

*Case No IV/M.110 -
ABC / GENERALE
DES EAUX / CANAL +
/ W.H. SMITH TV*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 10.09.1991

*Also available in the CELEX database
Document No 391M0110*



MERGER PROCEDURE
ARTICLE 6(1)b DECISION

VERSION FOR THE PUBLIC

Registered with advice
of delivery

To the notifying parties

Dear Sirs,

Subject: Case No IV/M110 - ABC/GENERALE DES
EAUX/CANAL+/W.H.SMITH TV.
Your notification pursuant to Article 4 of Council
Regulation No 4064/89

1. The proposed operation, notified on 7th August 1991, concerns the agreement between ESPN Inc. - a subsidiary of Capital Cities/ABC Générale d'Images (GdI) - a subsidiary of Compagnie Générale des Eaux - and Canal+ (C+) to set up a joint venture (CV1) to acquire most of the television interests of W.H. Smith.
2. After examination of the notified operation, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and that it is compatible with the common market.

The parties

3. ESPN Inc. is controlled by Capital Cities/ABC, the US communications group, in partnership with Hearst Corp, and is active in the US and in selling sports programmes to channels in Europe. GdI is the television subsidiary of Compagnie Générale des Eaux, a major French water and services company. The activities of GdI relate primarily to the acquisition and production of films. C+ is the French pay TV channel.

I. COMMUNITY DIMENSION

4. In 1990, the combined aggregate worldwide turnover of Capital Cities/ABC, Compagnie Générale des Eaux, Canal+ and the TV interests of W.H. Smith being acquired, was 22.051 million Ecu. Compagnie Générale des Eaux and C+ each achieved an aggregate Community-wide turnover of more than 250 million Ecu. The parties did not achieve more than two-thirds of their Community-wide turnover in one and the same Member State. Thus, the operation has community dimension within the meaning of Article 1(2) of the Merger Regulation.

II. THE AGREEMENT

5. The parties have agreed to acquire the shares and assets of W.H. Smith subsidiaries active in the television business (WHSTV), but excluding Yorkshire TV. These are mainly TV channels specializing in sport programmes such as TESN - The European Sports Network, formerly called Screensport-, which includes TV Sport, Sportkanal, Sportnet; and others such as LifeStyle TV (women audience), Kindernet (children target audience), Cable Jukebox (music channel); and the Molinare Group, which is active in television production facilities.

III. CONCENTRATION

6. To implement this operation, the parties' agreement establishes two joint ventures, CV1 and CV2. CV2 is a partnership jointly controlled by GdI and C+ with a view to exercising joint control of CV1 with ESPN.
7. CV1 will be a 50/50 partnership between ESPN and CV2 (GdI and C+). Under the internal arrangements CV1 will be jointly controlled by ESPN, and by each of the partners of CV2, namely GdI and C+.
8. CV1 has been established on a long term basis (50 years, unless terminated earlier due to exceptional circumstances). It is intended to be a full-function, autonomous joint venture, whose object is essentially to develop sports broadcasting channels in Europe.
9. By the acquisition of assets and shares from W.H. Smith, the three parents will consolidate their previous minority interests in TESN and intend to concentrate their activities and interests in sports broadcasting channels in Europe.

The operation does not have as its object or its effect the coordination of the competitive behaviour of the undertakings concerned for the following reasons:

- a) With respect to sports broadcasting in Europe, apart from TESN, C+ is the only undertaking concerned which is currently active. But C+ is only operative on the Pay-TV market which, as is explained below, is a distinct market from free-access television channels, such as TESN. On this basis, TESN and C+ cannot be regarded as real competitors.

Regarding ESPN and GdI, their presence in the broadcasting market in Europe is marginal. They have shareholdings in only a limited number of television channels of lesser importance (e.g. Tele München and Tele Monte Carlo). The launching by either of a sports programming channel in competition with TESN does not seem a realistic possibility because of the duplicate costs that it would imply.

- b) As regards television rights for sports events, ESPN is a seller of such rights whereas C+ and TESN are purchasers. Furthermore, ESPN is specialised in selling US sourced sports programmes to European channels, such as American football and baseball, which do not match the principal need of the European channels in this field. ESPN competes with many other suppliers in this activity. On the other hand, C+'s prime interest lies with sports events of French national interest and TESN offers a wider variety of international, European-sourced sports events. Moreover, as regards the purchase of TV rights for international sports events, C+ is a member of the European Broadcasting Union, which provides a much better access to these rights than through TESN.
 - c) With respect to the different thematic channels acquired (LifeStyle, Kindernet and Cable Jukebox) these have a different linguistic and cultural focus than those already controlled by GdI and C+.
 - d) Concerning programme production, the Molinare group is of very minor importance.
 - e) As regards advertising: firstly C+ is financed substantially by subscription rather than by advertising revenues, and secondly, although this financing mix could change in the future the specificity of the programmes provided leads to different advertising target audiences.
 - f) Lastly, with reference to possible coordination in France between TESN and the cable distribution system operated by Compagnie Générale des Eaux, the operation does not change substantially the business relationship between the two since Compagnie Générale des Eaux is already an important shareholder in TESN's affiliate TV channels.
10. In consequence this operation is a concentration within the meaning of Article 3 of Council Regulation N° 4064/89.

IV. COMPATIBILITY WITH THE COMMON MARKET

The reference markets

11. This operation concerns the television markets for: rights for sports events, programme production, advertising and, most importantly, broadcasting.

The relevant product market for TV broadcasting is influenced and determined by the programme-mix. Certain TV channels offer a wide variety of different types of TV programmes eg. news, general entertainment, films, sports, music, documentaries etc. Other TV channels will focus, even exclusively, on one of the above types of programmes, to reach a specific audience.

As to the relationship between pay-TV and free-access TV; pay-TV is primarily financed by subscription fees, whereas free-access TV is financed by public authorities and/or by advertising revenue. In order to justify the payment of the subscription fee, pay-TV channels broadcast specialised programmes catering for the needs of a precise target audience. As such they seek to offer exclusive or first TV viewings of certain broadcasts, eg recent film or live sports coverage and carry no or little publicity. This product differentiation supports the argument that pay-TV represents a separate product market. However, the value of pay-TV to a consumer can only be determined in relation to the alternative viewing possibilities of free access channels. Consequently, even if pay-TV represents a separate product market, it remains dependant on the quality and specificity of TV programmes on free access channels.

The geographic reference market for TV broadcasting is influenced and determined primarily by the existence of language and cultural barriers, delimitating areas within which language and culture are relatively homogeneous. These areas can surpass national boundaries.

12. From both the supply and demand side, the geographic and product markets for TV channels are in a strong process of evolution. The increasing importance of satellite television and the continuing expansion of cable networks, which can carry a much greater range of TV channels (as compared to terrestrial broadcast), are facilitating the development of pan-European channels. Cultural differences may still hinder the full development of pan-European channels but linguistic problems can be overcome by dubbing, subtitling or greater foreign language familiarity.

Sports programmes, as a product, are particularly amenable for transnational broadcasting since they can transcend national, cultural and linguistic barriers.

13. In the light of the above analysis, the exact definition of the relevant product and geographic reference market, but with the exception of pay-TV, can be left open in the present case since, even on a narrow definition, the operation would not create or strengthen a dominant position as a result of which effective competition would be significantly impeded.

Assessment

14. Whatever the precise definition of the relevant product and geographic market - be it general or thematic programme, national or European, - the operation does not raise doubts as to its compatibility with the common market for the following reasons:

- with respect to thematic TV channels, if a narrow product market definition is adopted, there are at the present time only two main sports TV channels, namely Eurosport and TESN. Eurosport has a greater market penetration than TESN (except in France) and enjoys the support of the European Broadcasting Union. Furthermore, other sport specific channels are entering the market-place such as Sport 2-3 in France. Lastly, although a general TV channel has a much wider programme mix compared to a TV sports channel, general TV channels still carry some coverage of sporting events to a greater or lesser extent;
 - from a geographic point of view, TESN and its affiliates do not exceed in terms of total average viewing time more than 1% in any Member State;
15. The acquisition of different thematic channels (LifeStyle, Kindernet and Cable Jukebox) does not create a dominant position. Firstly these channels concern free access channels as opposed to pay channels. Secondly they relate to different linguistic markets than those thematic channels already controlled by GdI and C+. Thirdly and lastly, each channel has less than a 1% share of total viewing time of the broadcasting market considered as a whole, in each Member State.
16. As far as the overlap of the broadcast of TV sports programmes between TESN and its parents is concerned it has to be noted that Canal+ is a pay-TV channel operating in several Member States, enjoying a privileged position in France since it is broadcast on the terrestrial network. It is only active to a limited extent in broadcasting sports programmes (an average of 7% of its viewing time is allocated to sports programmes in France). However, as a pay-TV channel, C+ operates in a distinct market and does not therefore compete fully and directly with TESN. Both ESPN and GdI have interests in only a limited number of TV channels of lesser importance (e.g. Tele München and Tele Monte-Carlo).
17. In vertically related markets, the parties are of minor importance:
- on the sports programmes procurement market, all channels compete and the parties have a minor share. ESPN has far too minor a position in sports licensing in Europe to have such market power that it could create through this operation a dominant position;
 - as regards the production of TV programmes, the acquisition of the Molinare Group will not create a dominant position since the group is not a major television production company within the EC or in any Member State and competes with many similar production companies. Furthermore, its activities are primarily focused on the UK, whereas GdI and C+'s existing production activities are mainly located in France;
 - concerning the cable distribution of a TV sports channel in France, even if Compagnie Générale des Eaux

were to favour TESN, the existence of two other major cable distributors and at least one alternative TV sports channel in a rapidly growing market will ensure effective competition. It is therefore unlikely that TESN through its links with Compagnie Générale des Eaux would achieve a dominant position.

Ancilliary restraint

18. As to the non-competition clause set out in Article 11 of the Agreement which specifies that no parties shall compete with TESN on a predominantly sports programming channel, it is to be considered as a restriction directly related and necessary to the implementation of the concentration. The present decision covers this non-competition obligation.

Conclusion

19. Taking into account the low market shares attained by the concentration and the strength of other market competitors, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

*

*

*

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 N° 4064/89.

For the Commission,