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***Case No COMP/M.1889 - CLT-UFA / CANAL+ / VOX***

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: 21/03/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **21/03/2000 SG (2000) D/102546**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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/M.1889- CLT-UFA/CANAL+/VOX**
Notification of 18.2.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. This operation concerns the acquisition by CLT-UFA S.A. ("CLT-UFA") of News German Television Holding GmbH's ("News") 49.9% stake in VOX (VOX Film- und Fernseh GmbH & Co KG and VOX Film- und Fernseh Geschäftsführungs GmbH ), a German general interest TV channel. The creation of VOX as a joint venture between CLT-UFA and News[1] and the subsequent entry of CANAL+[2] have already been approved by the Commission.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No 4064/89 and does not raise serious doubts as to its compatibility with the common market.

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[1] Case No IV/M 489 – Bertelsmann/News International/VOX, VOX I of 6 September 1994

[2] Case No. IV/M.525 – VOX II of 21 December 1994

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## I. THE PARTIES

3. CLT-UFA is a 50/50 joint venture between Audiofina S.A. and Bertelsmann AG in which the parent companies have concentrated their European television and broadcasting activities.

4. Canal+ S.A. and its subsidiaries are mainly active in the sectors of television broadcasting, marketing of pay TV channels, and the production of TV programmes and movies. Its major shareholder is Vivendi S.A, a French company mainly active in the building industry, telecommunications and media and environmental activities.

5. VOX is a general interest free access TV channel in Germany whose broadcasting licence restricts it to broadcasting information and entertainment programmes.

## II. THE OPERATION

6. This operation concerns the acquisition by CLT-UFA. of News 49.9% stake in VOX, a German general interest TV channel. This transaction will increase the share of CLT-UFA in VOX from 24.9 % to 74.8%. The other major partner in VOX is Canal+ S.A. with a share of 24.9 %. The remaining 0.3% is held by DCTP, Entwicklungsgesellschaft für Televisions-Programme mbH, Düsseldorf.

## III. CONCENTRATION

### Joint control

7. Canal+, with its 24.9% stake, will have veto rights over major decisions and, as all decisions of major importance require a majority of 80% of the shares, will have joint control with CLT-UFA over VOX.

### Autonomous economic entity

8. VOX was considered to be an autonomous economic entity in the previous decisions. The operation being assessed does not change the autonomy of VOX in relation to its parents therefore VOX is an autonomous economic entity.

### Significant change in the quality of control over VOX

9. The reduction in the number of shareholders having joint control from three to two constitutes a significant change in the quality of control over VOX[3].

10. CLT-UFA will gain […] considerably more weight in the decision-making process […].

## IV. COMMUNITY DIMENSION

11. The undertakings concerned (CLT-UFA, Canal+ and VOX) have a combined aggregate world-wide turnover of more than EUR 5 billion[4]. Each of CLT-UFA and Canal+ has a Community-wide turnover in excess of EUR 250 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.

## V. COMPETITIVE ASSESSMENT

### Relevant product and geographic markets

12. VOX operates exclusively on the free access TV market. As set out in the previous decisions the relevant product market to be defined is the market for advertising in television broadcasting.

### Compatibility with the common market

13. The market share for VOX is around [less than 6 %] by advertising revenue and [less than 6 %] by audience.

14. The CLT-UFA group (TV stations RTL, RTL II, Super RTL and the joint venture VOX) has a market share of around [35 - 45 %] on the German TV-advertising market. It faces competition mainly from the Kirch group (TV stations SAT1, PRO 7, DSF, Kabel 1) which has a market share of [45 – 55 %] on the German TV-advertising market.

15. Since the joint venture VOX is already considered part of the CLT-UFA group the market share will not change because of this transaction.

16. In addition, since News also has a stake in the German free-TV station TM3, the present transaction can be considered a pro-competitive de-concentration.

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[3] When assessing the reduction in the number of shareholders from three to two, the Commission already found that a change in the decision-making process from the exercise of a veto to the reaching of mutual agreement alters the nature of control (Case N° IV/M 993 Bertelsmann/Kirch/Premiere).

[4] 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.

## VI. CONCLUSION

17. Based on the above information, the concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or in a substantial part of it.

18. 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,