

***Case No IV/M.1407 -  
BERTELSMANN /  
MONDADORI***

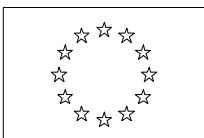
Only the English text is available and authentic.

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

---

Article 6(1)(b) NON-OPPOSITION  
Date: 22/04/1999

*Also available in the CELEX database  
Document No 399M1407*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.04.1999

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

**To the notifying parties**

Dear Sirs,

**Subject: Case No IV/M.1407 – Bertelsmann/Mondadori**

Notification of 18 March 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 18 March 1999, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (Merger Regulation) by which Bertelsmann AG (“Bertelsmann”) and Arnaldo Mondadori Editore S.p.A. (“Mondadori”) acquire joint control of a newly created company in which Bertelsmann and Mondadori will concentrate their respective Italian book club activities.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 and does not raise serious doubts as to its compatibility with the common market and the functioning of the EEA Agreement.

## **I. THE PARTIES AND THE OPERATION**

3. Bertelsmann is the principal company of a German media group that is world-wide active in the publishing of books and magazines, in book clubs, in the publishing and distribution of music and records and in the operation of private television.
4. Mondadori's main business activities are the publishing and distribution of books and magazines as well as printing. Mondadori is part of the Fininvest group.
5. The purpose of the newly created company will be the operation of the parties' Italian book club activities. The joint venture will recombine the Bertelsmann book club Euroclub and the Mondadori book club Club degli Editori by taking over the respective activities and the related assets from the notifying parties.

## **II. CONCENTRATION**

6. The parties will jointly control the new venture. After an initial period of three years Bertelsmann and Mondadori will each hold a 50% participation. During the first three years Mondadori will hold 50% plus one share, Bertelsmann 50% minus one share. However, even within the first three years, the Joint Venture Agreement ensures that no strategic commercial decision can be adopted without the prior approval of both parties. A board of directors consisting of six members will be responsible *inter alia* for the approval of the annual budget. The board shall delegate parts of its responsibilities, such as the approval of major investments and acquisitions, to an executive committee consisting of two members. Each of the parties will appoint half of the members of the board of directors and the executive committee. Since both parties are equally represented in the decision making bodies, they need to reach a common understanding in their decision making and do thus jointly control the new undertaking.
7. The joint venture will comprise the current book club activities of both parties and will therefore own all assets and personnel necessary for such a business. It is formed on a lasting basis and will perform on a lasting basis all the functions of an autonomous economic entity.
8. Therefore, the creation of the joint venture constitutes a concentration within the meaning of Article 3 paragraph 2 of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million<sup>1</sup> (Bertelsmann: EUR 11,589 million in 1997/98; Fininvest: EUR 5,229 million in 1997). Each of the parties has a Community-wide turnover in excess of EUR 250 million (Bertelsmann: [EUR >250 million] 1997/98; Fininvest [EUR > 250

---

<sup>1</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p 25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

million] in 1997). The companies concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Hence, the notified operation has a Community dimension.

#### IV. COMPETITIVE ASSESSMENT

##### a. Relevant product markets

10. The joint venture will combine the Italian book club activities of Bertelsmann and Mondadori. The Bertelsmann book club operates under the name *Euroclub*. Clients become members following the acceptance of an introductory offer. The membership comprises a positive purchase obligation. Euroclub also offers CDs, videos, games and multimedia products. Mondadori's *Club degli Editori* sells books under four different systems and brand names. The respective brands are *Club degli Editori*, *Circolo*, *Club per Voi* and *Junior-Club*. They differ in the selected range of books and the number of available titles offered to their members and thus the addressed readers. Furthermore they offer their books to their members on a monthly or on a two-month basis. Junior-Club is the only club belonging to Mondadori where members have a positive purchase obligation similar to the one of Euroclub. The other Mondadori clubs are characterised by a negative purchase option, *i.e.* their members are free to decline the monthly offered selection of books.
11. Book clubs generally acquire a non-exclusive sublicense of a title in order to set up a book club edition. Exceptionally, licenses are acquired directly from authors or agents. Bertelsmann for instance acquires up to [...] licenses yearly in order to publish for members only. In comparison, the total number of titles for which sub-licences are obtained is some [...] on a yearly basis. Hence, only to this minor extent Bertelsmann be considered as a publisher of Italian books. The core activity of a book club, however, is the retail selling of books.
12. The parties submit that the relevant product markets to consider are (i) the market for all retail consumer book sales and (ii) the overall market for the sale of music CDs, video, games and multimedia products. The investigation has shown, however, that an alternative market to consider may be that for all forms of so-called 'distant selling'. A further relevant market is that of the publishing, given that Mondadori is an important publisher of Italian language books. That market is only vertically affected though, given that Bertelsmann virtually has no publishing activities in Italy.  
  
*(i) The market for all retail consumer book sales*
13. The parties submit that the relevant product market comprises the sale of books regardless of the distribution channels, such as bookstores, supermarkets, mail order sales, book clubs, a/o. According to the parties, a focus on the sale via book clubs as a relevant product market would not reflect the existing competitive constraints from other distribution channels. They mainly argue that the traditional differences between book clubs and other distribution channels in Italy are no longer existing and that consumer habits reveal that book shops, book clubs and any other forms of retail, are interchangeable from a customer point of view.
14. To support the above, the parties submit that only a few years ago, a "three-level" distribution system of selling books to end-customers, known in other Member States, existed in Italy as well. After the initial publication of the original hard cover version of a

title made available only in book shops, a book club edition (2<sup>nd</sup> level) was subsequently brought on the market with a usual delay of 8 to 12 months. The paperback edition (3<sup>rd</sup> level) was launched some 18 months after the original publication. This three-step distribution level might have justified the distinction of separate relevant markets for the various distribution channels, as differences both in price and date of appearance could, from the demand side, be so important that particular customers would not switch between distribution channels. These differences, however, are no longer existing in Italy. The book clubs in Italy no longer enjoy an exclusive period for the selling of their book club editions. Publishers sell a cheaper version of the original publication to supermarkets with a rebate of 20% to 25%. These cheaper versions often appear in competition to the book club editions and only a short period of time after the publishing of the original version. As a result, there are only minor price differences between book club editions and titles that are sold via books stores or supermarkets. As both versions appear almost simultaneously, the book club membership no longer offers an advantage justifying the assumption of a separate relevant product market. (This assumption is backed by data provided by the parties. A survey amongst Euroclub's members shows that at least 58% of them purchase books outside Euroclub showing that the book club is not the only source.)

15. In spite of the above arguments presented by the parties in support of the definition of an overall market for the retail sale of consumer books, and in spite of the fact that the opinion of certain third parties supports the parties' view, the Commission considers that it may be possible to distinguish a market for so-called 'distant selling', i.e. including book clubs, mail order and sales via Internet, as well as any other possible form of distant selling. It is noted that in other sectors the Commission has distinguished between mail order sales and other forms of retail, for example in case IV/M.070 (*Otto/Grattan*). In another prior case relating to book retail (case IV/M.1112 *Advent International/EMI/W. H. SMITH*), the Commission also pointed to the subdivision of the market between sales through shops and sales via mail order, Internet, book clubs, etc. The main reasons for distinguishing a potential separate product market for distant sales of consumer books are that consumers can make a choice from a catalogue (or similar) at home (not in the presence of the seller), consumers can have the goods delivered at home and can send them back with reimbursement, and that a segment of the population that lives in remote areas has no alternative to home shopping. For these same reasons, the Commission considers that book clubs and other forms of 'distant selling' are substitutable, so that the definition of a separate market for book clubs is not plausible.
16. The exact delineation of markets, however, can be left open because – as outlined below – the merger would not create or strengthen a dominant position by any plausible market definition, as described above.

*(ii) The market for the sales of music CDs, video, games and multimedia products*

17. Bertelsmann also sells music products such as CDs and videos via its book club Euroclub. In parallel with the above arguments for the sale of books there are indications that the market should be further subdivided, at least into the markets for distant sales of music products and the sale of music products via music stores etc. However, since only Bertelsmann is active on an overall market for the sale of music products the merger does not lead to competition concerns as regards these activities and a further discussion can therefore be left aside.

## **b. Relevant geographic market**

18. The parties' activities overlap only in Italy. Given the fact that the merger concerns the sale of Italian language books in Italy, the relevant geographic market to be considered in this case is Italy.

## **c. Assessment**

### *(i) The market for all retail book sales*

19. The parties submit that the Italian market for the retail sale of consumer books is very competitive, *inter alia* due to the fact that the retail price maintenance no longer exists. The notifying parties have provided data, based on publicly available information, for all retail consumer book sales in Italy as well as for the direct sale of books.
20. The parties submit that the market volume of the overall market for all retail consumer book sales is EUR 2,244 million and refer to the official source Editrice Bibliografica. On this market Mondadori has a turnover in 1997 of [EUR 70-80 million], which means a [<5%] market share. Bertelsmann's turnover is [EUR 30-40 million], i.e. a [<5%] market share. Given the combined market share market share of well below [<5%], the operation is unlikely to create or strengthen a dominant position.

### *(ii) The market for 'distant selling' of books*

21. Even on a narrower market encompassing the distant sales of consumer books in Italy, the setting up of the joint venture is not likely to lead to the creation or strengthening of a dominant position. Based on figures published by Editrice Bibliografica, the market volume is EUR 242 million (1997). The following table based on the figures of Editrice Bibliografica, figures of the trade association ANVED and the parties' best estimations give an overview of the market structure in terms of market share.

<b>Supplier</b>	<b>Turnover (Million EUR)</b>	<b>Market share</b>
<b>Club degli Editori</b>	[50-60]	[20-25%]
<b>Euroclub</b>	[30-40]	[15-20%]
<b>Joint venture</b>	[80-100]	[35-45%]
<b>De Agostini</b>	[30-40]	[10-15%]
<b>Selezione</b>	[10-20]	[5-10%]
<b>Edizione Piemme</b>	[<10]	[<5%]
<b>OEMF</b>	[<10]	[<5%]
<b>Touring</b>	[5-10]	[<5%]
<b>Others</b>	[70-80]	[30-35%]
<b>Total</b>	232,7	100,0%

22. Based on these figures, the combined market share of the parties will be [35-45%]. Although there is a substantial gap in terms of market shares between the parties and the following competitor (De Agostini, having [10-15%] of the market), the merger is not likely to create or strengthen a dominant position. Firstly, in distant selling there are a number of competitors, such as the Agostini and Edizione Piemme, which are themselves publishers and which may be presumed to have the financial and commercial strength to further develop their current mail order activities. Secondly, within distant

selling, the parties' market shares reflect their book club activities. Sales via book clubs, as well as mail order sales are traditional ways of distant selling. Other forms of distant selling, and notably sales via Internet are relatively new and are rapidly developing. Thirdly, barriers to entry are relatively low, as new entrants do not have to set up a distribution infrastructure. To reach potential customers, access via computer offers important new possibilities for potential competitors. Indeed, in the past year a number of new entrants have appeared on the market via Internet sites (such as AirBook.it, Edit.it, netbook.it, bancarella.it), which are usually sites of the existing major publishers and/or retailers in Italy. Developments in other countries, where Internet sales of consumer books are increasing steadily, also indicate the increased (potential) competition from Internet sales.

23. Fourthly, if one would consider sales via other distribution channels (book stores, etc.) as belonging to a market separate from distant selling, than there is nevertheless a constraining effect from sales through these other distribution channels. As described above, according to the parties (and this has been confirmed by consulted competitors), supermarkets offer the same book as book clubs for prices that are 20% to 25% below the original version of the book title. They can make this offer almost simultaneously to the offer of the original title via bookshops. Competitors confirm that the lack of retail price maintenance in Italy and the substantial rebates supermarkets and other larger distribution chains are able to offer, sometimes leads to an undercutting of the prices charged by the book clubs. Against these constraints on the distant selling of books, the parties will have no significant scope to set conditions and prices at supra competitive levels and competition will therefore not be adversely affected as a result of merger.

*(iii) Other markets*

24. As stated above, Mondadori is also active in Italy on the upstream market for publishing, whereas Bertelsmann is not. In spite of the absence of a horizontal overlap, it ought to be considered whether, through the addition of Bertelsmann's retail distribution activities, the role of Mondadori as a publisher will be strengthened, given that it would acquire additional outlets for its publications. On the market for publishing of general consumer books in Italy, Mondadori has a turnover of some [EUR 290-310 million], which gives it a market share of some [25-35%]. When considering book retail in Italy as a whole, Bertelsmann (through Euroclub), covers a market share of merely [<5%]. Therefore, also when considering vertical aspects of the merger, competition will not be significantly impeded.

**V. ANCILLARY RESTRAINTS**

25. The parties have withdrawn their request for clearance of the ancillary restraints originally notified.

## **VI. CONCLUSION**

26. 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,