market definition.

D. Licensing of broadcasting rights

103. TWDC is active in the EEA in the market for the licensing of broadcasting rights of motion pictures and TV programmes for VOD, PPV, pay-TV, and FTA-TV. TWDC is also active in the market for the wholesale supply of TV channels to pay-TV and FTA-TV operators.
104. Lucasfilm is active in the licensing of broadcasting rights of its motion pictures Star Wars series title and TV programme Clone Wars mostly for FTA-TV, but also to a limited extent for VOD, PPV⁴⁰ and Pay-TV.⁴¹
105. In the market for the licensing of broadcasting rights, either as whole or in each of the potential segments where the Parties' activities overlap (licensing of broadcasting rights for PPV, VOD, FTA-TV, pay-TV and within the pay-TV window, licensing of broadcasting rights of motion pictures for pay-TV, licensing of broadcasting rights of TV programmes and/or other content for pay-TV), the combined entity's market shares in 2011 would remain below 15% in each of the Member States where the activities of the Parties overlap.
106. On the basis of the Parties' market shares, there are no horizontally affected markets in relation to the licensing of broadcasting rights under any potential market definition.

⁴⁰ Lucasfilm's activities in the licensing of broadcasting rights for PPV and VOD were limited in 2011 to Austria, The Netherlands, Luxembourg, Belgium, Germany and Greece with market shares amounting up to 1%.

⁴¹ Lucasfilm's activities in the licensing of broadcasting rights for pay-TV were limited in 2011 to the UK with the licensing of broadcasting rights of Star Wars Episode III, and Clone Wars season III with market shares amounting up to 1%.

107. In light of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards the licensing of broadcasting rights under any alternative market definition and therefore considers that the notified transaction is equally unlikely to adversely affect cultural diversity in the EEA.

E. Production, acquisition and distribution of motion pictures for theatrical release

108. Outside the EEA, TWDC and Lucasfilm are active in the market for the production of motion pictures for theatrical release with production studios. While Lucasfilm did not release any title in the period 2009-2011, it released two titles in the EEA in 2012, namely Starwars: Episode I in 3D and Red Tails. Lucasfilm is also active in post-production operations in the EEA.

109. TWDC is also active in the market for the acquisition of motion pictures for theatrical release in the EEA. On the contrary, Lucasfilm did not acquire any motion pictures in 2011 and 2012.

110. Finally, TWDC is active in the market for the distribution of motion pictures for theatrical release in the EEA and at national level. Lucasfilm did not have operations in 2009-2011, with only limited activities in 2012, due to the release of the two above-mentioned titles.

111. The Parties' activities therefore overlap in the market for the production of motion pictures for theatrical release at worldwide level, and in the market for the distribution of motion pictures for theatrical release in a number of Member States.

112. There are also vertical links between Lucasfilm's upstream production activities and TWDC downstream distribution activities, and between TWDC's motion pictures production activities and Lucasfilm's post-production activities.

Horizontal aspects

113. On the worldwide market for the production of motion pictures, the combined entity's market share in 2012 would remain below 15% at worldwide level.

114. In the markets for the distribution of motion pictures for theatrical release, the combined entity's market share in 2012, calculated on the basis of gross box office receipts, would remain below [...] % in each of the Member States where the activities of the Parties overlap with the exception of Bulgaria ([20-30]%), Finland ([10-20]%), Hungary ([10-20]%), Norway ([10-20]%), Sweden ([20-30]%) and the UK and Ireland ([10-20]%).

115. The increment in market shares would be limited in each of these Member States (1%) due to Lucasfilm's limited activity in this market.

116. In addition, the Notifying Party considers that in all the affected markets/segments the combined entity, post-transaction, would face competition from a number of well-established competitors active in the production, acquisition and distribution of motion pictures for theatrical release, such as DreamWorks SKG, Fox Film Entertainment, Paramount Pictures Corporation, Sony, Metro-Goldwin Mayer, Universal Pictures, and Warner Bros.⁴²

⁴² Form CO Submitted by the Notifying Party, paragraph 149.

117. Against this background, the results of the market investigation confirm that the impact of the transaction is likely to be small on this segment of the market. The majority of respondents expressing a view considers that Lucasfilm is not a significant competitor on this market.
118. In view of the above, the Commission concludes that the proposed transaction does not raise competition concerns as regards the horizontally affected markets for the distribution of motion pictures for theatrical release under any alternative market definition.

Vertical aspects

119. As regards the vertical relationship between Lucasfilm's activities in the upstream market for the production of motion pictures for theatrical release and TWDC's downstream activities in the distribution of motion pictures for theatrical release in the EEA and at national level, the Notifying Party submits that Lucasfilm's and TWDC's activities in the respective upstream and downstream markets are limited with market shares below 25% respectively at worldwide and national level.⁴³
120. As regards the vertical relationship between TWDC's activities in the upstream market for the production of motion pictures for theatrical release and Lucasfilm's downstream activities in post-production of motion pictures, the Notifying Party submits that Lucasfilm's and TWDC's activities in the respective upstream and downstream markets are limited with market shares below 25% respectively at worldwide and national level.⁴⁴
121. Therefore this transaction does not give rise to any vertically affected markets in relation to motion pictures for theatrical release.
122. In light of the above, the Commission concludes that the proposed transaction does not raise vertical competition concerns in relation to motion pictures for theatrical release.

Overall conclusion for production, acquisition and distribution of motion pictures for theatrical release

123. In view of the above, the Commission concludes that the proposed transaction does not raise competition concerns with regard to the production, acquisition and distribution of motion pictures for theatrical release under any alternative market definition and therefore considers that the notified transaction is equally unlikely to adversely affect cultural diversity in the EEA.

⁴³ Form CO Submitted by the Notifying Party, paragraph 150.

⁴⁴ Form CO Submitted by the Notifying Party, paragraph 150.

VI. CONCLUSION

124. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)
Joaquín ALMUNIA
Vice-President