

***Case No IV/M.1459 -
BERTELSMANN /
HAVAS / BOL***

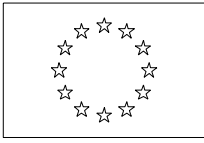
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**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION

Date: 06/05/1999

*Also available in the CELEX database
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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06. 05. 1999

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 IV/M.1459-BERTELSMANN/HAVAS/BOL

Notification of 31.03.1999 pursuant to Article 4 of Council Regulation N 4064/89

1. On 31.03.1999, the Commission received a notification of a proposed operation by which the undertakings Bertelsmann AG and Havas SA acquire, within the meaning of Article 3(1)(b) of Council Regulation N°4064/89, joint control over the company BOL, SNC, by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation N°4064/89 and does not raise serious doubts as to its compatibility with common market.

I. THE PARTIES AND THE OPERATION

3. Bertelsmann AG is active in the printing, the publishing and distribution of books and magazines, book clubs, publishing and distribution of music and records and private television. In France, Bertelsmann's operations within the consumer book sector are restricted to a book club (France Loisirs), which it operates jointly with Havas.
4. Havas S.A., which belongs to the Vivendi-group, is active in the media, information, publishing of books and software for consumers and professionals.
5. BOL is a company active in the sale of books in the French language via the Internet (hereinafter referred to as 'BOL France'). It is an existing business belonging to the company Media Communication S.A., which is a subsidiary of Bertelsmann. Havas will acquire a 50 % of the shares BOL France, to be effected through a share increase. BOL

France will be part of a world-wide system of BOL companies, which will offer on-line book sales in various countries.

II. CONCENTRATION

6. The proposed operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Joint control

7. Bertelsmann and Havas will each have a 50 % participation in the joint venture. BOL France will be managed by a “Comité d’associés” (shareholders committee) and a “Comité exécutif” (executive board). The sharing of the seats in these committees will be equal between the parent companies. All major decisions are to be taken by simple majority. Each member has one vote. The president of the shareholders committee (total of six members) will be appointed by Media Communication, but will not have a casting vote. The chairmanship of the executive committee (total of 4 members) will rotate between the parent companies. Similarly, no casting vote is attributed.
8. A managing director, whose activity will be under the supervision of the shareholders committee, will be nominated by the parent companies, following a proposal by Havas. Furthermore, the approval of the shareholders committee is necessary for determining the budget and strategic plan, for the setting up of new subsidiaries, the sale of assets and mergers, the launching of new activities, the approval of any unbudgeted investments exceeding EUR [...], as well as the recruitment of top executives. Consequently, the major business decisions are subject to the approval of both parties, so that the undertaking will be under the joint control of Bertelsmann and Havas.

Autonomous economic entity acting on a lasting basis

9. As stated, BOL France is an existing undertaking, having become active in 1999, with sufficient assets and personnel at its disposal. The agreed duration of the joint venture is 99 years.
10. In order to ensure that BOL France can continue to operate autonomously, it is foreseen that certain assets currently belonging to the parent companies are put at the disposal of BOL France. These include licenses for the use of the brand name BOL, for the use of the Internet technology of BOL International GmbH, as well as the ownership-rights regarding the books database purchased from Decitre. These arrangements are for an unlimited duration.
11. In conclusion, BOL France will be able operate on a lasting basis as an autonomous economic entity.

III. COMMUNITY DIMENSION

12. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million¹ (Bertelsmann: EUR 11 589 million; Vivendi: EUR 31 536 million). Each of them has a Community-wide turnover in excess of EUR 250 million, (Bertelsmann: EUR 6 636 million; Vivendi: EUR 28 488 million), 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.

IV. COMPETITIVE ASSESSMENT

a) The relevant product markets

13. According to the parties, the relevant products markets to consider are (a) the market for all retail consumer book sales, (b) the narrower market segment for the on-line sales of consumer books via the Internet, (c) the market for the publishing of consumer books. A further potential market is that of (d) the wholesale distribution of consumer books. Moreover, in line with its previous case law (e.g. case IV/M. 1407 Bertelsmann/Mondadori, decision of 22.4.1999), the Commission has also considered another potential market, i.e. that for all forms of 'distant sales' of consumer books (including book club sales, mail order and sales via Internet). 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 of strengthening of a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

b) The relevant geographic market

14. The parties submit that the geographic market for the publishing and the retail sales may be national, but that for Internet sales it is world-wide. The sales by Internet have a wider scope than traditional book club or mail order sales because of the international accessibility of the Internet. The Commission considers, on the one hand, that for the reason given by the parties, the market may indeed be wider than France. On the other hand, the first experiences shows that sales in France represent the large majority (70-80%) of total sales via the Internet, which would indicate the existence of a national market. However, for the purpose of the present case the exact determination of the geographic scope of the market can be left open because the operation will not lead to the creation or a strengthening of a dominant position.

¹ 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, p25). 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.

c) Assessment

(i) The market for all retail consumer book sales

15. The parties' activities in retail consumer books sales in France are carried out through the existing joint venture "France Loisirs" and through BOL France. The estimated market share of the parties in retail sales (sales of BOL France and France Loisirs together) is [below 15 %]. Given that position, and in the absence of any addition of market shares, the merger will not significantly affect competition on this market.

(ii) The market for distant sales of consumer books (including book clubs, mail order and sales by Internet)

16. As stated, Bertelsmann and Havas are already active in book club sales through "France Loisirs", their joint subsidiary. The parties have estimated, on the basis of figures provided by the 'Syndicat des Entreprises de Vente par Correspondance et à Distance', that their share of the distant selling market in France is [15-25 %]. Again, on the basis of that figure, and given the fact that the merger will not lead to any addition of market shares, the merger will not lead to the creation or strengthening of a dominant position.

(iii) The market for the Internet sales of books

17. The Internet sales of books in French language is a new activity for both Bertelsmann and Havas in France. Indeed, the selling of books via Internet is an emerging activity which is expanding rapidly. Havas estimates that sales of French books via Internet currently represents some 0,1 % of the overall of book sales in the French language. On this market, several competitors, such as Alapage, Alibabook, FNAC Direct, Club Internet (Hachette) have appeared in recent times. Access to the Internet, the technology for selling books via the Internet, as well as the access to 'book libraries' to secure a large enough offer, appear to be sufficiently available to (potential) competitors, so that the merger will not have significant foreclosure effects. In this respect it is worth noting that the offer of BOL France only contains 10% of Havas books and 90% of books from competing publishers. Similarly, competitors have Havas editions on offer. Given the above circumstances, the operation cannot be taken as leading to the creation or the strengthening of a dominant position.

(iv) The market for the publishing of books

18. Havas is one of the main publishers in France. In publishing it has a market share of roughly [15-25 %], which would be [5-15 %] if based on available books and [15-25 %] when considering new titles in 1997. Bertelsmann, however, is not active in the publishing of books and for these reasons competition on this market will not be impeded as a result of the merger.

(v) The market for the wholesale distribution of books

19. Havas as a publisher is active at the wholesale distribution level for consumer books in France. This activity is undertaken principally for its own books, although to a marginal extent it also distributes books for other publishers. Competing publishers, such as Hachette and Gallimard also have their own distribution system. Furthermore, a number of independent distributors are active on the market, some with a national coverage and others more regionally active. Also, big specialised retail stores, such as FNAC, are setting up their own logistic platform, according to the parties. Even though no exact

market share data are available from public sources, the above market structure is such that the position of Havas may be presumed not to be stronger than that on the overall market for the publishing of consumer books in France, as discussed above. Moreover, Bertelsmann has no wholesale distribution activities in France, so there is no overlap between the parties. In these circumstances, the operation cannot be taken as leading to the creation or the strengthening of a dominant position.

V. ANCILLARY RESTRAINTS

20. The parties have submitted one clause as an ancillary restraint. This clause, which is valid for the duration of the joint-venture, states that should Bertelsmann or Havas consider becoming active in the same field of activity as BOL France (“..other activities related to on-line sale of books in the French language...”), BOL France must be given a right of first refusal for these new activities.
21. The above arrangement in fact confirms the intention of the parties to concentrate their activities into the joint venture, be it that it leaves a certain freedom to develop further activities in the same field. The above clause may be regarded as a direct expression of the parties’ decision to transfer their activities in this specific field to the joint venture, which is the subject matter of the principal agreement. Hence, the above clause is cleared by this decision.

VI. CONCLUSION

22. 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,