

***Case No IV/M.902 -
WARNER BROS. /
LUSOMUNDO /
SOGECABLE***

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

Article 6(1)(b) NON-OPPOSITION
Date: 12/05/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.05.1997

PUBLIC VERSION

MERGER REGULATION
ARTICLE 6(1)(b) DECISION

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To the notifying parties

**Subject: Case N° IV/M.902 - Warner Bros./Lusomundo/Sogecable.
Notification of 8.04.1997 pursuant to Article 4 of Council Regulation N° 4064/89.**

1. On 8 April 1997, The Commission received a notification of a proposed concentration pursuant to Article 4 of Council regulation (EEC) N° 4064/89 by which the undertakings Warner Bros. International Theatres ("WBIT"), Lusomundo, Sociedade Gestora de Participações Sociais, S.A. ("Lusomundo") and Sogecable S.A. ("Sogecable"), establish a joint venture named Warner Lusomundo Cines de España to purchase or lease and develop and exploit multiplex cinemas in Spain.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation N° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA agreement.

I. THE PARTIES

3. WBIT is a division of Time Warner Entertainment Company L.P. (a US limited partnership) and its sole business is the ownership and operation of cinemas and ancillary activities around the world.
4. Lusomundo is a Portuguese company whose principal areas of business are: the publication of newspapers and magazines; the operation of radio stations; the distribution of films for television broadcast and cinema exhibition; the distribution of films for videos; and the operation of cinemas. All of Lusomundo's business activities (with the sole exception of its interests in the present joint venture) are carried out in Portugal.
5. Sogecable is a Spanish company whose principal areas of business are: the operation of terrestrial and direct-to-home satellite pay television services; the production and distribution of films; the acquisition and sale of sports rights; and the provision of technology services. Sogecable is owned 25% by Prisa (Promotora de Informaciones S.A.), 25% by Canal + S.A. and 50% by a number of financial institutions.

II. THE OPERATION

6. Sogecable will become a partner in the existing joint venture between WBIT and Lusomundo named Warner Lusomundo Cines de España S.A. which presently jointly control the joint venture with a 50% share in the capital each. After the transaction the new joint venture company ("JVC") will be owned in equal shares by WBIT, Lusomundo and Sogecable. Structurally, this is to be effected by an increase in JVC's share capital and the creation of a new Spanish company ("Newco") jointly owned by Lusomundo and Sogecable which will own 2/3rds of the future JVC's share capital. The remaining 1/3rd of the capital will be owned by WBIT.
7. On completion of the transaction, the existing joint venture agreement between WBIT and Lusomundo will be terminated and the parties' interests in the joint venture and the operation of that joint venture will be governed by the new joint venture agreement.
8. The objectives of the JVC are and will continue to be to purchase or lease and develop and exploit multiplex cinemas in Spain.

III. COMMUNITY DIMENSION

9. The operation has a community dimension. The joint worldwide turnover of the undertakings concerned exceeds ECU 5,000 million (only Time Warner's turnover amounts to ECU 16.071 billion in its last financial year).
10. The aggregate EC-wide turnover of at least two of the undertakings concerned exceeds ECU 250 million: Time Warner (ECU 1966 billion), Sogecable (ECU

312.651 million), Prisa (ECU 347.900 million) and Canal Plus Société Anonyme (“Canal +”: ECU 1494 billion).¹

11. The parties do not achieve more than two-thirds of their aggregate Community wide turnover within one and the same Member State.
12. The notified operation therefore has a Community dimension but does not constitute a cooperation case under the EEA Agreement.

IV. CONCENTRATION

13. The operation amounts to a change of joint control by WBIT and Lusomundo on the JVC to a situation of joint control by WBIT, Lusomundo and Sogecable on the same JVC. As the Commission has explained in its Notice on the notion of undertaking concerned (94/C 385/03) a change in the shareholding through the entry of a new shareholder acquiring control is considered as leading to a change in the quality of control and the operation constitutes a concentration under article 3 1 b) of the Merger Regulation.

V. JOINT CONTROL

14. On completion each of WBIT, Lusomundo and Sogecable will have an equal interest in the JVC . The JVC’s board will have six directors, two nominated by each party. Certain matters will require the prior approval of all three parties including each annual budget which will determine the precise framework of the activities of the joint venture and , in particular, the investment it may make. Therefore, the core strategic commercial decisions of the JVC, i.e. the decisions on the investments to be made in the purchase, lease or development of multiplex cinemas in Spain will be under the veto right of each parent company.
15. Therefore, the JVC will be under the joint control of WBIT, Lusomundo and Sogecable.

VI. FULL FUNCTION

16. The JVC has and will continue to have sufficient financial and other resources to operate as a business in the market on a lasting basis. The joint venture will obtain third party debt finance of around [...] . Under a separate agreement, the JVC is licensed to use the Warner name and Warner trademarks for the duration of the joint venture.

¹ Sogecable is owned 25% by Promotora de Informaciones, S.A. (“Prisa”), 25% by Canal + and 50% by a number of financial institutions. For the purposes of the Merger Regulation, Sogecable is jointly controlled by Prisa and Canal + (Commission decision on 19.07.1996, under article 6.1 c of the Merger Regulation).

² Deleted; business secret.

VII. ABSENCE OF COORDINATION OF ECONOMIC BEHAVIOUR

17. Under Clause 6.1 of the Joint Venture Agreement the parties agree not to be involved in the exhibition market in Spain other than through the JVC. From the withdrawal of the parents from the market on which the JV will operate it follows that the creation of the JV will not give rise to coordination of competitive behaviour between WBIT, Lusomundo and Sogecable.

Conclusion

18. On the basis of the above it can be concluded that the notified operation constitutes a concentration within the terms of Article 3 of the Merger Regulation.

VIII. COMPATIBILITY WITH THE COMMON MARKET AND THE EEA

Relevant product market

19. The parties consider that there is a market for viewing films in cinemas and that this will be the market affected by the operation.
20. A distributor normally releases a film in successive periods to different outlets, starting with the cinema release and proceeding through video rental, pay television, video sale and free television. Thus consumers wanting to see the latest releases have no alternative but to visit the cinema.
21. Cinema-going is a different kind of experience compared with watching films on television screens at home. It involves an outing, seeing the film on a big screen with appropriate sound equipment, and being in company of other members of the public.
22. It is however, for the assessment of the present operation, not necessary to define the relevant product markets since even the narrowest possible product market definition does not give rise to the creation or strengthening of a dominant position.

Relevant geographic market

23. The geographic market does not extend beyond Spain since cinemagoers will not travel to other countries to see films which will mostly be exhibited in a foreign language and not dubbed into Spanish. Similarly, distributors seem to see the market on a national basis. Distributors plan their promotional campaigns for Spain as a whole and much of their advertising, notably on television, is placed on a national basis.
24. However, it could perhaps be argued that the geographic market is a series of local markets since some cinemas are geographically isolated from other cinemas and therefore they do not face much competition from other exhibitors. The bulk of box office receipts is, however, derived from the main centres of population where, in most cases, cinemas are in direct competition with each other.

25. It is however, for the assessment of the present operation, not necessary to define the relevant geographic markets since even the narrowest possible definition does not give rise to the creation or strengthening of a dominant position.

IX. ASSESSMENT

26. WBIT and Lusomundo are only active in the exhibition market through their interest in the JVC. Sogecable currently has no involvement in the exhibition market.
27. The ownership of Spanish cinemas is very widely spread with even the largest chain having a market share by number of screens of approximately 6%. The JVC currently operates only one 8 screen cinema in Madrid and its market share is therefore negligible taking into account that following sources of the Spanish Ministry of Culture there were 2,108 screens in Spain in 1995.
28. The JVC invested Ptas.[...]³ in building its first multiplex and has plans to invest a further Ptas. [...]⁴ in building a further 17 multiplexes throughout Spain over the next 3 1/2 years with a total of 197 screens. Other operators are also planning significant investment in multiplexes and the services of the Commission have been informed that 26 multiplexes are expected to open in 1997 in Spain.
29. Therefore, given the negligible market share of the parties in the Spanish Cinema Exhibition market and the existence of substantial investment undertaken by other competitors in the market, the concentration will not create or strengthen a dominant position in the EEA territory or a substantial part of it.
30. The services of the Commission have also analysed the possible vertical relationships between the JVC and Time Warner's and Sogecable's distribution interests.
31. The Warner Bros. catalogue is distributed to cinemas by Warner Española. Despite its name, Time Warner has no shareholding in this company and is not involved in its management. Time Warner's distribution agreement with Warner Española expires on 31st December 1997.
32. Sogepaq Distribución S.A. (which is owned 50/50 by Sogepaq S.A. and Polygram Ibérica, S.A.) distributes Sogecable and Polygram films to cinemas. However, given the small market share of Sogecable (approximately 8% in 1996) in the Spanish film distribution market in contrast with the market shares held by some Hollywood Studios (UIP: 24%, Buena Vista/Lauren: 20%, Columbia Tristar: 11%, Fox:10%, all 1996 figures) and the agreement between the parties setting out that the dealings with the JVC will be conducted at arm's length, this vertical relation does not raise any competition problem either.

³ Deleted; business secret.

⁴ Deleted; business secret.

X. ANCILLARY RESTRAINTS

33. In the joint venture agreement the parties agree not to be involved in the exhibition market in Spain other than through the JVC. This clause reflects the permanent withdrawal of the parents from the market to be served by the JVC and can therefore be recognized as an integral part of the concentration.
34. WBIT will sign three other agreements with the JVC in order to provide the joint venture with know-how and expertise: a Supervisor's agreement under which WBIT provides expertise to the JVC in relation to the acquisition, development, design, construction, management, legal affairs and operations of the JVC's cinemas; a Licence agreement to use the Warner name and Warner trademarks⁵ for the duration of the joint venture; and a European Services Agreement under which the JVC has the right to use the services of various WBIT group employees. Terms will be agreed on arm's length basis and these agreements ensure that the JVC will have the necessary resources for carrying on business. Each of these three supplemental agreements is directly related to and necessary for the implementation of the concentration. As far as restricting competition, they can be regarded ancillary to the concentration.

XI. CONCLUSION

35. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) N° 4064/89.

For the Commission.

⁵ Including Looney Tunes slogans such as What's up Doc ?, That's all folks !.....