

*Case No COMP/JV.51 -
BERTELSMANN /
MONDADORI / BOL ITALIA*

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/09/2000

*Also available in the CELEX database
Document No 300J0051*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 1.09.2000

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 parties

Dear Sirs,

Subject: Case No COMP/JV.51 Bertelsmann/Mondadori/BOL ITALIA S.p.A.

1. On 7 August 2000 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89¹ by which the undertakings Bertelsmann AG and Mondadori S.p.A. acquired joint control of the business BOL Italia S.p.A. within the meaning of Article 3(1)(b) of the Council Regulation.
2. After examining the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

¹ OJ L 395, 30.12.1989 p. 1; corrected version OJ L 257 of 21.9.1990, p. 13; as last amended by Regulation (EC) No 1310/97, OJ L 180, 9. 7. 1997, p. 1, corrigendum in OJ L 40, 13.2.1998, p. 17.

I. THE PARTIES

3. Bertelsmann heads a German media group that operates internationally. The main activities of the group are printing, publishing and distribution of books and magazines; book clubs; publishing and distribution of music and records; private television; and related services within the multimedia sector. Bertelsmann will hold the shares in BOL Italia through its wholly-owned German subsidiary Bertelsmann Multimedia GmbH.
4. Mondadori heads the Mondadori group of companies. Its main business activities include the publishing of books, magazines, graphics and printings, as well as direct marketing and informatics. Mondadori is part of the Fininvest group, which is engaged in television, cinema, publishing, sport as well as finance and insurance activities.
5. BOL Italia is a stock corporation under Italian law. Its business activity is the online sales of books in the Italian language, in particular to readers in Italy. It also offers music cassettes, CDs, CD ROMs, VHS and DVDs to consumers world-wide. BOL Italia is part of a world-wide system of BOL companies, which will offer online book sales in various countries.

II. THE OPERATION

6. The transaction creates a full-function joint venture between Bertelsmann and Mondadori under joint control of both parties. The parties will establish the joint venture by Mondadori acquiring 50% of the shares in the currently wholly-owned Bertelsmann subsidiary BOL Italia.

The parties will concentrate in BOL Italia their online sales activities in Italy of Italian books, CDs, CD ROMs, VHS and DVDs.

III. CONCENTRATION

a) Joint control

7. BOL Italia is a full-function joint venture, equally held between Bertelsmann and Mondadori. The decision-making structure consists of a board comprised of 4 members. Each parent company appoints two of the board members and each board member has one vote. Board decisions must be passed by an absolute majority of the board members. The Chairman of the Board is designated alternately by Bertelsmann and Mondadori. In case a deadlock should occur, the situation will be resolved through negotiations rather than providing either party with a decisive, tie-breaking vote.
8. Consequently, the parents' companies have the joint control of BOL Italia as specified within article 3 (1) of Regulation No. 4064/89.

b) Full-function joint venture

9. BOL Italia is a full-function joint venture that has been agreed on for an unlimited term. The joint venture will be able to perform all the functions of an autonomous economic entity in the book-publishing and book-retailing sectors on a lasting basis, including an unlimited license to use the trademark "BOL", the technology, corporate image and other know-how of BOL International GmbH, a Bertelsmann group

company. The parent companies have transferred all their online book-retailing activities in Italy to BOL Italia and have agreed to supply their full list of titles to the joint venture on a non-exclusive basis, whereby BOL Italia is free to conclude supply agreements with other publishers.

10. Therefore, the joint venture will be of a lasting basis as specified within article 3 (1) of Regulation No. 4064/89.

IV. COMMUNITY DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than €5 billion.² The Community-wide turnover of both companies is in excess of €250 million³, but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

1. The relevant markets

12. Pursuant to its decisions in the cases IV/M.1459 [Bertelsmann/Havas/BOL], COMP/JV.24 [Bertelsmann/Planeta/BOL Spain] and COMP/JV.45 [Bertelsmann/KF/BOL Nordic], the Commission considers that the following product markets could be considered relevant for the assessment of this operation: (a) the market for distant sales of consumer books. This market possibly can be split up in (b) a market for on-line sales of books and a market for other distant sales of consumer books (book clubs and mail order). In addition, in this specific case (c) the market for retail of music cassettes and CDs, CD-ROMs and other multimedia products is relevant as well.
13. However, for the purposes of the present assessment the precise scope of the relevant product market can be left open, since on the basis of all plausible market definitions considered, the operation will not lead to the creation or strengthening of a dominant position.
14. The parties submit that the geographic market for the distant sales of books (including on-line sales of books) is at least national, if not as wide as the Italian-speaking world, especially as far as the on-line sales are concerned. The market for the retailing of music-cassettes and CDs, CD-ROMs, VHS and DVDs is a homogenous Italian market. However, for the purpose of the present case the exact determination of the geographic scope of the market can be left open since the operation will not lead to the creation or strengthening of a dominant position on the basis of the most narrow definition of a geographic market, i.e. Italy.

² Bertelsmann €13,2 billion and Mondadori/Fininvest €5,3 billion.

³ Bertelsmann €[...] billion and Mondadori/Fininvest €[...] billion.

2. Dominance

2.1. *The market for the distant sale of books to end-consumers (including book clubs, mail order and sales by Internet)*

15. In 1999, the parties' total market share amounted to [30-40%]. [20-30%] was taken by the parties' book club Mondo Libri, a joint venture that was cleared by the Commission on 22.04.1999 in Case IV/M.1407 - Bertelsmann/Mondadori. The remaining [5-10%] is taken by distant sales of Mondadori (franchise) book shops and Mondadori subsidiaries.
16. At present, BOL Italia's market share is 0% and is forecasted to remain less than [10%] during the companies first year of operation. Based on this information, the joint venture will not significantly affect competition in the distant sales of books to end-consumers market.

2.2. *The market for the Internet sales of books*

17. In case the market for the distant sales of books to end-consumers is split up between a market for the on-line sales of books to end-consumers and a market for the other distant sales to end-consumers (book clubs and mail order), BOL Italia will only be active on the market for the on-line sales of books to end-consumers. On-line sales of books in Italy represent <1% of the total book retail market and <2% of the distant book sales market. However, the internet sales of books is an emerging market in Italy. Analysts believe that e-commerce will grow rapidly in Italy during the next years and book sales via the Internet are expected to rise sharply. The overall market volume is estimated at €3 mio in 1999, €8 mio in 2000 and €19 mio in 2001.
18. BOL Italia is expected to achieve a total turnover of €[...] in its first business year, starting 30 October 2000 (i.e. [0-5%] market share in 2000 ; [0-5%] in 2001).
19. Bertelsmann is not active on this market in Italy. Also the parties' book club Mondo Libri is not selling books on-line. Mondadori has a market share of approximately [10-20]% on this market⁴ via the on-line services of Mondadori.com and the Mondadori subsidiary Cemit S.p.A. These online services will not affect BOL Italia as they offer products not being part of BOL Italia's product range.⁵
20. Many Italian publishers (32%) now already start using their websites for on-line sales of books. There is also a substantial number of mere virtual shops, many of them specialized in book sales and the number is growing rapidly. Market entry barriers are low as the total costs of establishing an on-line bookshop are relatively low and there are no legal or regulatory barriers to entry. In addition, the on-line book market segment functions as a completely transparent market and therefore is fiercely

⁴ A turnover of [...] on a total market estimation of €3 mio for 1999.

⁵ Mondadori.com offers download as well as news and information for Internet users. Cemit provides direct marketing services.

competitive. This is due to the availability of so called "meta search engines" comparing prices for specific books across multiple online bookshops.

21. Based on this information, it is clear that BOL Italia has a 0% market share on the market for the on-line sales of books in Italy and that there are no barriers to enter this market. Therefore, the joint venture will not lead to the creation or strengthening of a dominant position in the market for the on-line sales of books in Italy.

2.3. The markets for the sales of music cassettes and CDs, CD-ROMs and other multimedia products

22. Although BOL Italia will sell CDs, CD-ROMs and other multimedia products, the parties submit that this activity will not form a very significant portion of the company's revenues. This activity is indeed not the main business of the parties and the activities of other BOL on-line shops learn that the BOL franchise network is focused on selling books in the first place.
23. At present, the parties have insignificant market positions on these markets. The activities are largely carried out by their jointly held book club Mondo Libri. Its share of the music cassette and CD market in 1999 amounted to [0-5%], while its share of the CD-ROM market was [0-5%]. Mondadori also sells CD-ROMs through its subsidiary Mondadori Informatica (market share [0-5%]). Neither party sells DVDs.
24. Based on this information, the joint venture will not lead to the creation or strengthening of a dominant position in the markets for the sales of music cassettes and CDs, CD-ROMs and other multimedia products.

3. Coordination of competitive behaviour: assessment under Article 2(4)

25. Mondadori is very active in the Italian book publishing market, achieving a market share of [25-35%] in 1999. Bertelsmann, however, has virtually no publishing activities in the Italian market. Thus the creation of BOL does not lead to the coordination of the two parents in this upstream market. Such an analysis has already been made by the Commission when it has authorized the joint venture between the parties in the Italian publishing market in the case Bertelsmann/Mondadori/Mondo Libri⁶. In addition, coordination is excluded by the fact that Bertelsmann publishing activities in other European national markets do not have competitive effects on the Italian markets due to language barriers. In the Italian book retail market, Bertelsmann has no consumer activities, apart from the book club Mondo Libri (market share [0-5%]). Mondadori's current book retailing activities in Italy, apart from the above book club, include 6 bookshops and 70 franchise bookshops. Its market share amounts to [10-20%].
26. The creation of BOL does not lead to the coordination of the behaviour of the two parents in the book retail market because Bertelsmann is not directly active on this market. Its indirect activities (the joint ventures Mondo Libri and BOL Italia) are insignificant on total book retail market there is no overlap between them (book club and on-line shop).

⁶ Case No. IV/M.1407 – Bertelsmann/Mondadori.

27. Therefore, the operation will not lead to any co-ordination of the parents' competitive behaviour in any upstream market and in the market of the joint venture.

VI. ANCILLARY RESTRAINTS

28. The parties have notified the following clauses as ancillary restrictions.
29. (i) The first ancillary restriction is the non-competition clause contained in the Shareholder Agreement binding the parties and all undertakings under their control not to engage in the joint venture's business during the validity of the agreement and for a period of one year after a shareholder's exit. Excluded from this non-competition clause are only ancillary Internet activities conducted prior to the execution of the agreement as listed (Internet presence of the parties' book shops and book clubs) and of an exclusively promotional nature.
30. According to the parties, the non-competition clause serves to concentrate the parties' efforts in the joint venture and gives the joint venture an unimpeded chance of market entry. The clause is also alleged to be necessary to secure the investment into the joint venture and to ensure its future economic success.
31. The Commission considers that the non-competition clause is directly related and necessary for the market entry of the joint venture. Beyond this period of market entry, the parties have failed to justify the need for this clause. Therefore, the non-competition clause is only covered by the present decision for a period of five years.
32. (ii) The second ancillary restriction is the provision in the Franchise Agreement with BOL International GmbH that obliges BOL Italia to accept certain conditions of the franchise network to allow it to make use of its business ideas (BOL trademark, branding, standards, website design, centralized IT operations, marketing and advertising, client management systems, software applications).
33. These clause provide the joint venture the necessary assets to implement its business by ensuring world-wide branding, economies of scale and high quality customer care, and to protect the franchiser's intellectual property rights and maintain the common identity and reputation of the franchise network. BOL Italia has concluded this agreement in order to benefit from the BOL trademark, branding, e-commerce know-how and marketing strategy. The notified clauses are directly related and necessary for the implementation of the concentration.

VII. CONCLUSION

34. 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 EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,