

***Case No IV/M.1529 -  
HAVAS  
ADVERTISING /  
MEDIA PLANNING***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 10/06/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.06.1999

PUBLIC VERSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M.1529-Havas Advertising/Media Planning.  
Notification of 6.5.1999 pursuant to Article 4 of Council Regulation  
No 4064/89**

1. On 6 May 1999 the Commission received a notification of a concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89, as amended<sup>1</sup> by which Havas Advertising S.A. and Media Planning S.A. combine their activities in the media buying market.
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 with the EEA Agreement.

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<sup>1</sup> Council Regulation (EEC) n° 4064/89, OJ L 395, of 30.12.1989; Corrigendum: OJ L 257, of 21.09.1990, pag. 13.; amended by Council Regulation (CEE) n° 1310/97, OJ L 180, of 9.7.1997.

## **THE PARTIES**

3. Havas Advertising S.A. is a French company belonging to the Vivendi group. It is active in the main European countries in the markets of media buying (i.e. acquiring spaces for advertising in different media) and advertising.
4. Vivendi, formerly called Compagnie Générale des Eaux, is a French conglomerate present in many different sectors of activity, such as construction, real state, water services, waste services, telecommunications, transport and media. It is present in the media sector through its stake in Canal plus.
5. Media Planning, is a Spanish group principally engaged in the business of media buying, including the activities of research, strategy definition, tactical planning, negotiation and buying. It operates in Spain, Portugal and South America. It is privately owned.

## **THE OPERATION**

6. The parties signed a non binding Merger Agreement on 29 November 1998, in which they stated their intentions to combine their activities in the media buying sector. This agreement was completed by a Supplemental and Amendment Agreement to the Merger Agreement, a Contribution Agreement and a Shareholders agreement, signed on March 22, 1999.
7. According to the Contribution Agreement, the proposed operation will result in the acquisition by Havas Advertising S.A. of 45% of the share capital of Inversiones y Servicios Publicitarios S.A. (ISP), the holding company owning the shares in the Media Planning group companies. The capital will be acquired by Havas Advertising through contribution in kind by means of their shares in all their subsidiaries operating in the buying business in the EEA (a contribution of the media buying activities of Havas Advertising in Mexico and US is also foreseen for a latter date).
8. According to the Shareholders Agreement, at the date of the operation, Havas Advertising will have the right to nominate [majority ] of members of the board, which will remain in their posts for [...] years and will be re-elected for at least two additional ones. The decisions of the board, including the appointment of the CEO and the approval of the annual budget for operations and investments, will be adopted by simple majority. Only extraordinary operations, such as acquisition of shares or sale of business for more than [...], will require a 2/3 majority to be approved by the board.

## **CONCENTRATION**

9. The proposed operation represents an acquisition of single control by Havas of the Media Planning group within the meaning of Article 3.1 b) of the Merger Regulation. Indeed, Havas Advertising, through its right to nominate the majority of the members of the board, will have the possibility of exercising decisive influence over the company controlling the Media planning group. The present shareholders of Media Planning will only hold powers limited to the normal protection of minority shareholders.

## COMMUNITY DIMENSION

10. The Havas Advertising and Media Planning groups have a combined aggregate world-wide turnover in excess of Euro 5,000 million (Vivendi: [...] million Euros and Media Planning: [...] million Euros). The two of them have a community-wide turnover in excess of Euros 250 million (Vivendi: [...] million Euros and Media Planning: [...] million Euros). [...]

### Compatibility with the common market

#### The relevant market

##### The product market

11. Activities of media buying constitute a separate market within the advertising sector. They satisfy a particular demand from customers, which can be performed separately from the creation of advertising campaigns. From the supply point of view, some agencies provide both services together, but in many other instances companies specialise either in creative advertising or in media buying and do not have the resources or skills to provide both.
12. Media buying activities cannot be divided in several markets according to the media in question. Indeed, there is large supply side substitutability between media buying for different media. There are no specialised agencies for one specific media but agencies normally carry buying activities for all media channels. Media buying consultancy is developing as a separate activity, but at present it is still normally performed by media buying companies as part of their standard services and, therefore, cannot be considered as a separate product market.
13. The Commission has analysed the advertising sector in previous decisions, in particular in case IV/M.147 - *Eurocom/RSCG*, and has confirmed that the creative activities and the media buying activities constitute separate markets.

##### The geographic market

14. The advertising markets, due to differences in language, tastes and perceptions of customers is mostly national in scope. There is a tendency for the markets to become wider in scope, at least for multinational firms advertising in different countries, but this is not developed enough to consider that an international market could exist.
15. As far as media buying activities are concerned, the national scope of the market is even clearer. A national presence appears necessary at this stage both to secure a sufficient volume of clients for each media channel, which is necessary to obtain competitive prices for media space, and to gather the necessary knowledge of customer patterns as regards different media channels.
16. This has been the position of the Commission in previous decisions concerning the advertising sector and, in particular, case IV/M.147 - *Eurocom/RSCG*.
17. In conclusion, the relevant markets for the present case will be the media buying markets in each of the EEA countries where the parties operate.

## **Dominance**

### Horizontal overlap

18. The acquisition of control of Media Planning by Havas Advertising does not appear to affect competition in any of the markets mentioned before. The activities of the parties only overlap in Spain and Portugal, where the combined shares (1997 data) would be of [between 15 % and 25 %] (Havas Advertising [below 5 %] and Media Planning [between 15 % and 25 %]) and [between 10 % and 20 %] respectively (Havas Advertising [between 5 % and 10 %] and Media Planing [below 15%]). The new entity would become the main player in both markets, with Carat as a second player in Spain with a market share of [below 15%] and Initiative Media as a second player in Portugal with a market share of [below 15%]. Both markets are very fragmented and there is a large number of small competitors, with low barriers to entry.
19. Should the market be considered larger than national, the combined market share of the parties in the EEA would be of only [below 5 %] ([below 5 %] for Havas and [below 5 %] for Media Planning).

### Vertical integration

20. Vivendi, through its stake in Canal plus, is present in a market upstream of the activities object of the operation, pay television broadcasting market. Canal plus, indeed, sells media space to Media planning in Spain as well as to its competitors.
21. The Commission has examined whether this situation would have any detrimental effect on competition. It appears, that Canal plus publicity space sales to Media Planing represent only a [below 5 %] of total Media Planning's supplies and a similar amount as far as Havas Advertising in Spain is concerned. Moreover, for most advertisers Canal plus does not represent a channel where there is a particular need to be present, and is mostly treated as another TV channel ([above 50%] of total Media Planning's supplies correspond to other TV channels).
22. In view of this, even if Canal + were to discriminate in favour of the entity resulting from the operation as far as sales of advertising spaces are concerned, this would not result in a significant advantage giving rise to competition concerns.

## **CONCLUSION**

23. In the light of the above information, the proposed concentration does not raise serious doubts as to its compatibility with the common market. The Commission therefore has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA agreement. This decision is adopted in application of Article 6(1) b of the Council Regulation No 4064/89.

For the Commission