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*Case No IV/M.070 -
OTTO / GRATTAN*

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

Article 6(1)(b) NON-OPPOSITION
Date: 21.03.1991

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

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1. Notifying party
2. Notifying party

Dear Sirs,

Subject: Case No. IV/M070 - OTTO/GRATTAN
Notification of 22.02.1991 pursuant to Art. 4 of
Council Regulation No. 4064/89

1. The above notification concerns an agreed bid whereby OTTO VERSAND GmbH & Co. (OTTO VERSAND), through its wholly owned subsidiary Britannia Beteiligungs-Verwaltungs GmbH, has made a bid to acquire the entire issued share capital of NEXT Plc's (NEXT) wholly owned subsidiary GRATTAN Plc (GRATTAN).

2. After full examination of the notification, the Commission has come to the conclusion that the notified transaction falls within the scope of Council Regulation No. 4064/89 (Merger Regulation) and does not raise serious doubts as to its compatibility with the common market.

I. CONCENTRATION AND COMMUNITY DIMENSION

3. The notified transaction is a concentration in the sense of Article 3(1)(b) of the Merger Regulation since OTTO VERSAND by acquiring the entire share capital of GRATTAN will gain control of this company.

4. In their respective latest accounting years, the combined aggregate worldwide turnover of OTTO VERSAND and GRATTAN was more than 5,500 million Ecu. Both companies meet the requirements of

Article 1(2)(b), OTTO VERSAND and GRATTAN each having an aggregate Community-wide turnover of more than 250 million Ecu, of which not more than two-thirds was achieved in one and the same Member State. Consequently, the proposed concentration has a Community dimension.

II. ANCILLARY RESTRAINTS

5. The agreement between OTTO VERSAND and NEXT provides for a number of services (data processing, distribution and collection, administrative and ancillary services) to be continued to be supplied by GRATTAN to NEXT (and companies connected to NEXT) for minimum periods, ranging from 6 months to 4 years terminable by either side on notice periods ranging from 3 months to 1 year. The costs of providing these services are allocated on a usage basis with each party paying the costs incurred by GRATTAN in proportion to the services rendered to them.

6. The provision of these services was previously an integrated part of the services supplied by GRATTAN to NEXT. The parties consider these arrangements to be of particular importance to the vendor's NEXT Directorate business. Over the years and at considerable expense, GRATTAN has developed a highly efficient distribution/collection system which has enabled the NEXT Directorate business to develop, and which is considered to be essential for a transitional period to ensure the continuity of this business. The arrangements can be considered, therefore, directly related and necessary to the implementation of the concentration. In the light of the circumstances of this case, the time periods in question do not seem to be unreasonably long. These ancillary restrictions are therefore to be assessed together with the concentration itself.

III. THE PARTIES

7. OTTO VERSAND is a limited company registered in Germany, the shares of which are ultimately held by the Otto family. Included within the OTTO VERSAND group is 3 SUISSSES INTERNATIONALE S.A. and its sub-sidiaries. The main business of OTTO VERSAND is the retailing of non-food products through catalogue mail order. In addition, it is engaged in real estate activities (property development, the owning and leasing of high street shops and shopping centres, etc.).

8. OTTO VERSAND operates throughout Europe. In a number of Member States, namely Germany, France, Belgium, Spain, the Netherlands, Italy and the United Kingdom it is active through locally based companies in which it holds controlling interests or which are wholly owned and controlled subsidiaries. Its United Kingdom activities are limited and derive from a (small scale) joint venture with Fine Arts Developments Plc, Rainbow Home Shopping Ltd, which launched a mail order catalogue service specialising in clothing and textiles (a so-called "specialogue" service) in March 1990. OTTO VERSAND also operates a joint venture in Japan.

9. GRATTAN is a wholly owned subsidiary of NEXT. Its main business activity is the retailing of non-food products through catalogue mail order. GRATTAN also operates a number of high street retail outlets under various names through which it sells a number of the same products as it offers through its mail order catalogue as well as a number of clothing items sold under NEXT brand names. GRATTAN operates almost entirely in the United Kingdom, with the exception of a small number of sales to British Forces personnel stationed abroad. Upon eventual completion of the concentration, a number

of NEXT's overseas operations will be transferred to GRATTAN. These operations do not concern Community markets, and are therefore not included in the assessment set out below.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant market

10. This case concerns the retailing of non-food products through catalogue mail order. The most important product groups distributed through the companies concerned are ladies wear, home textiles, sports goods, mens wear and furniture. For these products the retail market is, at most, national. The same applies for catalogue mail order services for the following reasons:

11. With regard to mail order, the Commission takes the view that for the purposes of this decision, it is appropriate to consider the United Kingdom as the relevant geographical market, in particular for the following reasons:

- for the present, the combination of different languages, the existence of customs procedures including VAT invoicing and payment, and the costs and delays associated with the placing of international orders and international distribution of individual packages, renders cross-border trading economically impractical;
- companies with activities in different countries have confirmed that for the time being local facilities, separate catalogues with their own range of products and locally adapted pricing policies are necessary. Moreover, up to now in the United Kingdom only domestic operators have been present;
- there are appreciable differences among Member States in the stage of development of mail order. Mail order in the United Kingdom is a mature market, perhaps even declining. By contrast, in Spain, Italy and Portugal, mail order is generally considered to be a nascent business with prospects for growth;
- furthermore, mail order in the United Kingdom presents another specific characteristic, namely the agency system (see para. 13 below).

12. OTTO VERSAND submits that the relevant product market is total non-food retail sales. However, there are reasons for considering that catalogue mail order may constitute a distinct market within the total retail sector, at least within the United Kingdom. It presents a number of specific characteristics when compared to other forms of retailing:

- consumers make their choice from a catalogue at home, not in the presence of the seller, and have the possibility of inspecting and approving the goods over a period of time, typically 10-14 days;
- consumers are entitled to have the goods delivered to their home and to return the goods at the expense of the company and to be reimbursed in full;

- a segment of the population has no alternative to home shopping, either because the goods are not available in certain isolated areas or because certain consumers may have difficulties in leaving their homes, such as disabled and elderly persons;
- in the United Kingdom, catalogue prices are inclusive of credit facilities. Credit is generally available to mail order customers at no perceived cost over a long period of time (up to 50 weeks).

13. These specific characteristics in the service rendered by mail order companies are acknowledged by both consumers and suppliers to the extent that they are reflected in prices. From information compiled from several mail order companies, it appears that while they must position themselves in line with the retail sector as a whole, their pricing is subject to certain constraints:

- prices have to be fixed in advance of publication and for the entire lifespan of the catalogues, which are generally issued only once or twice a year (the costs associated with the printing, distribution and promotion of catalogues may represent up to 8% of turnover). Although subsequent discounts on the catalogue price may be offered for individual items through additional leaflets, mail order companies have less flexibility to adjust their prices, nationally or locally, than for instance high street shops;
- in the United Kingdom, the presence of agents is of particular importance for pricing within mail order. Agents (who account for an estimated 70-80% of mail order sales in the United Kingdom) may simultaneously work for more than one mail order company. In such circumstances, therefore, price comparisons between different catalogues are critical. More generally, the main concern of mail order companies is to remain price competitive in relation to each other, although they also take into account overall retail prices;
- there are indications that prices charged by mail order companies in the United Kingdom tend to be higher than those charged by high street shops in general, although it has not been possible to establish this with statistical accuracy. Two of the leading British mail order companies stated that their prices are normally higher due to differences in costs (catalogues, commission paid to agents, credit plus delivery).

14. Although mail order represents a very small fraction of total non-food retail sales (not exceeding 5% in any Member State), it represents a significant proportion of sales within certain product groups (ie near 10% for ladies wear, 14% for household goods and 13.5% for home textiles sales in the United Kingdom). Mail order is therefore a market of a significant size within certain categories of products.

15. For the combination of these reasons, it is considered that for the purposes of this decision retailing through catalogue mail order in the United Kingdom constitutes a relevant market within which to assess the economic impact of the proposed acquisition.

Horizontal aspects

16. OTTO VERSAND is one of the leading mail order houses in the Community. It has an important presence in several Member States:

it is among the two largest mail order companies in Germany, with a market share of 18.4%, the other major mail order company being Quelle. It also has subsidiaries in the Netherlands (market share of 8.4%), France (23.2%), Italy (7%), Belgium (19%) and Spain (12.9%). However, its presence in the United Kingdom has been minimal so far; the market share held by its joint venture, Rainbow Home Shopping, is less than 1% of mail order sales. Rainbow's sales (amounting to 6 million Ecu) are derived from the fashion specialogue "Together".

17. OTTO VERSAND's acquisition of GRATTAN, while allowing it to take a strategic foothold on the United Kingdom market, implies an overlap of activities in the United Kingdom which is insignificant from a competition point of view. Both prior to and upon completion of the proposed concentration, GRATTAN will be only the fourth largest mail order company in the United Kingdom with a market share of around 12%.

An examination of mail order sales in each category of main product groups confirms this view. GRATTAN achieves most of its turnover in the following product groups: ladies wear, home textiles, sports goods, menswear and furniture. In none of these product groups does the market share rise beyond 16% of the mail order market.

18. Neither OTTO VERSAND, through its Rainbow Home Shopping business, nor GRATTAN hold a dominant position prior to the proposed concentration. Even upon completion of the transaction the combined market share of the two companies will remain less than half of those of the two largest competitors on the United Kingdom market (Great Universal Stores and Littlewoods), the proposed concentration will not lead to the creation or strengthening of a dominant position on this market.

Vertical aspects

19. An effect on competition could arise from the purchasing power of the merged entity vis-à-vis its suppliers. In order to examine the vertical aspects of the concentration, the distinction between mail order and other retail distribution channels is not relevant since there is no reason to presume that suppliers would have to adapt their production specifically for mail order companies.

20. For this reason, therefore, it is appropriate to consider total retail sales in each product group as an adequate framework within which to assess the vertical aspects of the concentration. OTTO VERSAND and GRATTAN's shares of the total retail sales in each of their respective main product groups range for OTTO VERSAND between 2.3% (sport) and 4.1% (ladies wear) in Germany and between 1.3% (furniture) and 10.7% (home textiles) in France, and for GRATTAN between 0.4% (furniture) and 2.1% (home textiles) in the United Kingdom. The vertical implications of the proposed concentration seem, therefore, to be minor.

Barriers to entry

21. Apart from the fact that the market is mature and prospects of growth in the United Kingdom are negative in the short to medium term, no major economic barriers to entry have been identified. Major retail groups, in particular, retain sufficient possibilities

to enter the market. Since the proposed acquisition does not create or strengthen a dominant position, it does not raise further significant barriers to entry.

V. FINAL ASSESSMENT

22. Based upon the above findings the Commission has come to the conclusion that the proposed concentration does not raise serious doubts as to its compatibility with the common market.

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For the above reasons the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No. 4064/89.

For the Commission,