

***Case No COMP/M.5779 -
COMCAST/ NBC
UNIVERSAL***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/07/2010

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EUROPEAN COMMISSION

Brussels, 13/07/2010

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.5779 – Comcast/ NBC Universal
Notification of 10/06/2010 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 11 June 2010, the European Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 by which the undertaking Comcast Corporation ("Comcast", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking NBC Universal, Inc. ("NBCU", USA) by way of purchase of shares.

I. THE PARTIES

2. Comcast is a company primarily involved in operating cable systems in the USA. Comcast also produces and licenses TV content and TV channels and operates websites (including websites that allow for streaming or downloading of TV content) in the US. In the EEA, Comcast licenses TV programming and TV channels for distribution by pay-TV operators.

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.

3. Comcast also has a [...] % minority interest in Metro-Goldwyn-Mayer ("MGM", USA). In the EEA, MGM is active in the production of motion pictures, TV programmes and home entertainment products.
4. NBCU is a global media and entertainment company, active in the development, production, marketing and distribution of entertainment, news, and information. It is currently 80%-owned by General Electric Company ("GE", USA). NBCU owns and operates a portfolio of news and entertainment channels, a motion picture company, television production operations, a network of television stations and theme parks. In the EEA, NBCU is mainly present through: (i) its international general entertainment pay-TV channels; (ii) the CNBC news channel; (iii) licensing of rights for motion pictures and TV programmes; (iv) home video distribution (home entertainment); (v) motion picture distribution; and (vi) local TV and motion picture production.

II. THE OPERATION

5. The notified transaction involves two concomitant and inter-conditional steps. First, pursuant to a Share Purchase Agreement of 3 December 2009, GE will acquire from Vivendi 20% of the shares of NBCU not already owned by GE. Second, pursuant to a Master Agreement of 3 December 2009, Comcast and GE agreed to form a new joint venture company named Navy, LLC ("Navy"). Comcast will contribute to Navy certain cable channels, regional sports networks, and two Internet businesses, and GE will cause a wholly-owned subsidiary to contribute 100% of the shares of NBCU.
6. Comcast will hold a 51% shareholding in Navy, and GE a 49% shareholding.

III. CONCENTRATION

7. Comcast will acquire sole control of Navy:
 - As regards shareholder decisions, a majority of the equity present will be required to pass a resolution. Prior written consent by GE is only required for certain decisions that are limited to minority shareholder redemption rights and so long as GE's direct and indirect equity interest is more than 20%.
 - GE has the right to appoint two directors out of five in the board so long as GE's direct and indirect equity interest is more than 20% and one director so long as GE's direct and indirect equity interest is equal to 10%. Comcast has the right to appoint the remaining directors. A majority of the board directors, with a majority of those present being Comcast directors and, so long as GE's direct and indirect equity interest is higher than 10%, one GE director being present, will be required to pass a resolution. GE will however not have a right of veto over board decisions since a board meeting can be reconvened within 24 hours of a meeting adjourned because a GE director was not present.
 - Although prior written consent of GE is needed for the appointment of a CEO in the first 3 and a half years, the approval is no longer required if GE has failed to approve 2 candidates suggested by the board.
8. The proposed transaction therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. EU DIMENSION

9. The proposed transaction does not have an EU dimension within the meaning of Article 1 of the Merger Regulation because the turnover of the parties does not meet the thresholds set out in Article 1(2) and 1(3) of the Merger Regulation.² According to the notifying party, the operation is reviewable under the national merger control laws of six Member States, namely Austria, Germany, Ireland, Italy, Poland and the United Kingdom.
10. Following the filing of a referral request pursuant to Article 4(5) of the Merger Regulation on 29 March 2010 and no Member State having expressed its disagreement within the 15-day deadline, the concentration was deemed to have an EU dimension and was notified to the Commission on 11 June 2010.

V. ASSESSMENT

A. Introduction

11. In the EEA, Comcast and NBCU overlap in:
 - the licensing of TV content to pay-TV and free-TV operators and the licensing of TV channels for distribution by pay-TV operators (section B);
 - the sale of online advertising space (section C).
12. In 2005, Comcast, together with Sony, Providence, TPG and DLJ Merchant Banking Partners III, L.P. (and certain of its affiliated investment funds), acquired a shareholding in MGM. The Commission assessed the transaction as case M. 3595 – Sony/MGM and, in its decision³, the Commission concluded that Comcast would exercise joint control over MGM, inter alia, because of [...].
13. Comcast has increased its shareholding since 2005.
14. In March 2009, the Stockholders' Agreement⁴ in relation to MGM was amended in such a way so as to specify that [...].⁵ Other Comcast rights in relation to the corporate governance of MGM remain unaltered since 2005.
15. [...].
16. For the purposes of the case at hand, the notifying party submits that, given the very limited nature of Comcast's rights to influence the strategic conduct of MGM⁶ and the little use that

² In 2009 the Union-wide turnover of Comcast is EUR [...] and therefore below the threshold of EUR 250 million of Article 1(2)(b) of the Merger Regulation and below the threshold of EUR 100 million of Article 1(3)(d) of the Merger Regulation.

³ Case COMP/M. 3595 – *Sony/MGM*, decision of 30 March 2005, paragraph 7.

⁴ 2005 Amended and Restated Stockholders' Agreement ("*Stockholders' Agreement*").

⁵ First Amendment to the Amended and Restated Stockholders' Agreement of MGM Holdings Inc dated March 2009, clause A(a).

⁶ [...].

Comcast currently makes of those rights, the activities of MGM are not relevant to the competitive assessment of the present transaction.

17. If MGM's activities were taken into account for the purposes of the competitive assessment, the proposed transaction would give rise to of the following additional⁷ horizontal overlaps between the activities of MGM and NBCU in the EEA:

- Production of motion pictures for theatrical distribution (section D);
- Home entertainment (section E).

18. It is not necessary to take a final view as to whether Comcast has joint control over MGM, as found by the Commission in 2005 as, even if MGM's activities were to be taken into account in the Commission's assessment, the proposed transaction would not give rise to any competition concerns.

B. Licensing of TV content

1. Market definition

19. The parties have considered their respective positions by reference to the following categories: (i) licensing of broadcasting rights for pay-TV; (ii) licensing of broadcasting rights for free-TV; and (iii) licensing of broadcasting rights for TV channels.

20. In several decisions, the Commission has distinguished between the licensing of broadcasting rights for pay-TV and the licensing of broadcasting rights for free-TV.⁸ The Commission has considered a further segmentation into markets for licensing of broadcasting rights for: (i) premium motion pictures; (ii) "made-for-TV" programmes and (iii) premium sporting events.⁹

21. With respect to the licensing of broadcasting rights for motion pictures for pay-TV, the Commission has identified separate markets for the following different exhibition windows: (i) pay-per-view (PPV); (ii) the first pay-TV window; and (iii) the second pay-TV window.¹⁰ The notifying party submits however that the distinction between PPV and 1st window is not meaningful since the same customers acquire the same content. In most EEA-countries, there are only one or two pay-TV operators which acquire broadcasting rights for a time period covering both the first and the second windows. According to the notifying party, the distinction between the first and second pay-TV windows may only become relevant in countries where there are two pay-TV operators.

⁷ MGM's market shares in the markets for the licensing of TV content and online advertising business would also need to be taken into account.

⁸ See notably Case COMP/M.2876 - *Newscorp/Telepiù*, decision of 2 April 2003, paragraph 53.

⁹ See Case COMP/M.2050 - *Vivendi/Canal+/Seagram*, decision of 13 October 2000, paragraph 17.

¹⁰ See Case COMP/M.2050 - *Vivendi/Canal+/Seagram*, decision of 13 October 2000, paragraphs 18 et seq.; Case COMP/M.2845 - *Sogecable/CanalSatélite Digital/Vía Digital*, decision of 14 August 2002, paragraph 25.

22. Further, the Commission has also considered, but left open, a distinction between US-produced motion pictures and other motion pictures.¹¹ The notifying party considers that it is not appropriate to distinguish between the licensing of broadcasting for USA motion pictures and the licensing of broadcasting rights for other motion pictures. From a demand-side perspective, the notifying party argues that the attractiveness of a motion picture for pay-TV depends on its commercial appeal (commonly reflected by box office revenues) in a given country, where local productions often achieve significant box office revenues.
23. In several cases, the Commission has identified a separate market for the wholesale supply of channels for pay-TV.¹² The Commission has left open whether there are separate markets according to the channel genre (e.g. motion pictures, documentaries, youth, sports, etc.).¹³
24. The notifying party considers the sale of airtime for advertising to be an ancillary activity to the licensing of TV channels for distribution primarily by pay-TV operators and consider that their presence in the sale of airtime is accurately reflected in their share of the markets for the licensing of TV channels. This is in line with the approach followed in the decisions dealing with the market for the supply of channels to retail pay-TV in which the Commission did not examine the sale of advertising airtime as a distinct market.¹⁴
25. In line with the Commission's prior decisions,¹⁵ the notifying party submits that the geographic market for the licensing of TV content and the licensing of TV channels are national or, in certain cases, regional (along linguistic borders).
26. For the purposes of the present case, the exact definition of the relevant product and geographic markets as regards the licensing of TV content may be left open in the present case as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

¹¹ See Case COMP/M.2845, *Sogecable/Canal Satélite Digital/Via Digital*, decision of 14 August 2002, paragraph 25; Case COMP/M.2876, *Newscorp/Telepiù*, decision of 2 April 2003, paragraph 58; Case COMP/C.2-38.287, *Telenor/Canal+/Canal Digital*, decision of 12 December 2004, paragraph 70.

¹² See Case IV/M.1327 - *NC/Canal+/CDPQ/Bank America*, decision of 3 December 1998, paragraph 15; Case IV/36.237 - *TPS*, decision of 3 March 1999, paragraph 37; Case COMP/JV.30 - *BVI Television (Europe) Inc/SPE Euromovies Investments Inc/Europe Movieco Partners*, decision of 3 February 2000, paragraph 15; Case IV/36.539 *British Interactive Broadcasting/Open* - decision of 15 September 1999, paragraph 28 et seq.

¹³ See Case COMP/JV.40, *Canal+/Lagardère/Liberty Media*, decision of 22 June 2000, paragraph 22 et seq.; Case COMP/C.2-38.387, *Telenor/Canal+/Canal Digital*, decision of 29 December 2003, paragraph 58 et seq.

¹⁴ See notably Case COMP/M.2876 - *Newscorp/Telepiù*, decision of 2 April 2003, paragraph 79, table 1.

¹⁵ See Case COMP/JV.37 - *BSkyB/Kirch Pay-TV*, decision of 21 March 2000, paragraph 45; Case COMP/M.2050 - *Vivendi/Canal+/Seagram*, decision of 13 October 2000, paragraph 17; Case COMP/M.2876 - *Newscorp/Telepiù*, decision of 2 April 2003, paragraph 62.

2. Competitive assessment

27. Comcast has negligible activities in the EEA and NBCU also conducts the bulk of its activities in the USA. In the EEA, Comcast and NBCU overlap only in the licensing of TV programmes and channels for distribution by pay-TV operators. Whereas NBCU licenses broadcasting rights for motion pictures in most EEA Member States, Comcast does not license motion picture programmes.
28. MGM is also active in the licensing of broadcasting rights for TV programmes and channels. MGM licenses mainly motion pictures and to a limited extent made-for-TV programmes to pay-TV operators in most of the EEA countries and it licenses motion pictures and made-for-TV programmes to numerous free-TV operators. However, it should be noted that MGM's activity is decreasing with the production of only a limited slate of new release titles in the past few years.
29. In the EEA, none of the parties license premium football content.
30. The notifying party submits that the most appropriate measure of the competitive positions of TV licensors is their share of TV licensing revenues, which reflects both TV licensors' success in licensing the titles of their catalogue and the value of those titles.¹⁶
31. To estimate their market shares of the licensing of TV programmes, the notifying party has used Screen Digest information. However, Screen Digest only provides information for France, Austria/Germany, Italy, Spain and Ireland/UK in the EEA. These countries account for [40-50]% of Comcast's EEA wide turnover from licensing TV content, [75-85]% of NBCU's and [75-85]% of MGM's.
32. To estimate their shares of the licensing of TV channels, the notifying party has used information published by Zenith Optimedia, Informa and Screen Digest. Again market wide data from these sources is limited and does not cover all of the Member States of the EEA.
33. The notifying party considers that their combined share would remain below 15% in the EEA and in any individual EEA country even if MGM's sales were taken into account. On the basis of the notifying party's best estimates, only the market for the licensing of TV content to pay-TV in Germany/Austria would be affected.
34. Screen Digest only provides data that allows the notifying party to estimate the size of pay-TV content licensing in total, free-TV content licensing in total and free-TV content licensing in total excluding sports programming. However, the notifying party believes that, if it were possible to produce estimates for the size of various segments of the TV

¹⁶ In any case, according to public sources, the catalogues of the parties are comparable or even smaller than the library of other competitors. Comcast has [...] hours of general entertainment and sports programming available for licensing to TV operators in the EEA. NBCU's catalogue includes approximately [...] motion pictures and [...] hours of other TV content. MGM's catalogue includes [...] motion pictures and [...] episodes of TV programming. BBC's library includes 50,000 hours of TV programming, Lionsgate's library includes approximately 12,000 motion picture and television titles, Sony's library includes over 3 500 motion pictures, plus over 35,000 television episodes, 275 television series and more than 22 000 episodes of game show programming and Warner Brothers has more than 6 650 motion pictures, 40 000 television titles and 14 000 animated titles.

programme licensing identified by the Commission in previous decisions as described above, the parties' respective shares would not be significantly different.

35. On the basis of the following findings and their knowledge of the countries for which data is not available, the parties believe that their combined share of sales in any relevant segment set out above and for any relevant geographic market in the EEA is significantly below 15%.

(i) *Licensing of TV programmes to pay-TV operators*

36. NBCU and Comcast overlap in 21 countries in the EEA.¹⁷ Taking MGM into account, an additional overlap in Portugal should be considered. Even if the combined market share of Comcast, NBCU and MGM is calculated on a conservative basis, there are no affected markets with the exception of Austria/Germany where their combined market share would just exceed 15%. In addition, the increments are small: Comcast's share of licensing of programmes for pay-TV is less than [0-5]% for all countries in which data are available. MGM's share of licensing of programmes for pay-TV is less than [0-5]% for all countries in which data are available.

Table 1: Market shares in Licensing of TV programmes for Pay-TV

Country	Comcast	NBCU [...] ¹⁸	MGM	Total
France	[0-5]%	[5-10]%	[0-5]%	[5-10]%
Italy	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Spain	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Austria/Germany	[0-5]%	[10-20]%	[0-5]%	[10-20]%
Ireland/UK	[0-5]%	[5-10]%	[0-5]%	[5-10]%

(ii) *Licensing of TV programmes to free-TV operators*

37. NBCU and MGM overlap in 22 countries in the EEA.¹⁹ Comcast is not present on this market. The combined market share of NBCU and MGM is below [0-5]% in all countries in which data are available. In addition, increments are small: MGM's share of licensing of programmes for free-TV is less than [0-5]% for all countries in which data are available.

¹⁷ NBCU and Comcast overlap in Austria, Belgium, Bulgaria, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Malta, Netherlands, Norway, Poland, Romania, Spain, Sweden and the UK.

¹⁸ [...].

¹⁹ NBCU and MGM overlap in Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Table 2: Market shares in Licensing of TV programmes for free-TV (excluding sports) ²⁰

Country	NBCU	MGM	Total
France	[0-5]%	[0-5]%	[0-5]%
Austria/Germany	[0-5]%	[0-5]%	[0-5]%
Italy	[0-5]%	[0-5]%	[0-5]%
Spain	[0-5]%	[0-5]%	[0-5]%
Ireland/UK	[0-5]%	[0-5]%	[0-5]%

(iii) Licensing of TV channels to Pay-TV operators

38. As regards the licensing of TV channels, NBCU and Comcast overlap in 15 countries in the EEA whereas NBCU and MGM overlap in 11 countries in the EEA.²¹ The combined market share of Comcast, NBCU and MGM is less than [0-5] % in all countries where data are available. In addition, increments are small with Comcast's share of licensing of TV channels below [0-5] % and MGM's share of licensing of TV channels not more than [0-5] % for all countries in which data are available.

Table 3: Market shares in Licensing of TV channels

Country	Comcast	NBCU	MGM ²²	Total
Austria	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Belgium	[0-5]%	[0-5]%	[0-5]%	[0-5]%
France	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Germany	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Hungary	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Ireland	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Italy	[0-5]%	[0-5]%	[0-5]%	[0-5]%

²⁰ Since none of the parties license sports programmes to free-TV, this estimate is the most conservative.

²¹ NBCU and Comcast overlap in Austria, Belgium, France, Germany, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Slovakia and the UK. In addition, NBCU and MGM overlap in Bulgaria, Czech Republic, Denmark, Estonia, Finland, Hungary, Norway, Romania, Slovenia, Spain and Sweden.

²² Comcast has been unable to obtain MGM's revenue from licensing TV channels. MGM's shares are therefore estimated on the basis of MGM's "other revenue". MGM's "other revenue" covers revenue generated through consumer products licensing, interactive game sales, subscriber and advertising revenue from its wholly owned channels and certain other licensing revenue.

The Netherlands	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Poland	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Romania	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Spain	[0-5]%	[0-5]%	[0-5]%	[0-5]%
UK	[0-5]%	[0-5]%	[0-5]%	[0-5]%

(iv) *Overall assessment*

39. The notifying party further argues that the markets for the licensing of TV content are highly competitive with a large number of suppliers including the larger US studios as well as European and other non-American producers of motion pictures and made-for-TV programmes. Studios also compete with their customers, in particular free-TV operators, who produce made-for-TV motion pictures and other programmes. As an illustration of the crowded competitive space, there are at least 39 competitors in Italy for licensing of TV content and channels.²³ The large number of suppliers is also acknowledged in the Commission's decision in the *MGM/Sony* case.²⁴
40. In many EEA countries, the numerous suppliers are competing to license content to a limited number of pay- and free-TV operators. As an illustration, the following operators are active in pay-TV: Sky Italia and Mediaset in Italy, BSkyB and Virgin in the UK, and Sogecable, Ono and Imagenio in Spain. In the Benelux countries, France, the Nordic countries, and Poland, two pay-TV operators per country account for approximately 90% of pay-TV revenues in each of these countries. The nearly monopsonistic position of Pay-TV operators was acknowledged in the Commission's decision in the *MGM/Sony* case.²⁵
41. Across the EEA, there has been significant growth in the number of new TV channels as a result of the broadcasting switch to digital and the development of new technology. At least 245 channels were launched across Europe in 2009. This has resulted in an increase in the demand for new content.
42. According to the notifying party, European TV programme producers, in particular, are extremely strong competitors in their local territories and in some cases outside them.

²³ Rai SpA/Raisat SpA; R.T.I. SpA; Boing SpA; Telecom Italia Media SpA; Sky Italia Srl; Discovery Italia Srl; The Walt Disney Company; Fox International Channel Italy Srl; Elemedia SpA; ESPN Emea Ltd; Eurosport SA; Sitcom Televisioni Srl; Switchover Media Srl; Digicast SpA; Turner Broadcasting System Italia Srl; MTV Italia Srl/Viacom; AXN Italia Srl; Cultoon Television Ltd; Current Italy Srl; De Agostini Editore SpA; JIMJAM Television; Match Music Srl; Giglio Group SpA; Rock TV Srl; Zonemedia Broadcasting; Anica Flash Srl; Lady Channel Srl; Sportcast Srl; Promosat; D.GUSTO Srl; Dahlia TV Srl; Gruppo Caltagirone; Italy Editore; Francesco di Stefano; Holland Coordinator and Service BV; CEI; Carlo Vetrugno; Italia 7 Gold Srl; and Profit Group SpA.

²⁴ Case COMP/M. 3595 – *Sony/MGM*, decision of 30 March 2005, paragraph 48.

²⁵ Case COMP/M. 3595 – *Sony/MGM*, decision of 30 March 2005, paragraph 51.

Moreover, the Audiovisual Media Services Directive²⁶ requires Member States to ensure, “*where practicable and by appropriate means*”, that broadcasters reserve the majority of broadcasting time for European works and 10% of programming time and budget for European works from independent producers.

43. In light of the above, it can be concluded that the proposed transaction does not significantly impede effective competition in the internal market or any substantial part of it in the EEA countries concerned as regards the licensing of TV content, regardless of the exact market definition.
44. Since the parties have a small presence on the different markets which have been analysed, the notified operation will not have any significant impact as regards the availability of TV content for licensing and is therefore unlikely to harm consumer choice and cultural diversity in the EEA.²⁷

C. Sale of online advertising space

1. Market definition

45. The notifying party submits that the exact product market definition may be left open in the present case as no competition concerns regarding online advertising arise from the proposed transaction under any conceivable market definition.
46. In previous decisions,²⁸ the Commission has established a distinction between online and offline advertising markets. In those cases, the Commission has also considered whether search and non-search advertising constituted separate markets, but has ultimately left this issue open.²⁹ As regards, geographic market definition, in previous decisions,³⁰ the Commission has concluded that the market for online advertising (and its possible segments) is national or divided along linguistic borders within the EEA.
47. For the purposes of the present case, the exact product and geographic market definitions as regards online advertising may be left open as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

²⁶ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, OJ L 95 of 15.04.2010, p.1.

²⁷ 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".

²⁸ Case COMP/5727 – *Microsoft/Yahoo! Search Business*, 18 February 2010 paragraph 61 and Case COMP/M.4731, *Google/DoubleClick*, 11 March 2008 paragraphs 44 to 47 and paragraph 56.

²⁹ Case COMP/5727 – *Microsoft/Yahoo! Search Business*, 18 February 2010 paragraph 75 and Case COMP/M.4731, *Google/DoubleClick*, 11 March 2008 paragraphs 48 to 56.

³⁰ Case COMP/5727 – *Microsoft/Yahoo! Search Business*, 18 February 2010 paragraph 93 and Case COMP/M.4731, *Google/DoubleClick*, 11 March 2008 paragraph 84.

2. Competitive assessment

48. Comcast, NBCU and MGM are all active in online advertising in the EEA. The main players in the online advertising industry are on the one hand, web publishers selling advertising space on their internet pages in order to generate revenues, and on the other hand, advertisers, who buy such space in order to place their advertisements on the internet and target the audience of internet users.
49. Comcast sells advertising space on its Eonline websites in the UK, France, Germany and Italy. Through its Universal Networks International business, NBCU has an interest in websites for a number of its TV channels. It also earns revenue from the sale of advertising space on its CNBC and iVillage websites. MGM's online advertising business is primarily handled through a third party, [...], which sells directly to customers and may separately generate advertising revenue from customers in the EEA.
50. As stated by the Commission in *Google/DoubleClick*³¹, the online advertising market has been growing at an extremely fast pace in recent years.
51. From the information submitted by the notifying party, it appears that the combined market shares for Comcast, NBCU and MGM would be well below 15% on any national market in the EEA. From the information provided by the notifying party, the combined market shares for Comcast, NBCU and MGM for online advertising would be: [0-5]% in Austria, [0-5]% in France, [0-5]% in Germany, [0-5]% in Ireland, [0-5]% in Italy and [0-5]% in the UK. Consequently, the proposed transaction will not lead to any affected markets as regards online advertising.
52. Therefore, in light of the above, it can be concluded that the proposed transaction does not significantly impede effective competition in the internal market or in a substantial part of it as regards online advertising in the EEA countries concerned.

D. Production of motion pictures for theatrical distribution

1. Market definition

53. The notifying party considers that there are two separate product markets: the market for the production/acquisition of motion pictures and the market for the distribution of motion pictures. The notifying party considers that there is a single market for the production and acquisition of motion pictures. The parties' activities only overlap with respect to production/acquisition of motion pictures. The notifying party considers that the relevant geographic market is at least EEA-wide and possibly worldwide.
54. In previous decisions,³² the Commission has found the production and distribution of motion pictures to constitute separate markets. The Commission has considered but ultimately left open whether the acquisition of motion pictures should also be in a

³¹ Case COMP/M.4731 *Google/DoubleClick*, decision of 11 March 2008, paragraphs 8 and 9.

³² Case IV/M.1219, *Seagram/Polygram*, decision of 21 September 1998.

separate market³³. The Commission has previously considered the geographic market for the production of motion pictures is at least EEA-wide and possibly worldwide³⁴.

55. For the purpose of the present case, the exact product and geographic market definition as regards the production and acquisition of motion pictures may be left open as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

2. Competitive assessment

56. Comcast is not active in this field. NBCU is active in the development, production, acquisition and distribution of motion pictures primarily through Universal Pictures. MGM is active in the production of Motion pictures through MGM pictures and United Artists, in which it owns a [...] % interest. MGM is not active in the distribution of motion pictures as all of MGM motion pictures are distributed by Twentieth Century Fox. The activities of the parties therefore only overlap in the production of motion pictures.
57. To estimate their market shares, the notifying party has provided figures on the box office revenues of their acquired and produced motion pictures in the EEA and their respective shares of total box office revenues. In the EEA NBCU had a share of [10-20] % of box office revenues and MGM [0-5] %, namely a combined market share of NBCU and MGM of [10-20] %. The proposed transaction does not therefore give rise to an affected market.
58. The notifying party also points out that the competitive position of MGM has decreased significantly over the recent years, which is reflected in a sharp decline in the number of motion pictures produced between 2003 and 2008 the resulting drop in revenues.
59. Therefore, in light of the above, it can be concluded that the proposed transaction does not significantly impede effective competition in the internal market or in a substantial part of it as regards the production and acquisition of motion pictures in the EEA. The notified operation is unlikely to have any negative impact on consumer choice and cultural diversity.

E. Home entertainment

1. Market definition

60. According to the notifying party, DVDs and Blu-ray discs produced by NBCU and MGM compete in a market comprising all motion pictures and other forms of content available on DVD and Blu-ray for sale or rental in the home entertainment market. The notifying party considers that the relevant geographic market is at least national and may in some cases be regional.
61. In previous decisions, the Commission has considered but ultimately left open whether home entertainment should be segmented further between: (1) sell-through and rental; (2) motion pictures and other types of content; and (3) motion picture new releases and

³³ Case COMP/M.3595, *Sony/MGM*, decision of 30 March 2005.

³⁴ Case IV/M.1219, *Seagram/Polygram*, decision of 21 September 1998.

catalogue.³⁵ In a previous decision,³⁶ the Commission has considered the geographic market of "video rental and sell-through" as national in scope but ultimately left the issue open.

62. For the purposes of the present case, the exact product and geographic market definition can be left open as regards home entertainment as the proposed transaction does not give rise to any competition concerns under any conceivable market definition.

2. Competitive assessment

63. Comcast is not active in home entertainment. NBCU produces, acquires and distributes a variety of content on DVD and Blu-ray in the EEA. NBCU has a catalogue with approximately [...] motion picture titles and approximately [...] hours of TV content available for home entertainment distribution in the EEA. MGM produces and acquires motion pictures and other content (including TV programmes) which it licenses for Home Entertainment distribution almost exclusively on DVD. MGM has approximately [...] motion pictures titles currently available for home entertainment distribution in the EEA. MGM licenses all of its distribution in the EEA to Twentieth Century Fox.
64. The notifying party considers that as MGM licenses all of its content to Twentieth Century Fox and is thus not active in either wholesale or retail distribution for Home Entertainment, there is no overlap between NBCU and MGM in Home Entertainment.
65. Nevertheless, the notifying party has provided estimates for the market shares at the national level of NBCU and MGM for DVDs and Blue-ray discs. These estimates are based on data collected from market researchers such as Screen Digest, GfK and OCC.
66. The notifying party was only able to provide estimates for both NBCU and MGM on the retail level and not at the wholesale level.³⁷ Neither NBCU nor MGM are active at the retail level. The notifying party also provided estimates for NBCU's market share at the wholesale level. As the market shares at the retail level as well as NBCU's market shares at wholesale level are sufficiently low, competition concerns can be excluded on the basis of the figures provided without the need to have exact market share figures. This will be demonstrated below.
67. The notifying party was not able to provide the market size and market share estimates for all Member States in which the home entertainment activities of NBCU and MGM overlap. For the markets for which information was available the retail market shares of the parties are as follows:

Table 4: Retail market shares in home entertainment I

³⁵ See Case IV/M.1219, *Seagram/Polygram*, decision of 21 September 1998.

³⁶ See Case IV/M.1219, *Seagram/Polygram*, decision of 21 September 1998.

³⁷ Since neither NBCU nor MGM are active at the retail level, the market shares are estimated on the basis of the revenues generated by the parties' titles sold at retail level.

Country	NBCU	MGM	Total
Austria	[5-10]%	[0-5]%	[5-10]%
Belgium	[10-20]%	[0-5]%	[10-20]%
Denmark	[5-10]%	[0-5]%	[5-10]%
Finland	[5-10]%	[0-5]%	[5-10]%
France	[10-20]%	[0-5]%	[10-20]%
Germany	[5-10]%	[0-5]%	[10-20]%
Ireland	[10-20]%	[0-5]%	[10-20]%
Italy	[5-10]%	[0-5]%	[5-10]%
The Netherlands	[5-10]%	[0-5]%	[10-20]%
Norway	[5-10]%	[0-5]%	[5-10]%
Portugal	[10-20]%	[0-5]%	[10-20]%
Spain	[10-20]%	[0-5]%	[10-20]%
Sweden	[5-10]%	[0-5]%	[5-10]%
UK	[10-20]%	[0-5]%	[10-20]%

68. These countries account for [more than 90]% of NBCU's home entertainment revenues in the EEA. The combined market shares slightly exceed 15% only in three countries, namely France ([10-20]%), Ireland ([10-20]%) and the UK ([10-20]%).

69. No estimates on retail market shares based on data collected from Screen Digest, GfK and OCC are available for the Czech Republic, Greece, Hungary and Poland. For these countries the notifying party estimated a market share by setting the parties' wholesale sales (the only sales data available to them) in relation to the total retail market. This results in the following market shares:

Table 5: Retail market shares in home entertainment II

Country	NBCU	MGM	Total
Czech Republic	[5-10]%	[0-5]%	[5-10]%
Greece	[10-20]%	[5-10]%	[20-30]%
Hungary	[0-5]%	[0-5]%	[0-5]%
Poland	[0-5]%	[0-5]%	[0-5]%

70. The only Member States in which the combined market share of NBCU and MGM exceed 15% is therefore Greece with a market share of at least [20-30]%. Because these market shares include the distributors' margins, these are likely to underestimate the parties' market share.

71. The wholesale market share of NBCU for these countries are as follows:

Table 6: Wholesale market share of NBCU in home entertainment

Country	NBCU
Czech Republic	[0-5]%
Greece	[10-20]%
Hungary	[5-10]%
Poland	[5-10]%

72. This table also indicates that the market shares of NBCU in the Czech Republic, Hungary and Poland are low. Furthermore, the wholesale market shares of NBCU can be used to estimate the differences in proportions between wholesale market and retail market and to give an indication of the extent to which the estimates in table 5 underestimate the parties' market shares. As regards Greece, NBCU's wholesale market share is [10-20]% compared to an estimated retail market share of [10-20]% in table 5. It is therefore likely that the parties' combined market share for Greece of [20-30]% as presented in table 5 is not significantly underestimated.

73. According to the notifying party, the major competitors to NBCU and MGM in home entertainment are companies like Disney Media Production (which has a catalogue of motion picture titles including those from Walt Disney Pictures, Touchstone Pictures, Hollywood Pictures, Miramax and Pixar), Warner Bros., Sony Pictures Entertainment, Paramount Pictures, Dreamworks, Fox and others.

74. As regards a possible further sub-division of the market into sell-through and rental, the notifying party submits that the rental segment is immaterial to the assessment of the present case as MGM has had few new theatrical releases in the recent years and accordingly probably only low sales of DVD's/Blu-ray intended for the rental segment.

75. As regards a possible further sub-division into motion picture and other content the notifying party submits that market shares would not be materially different between non-motion picture and motion picture as motion pictures generally account for the majority of Home Entertainment revenues in the EEA.

76. Therefore, in light of the above, it can be concluded that the proposed transaction is unlikely to significantly impede effective competition in the internal market or in a substantial part of it as regards home entertainment in the EEA countries concerned. The notified operation is unlikely to have any negative impact on consumer choice and cultural diversity.

VI. CONCLUSION

77. In light of the above, the Commission concludes that the proposed transaction is unlikely to significantly impede effective competition in the internal market or in a substantial part of it in the EEA countries concerned.

78. 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 European Commission,
(signed)
Joaquín ALMUNIA
Vice-President of the European
Commission