

***Case No COMP/M.2601 -
WPP / TEMPUS***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/10/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.10.2001
SG (2001) D/291886

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.2601 - WPP / TEMPUS
Notification of 25.09.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 25 September 2001, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking WPP Group plc ("WPP") of the United Kingdom acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Tempus Group plc ("Tempus") of the United Kingdom by way of a public bid for the entire issued share capital of Tempus.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. WPP is an international communications services group, operating in 102 countries worldwide. WPP provides a comprehensive range of communications services through its operating companies, including advertising; media investment management; information and consultancy; public relations and public affairs; branding and identity, healthcare and

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

specialist communications. Its operating subsidiaries include the advertising agencies Ogilvy & Mather, J. Walter Thompson Company and Young & Rubicam Advertising; Mindshare and The Media Edge in the media investment management field; The Kantar Group in the information and consultancy sector, including Research International and Millward Brown; the public relations and public affairs companies, Hill and Knowlton, Burson-Marsteller, Ogilvy Public Relations Worldwide and Cohn & Wolfe; and a wide range of specialised communications companies including Enterprise IG and Landor, specialising in branding and corporate identity, CommonHealth, specialising in healthcare communications and OgilvyOne and Wunderman specialising in direct marketing.

4. Tempus is a marketing and media communications group headquartered in the UK. It has been listed on the UK Stock Exchange since 1989. Tempus has almost 100 offices in 29 countries. Tempus is an international media communications group, comprising a global media communications network (CIA), an international digital marketing agency (Outrider), a strategic marketing consultancy (Added Value), a global branding identity and design group (BrownKSDP), a business measuring marketing effectiveness. Working with all of these disciplines, CIA also acts as an integrated lead agency that offers these combined resources.

II. THE OPERATION

5. The proposed operation involves the acquisition of sole control by WPP of a controlling shareholding in Tempus, by means of a public offer for all of Tempus' issued share capital.

III. CONCENTRATION

6. The concentration concerns the acquisition by WPP of sole control of Tempus. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of Regulation 4064/89, the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 2.5 billion². In each of at least three Member States ([...]), the combined aggregate turnover of all the undertakings concerned is more than EUR 100 million. In three of these Member States ([...]) WPP and Tempus each have a turnover of more than 25 million. The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 100 million. They do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The operation meets the criteria for having a community dimension set out in Article 1(3) of the Merger Regulation.

² 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.

V. COMPETITIVE ASSESSMENT

A. Relevant Product Markets

8. The main overlap in activity between the parties is in the area of media buying³, where some affected markets will be created. The parties are also both active in the market for marketing communications services, though the overlaps in this market relate only to the limited number of fields in which Tempus's agencies are active. The effect of this transaction in this latter market will be very limited, and no affected markets will be created.
9. The basic function of a media buying agency is to buy space across different types of media (including broadcast and cable television, radio, newspapers, magazines, billboards and the internet) for clients running advertising campaigns. Media buying agencies will also usually provide media planning or strategic advice, which involves the agency researching the market for the product or service to be advertised to define the target audience, and also advising on which media in which locations would be most suitable. The agency may also advise clients to use other promotional methods such as direct marketing, promotions or event sponsorship, as well as advertising through a variety of media.
10. Marketing communications services comprise the range of advertising services provided by the advertising agencies, including consulting, development of marketing and branding campaigns as well as production and design of adverts, public relations, consumer relationship management/direct marketing, identity and design.
11. The notifying party has submitted that media buying may be considered part of a wider relevant market for all marketing communications services, arguing that the planning aspect of media buying considerably blurs the boundaries between advertising (i.e. marketing communications services) and media buying.
12. In a number of recent decisions⁴, the Commission has not excluded that there may be a significant overlap between the activities of media buying and marketing communications services and that they could be considered as part of a single relevant market. However, the market investigation into the proposed acquisition of Tempus by WPP has in general not provided support for this argument. Notably, the market investigation has shown that while in some cases advertising and public relations are interchangeable, these marketing communications services are not interchangeable with media buying activities which are by their nature technical and are not directly related to the creation of an advertising campaign. The notifying party has also indicated that the largest advertising groups tend to have separate media buying functions from the creative advertising side.
13. For the purpose of the present decision, it is not necessary to define the precise boundaries of the relevant market, in particular whether or not media buying should be considered separately from marketing communications services, since the operation would not create or strengthen a dominant position however the product markets are defined.

³ Sometimes referred to as “media investment management”.

⁴ See for example, IV/M.1529 - Havas Advertising/Media Planning, COMP/M.2000 - WPP Group/Young & Rubicam; COMP/M.2415 - Interpublic/True North and COMP/M.2558 – Havas/Tempus, 07.09.2001

14. It is also relevant to consider the possibility that the supply of multi-country marketing and communications services represents a distinct product market. Such services would be differentiated from national services on the basis that they require specific implementation requirements. The Commission's market investigation has not provided strong evidence that a distinct market exists for the provision of international services. For the purpose of this decision, the issue of whether or not multi-country communications services constitute a separate product market may be left open, since regardless of the considered product market definitions, the concentration would not create or strengthen a dominant position.

B. Relevant Geographic Markets

15. The Commission has previously considered that the relevant geographic markets for marketing communications services/media buying are national in scope due to differences in language, tastes and perceptions of customers. The notifying party concurs with this view, stating that most, if not all, media buying and marketing communications services remain national, and therefore there are limited opportunities for the provision of such services on an international basis.

16. It appears true that most media buying and marketing communications services are provided on a national basis. Nevertheless the Commission's market investigation has indicated that as multinational customers develop international advertising budgets and campaigns they increasingly insist upon service from agencies that are able to offer economies of scale and creative input on a matching international basis. To implement such campaigns, these customers may access a network of marketing agencies through a single contact point, rather than contracting on a national basis.

17. For the purposes of this decision it is not necessary to decide whether the markets are national or wider, since however they are considered, the operation will not lead to the creation or strengthening of a dominant position on any market.

C. Impact of the Concentration

18. Table 1 gives details of the parties' market shares on the narrowest possible basis, namely national markets for media buying.

Table 1 - Market share estimates - media buying (2000)

	WPP %	Tempus %	Combined %
Austria	[5-10]	[0-5]	[5-10]
Belgium	[5-10]	[0-5]	[10-15]
Denmark	[0-5]	[5-10]	[10-15]
Finland	[0-5]	[0-5]	[0-5]
France	[5-10]	[0-5]	[5-10]
Germany	[5-10]	[0-5]	[10-15]
Greece	[0-5]	[0-5]	[0-5]
Ireland	[10-15]	[0-5]	[10-15]
Italy	[10-15]	[10-15]	[20-25]
Luxembourg	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
Netherlands	[10-15]	[0-5]	[15-20]
Portugal	[10-15]	[0-5]	[10-15]
Spain	[5-10]	[5-10]	[10-15]
Sweden	[0-5]	[10-15]	[15-20]
UK	[0-5]	[0-5]	[5-10]
Norway	[0-5]	[5-10]	[10-15]

n/a -market share information not available for Luxembourg.

19. On the basis of the figures in Table 1, provided by the notifying party in its notification, combined market shares of 15% and therefore affected markets for media buying will be created in Italy, Netherlands and Sweden. These figures have been largely corroborated by respondents in the market investigation. Table 2 gives the market shares of those competitors with market shares greater than 10%.

Table 2 – Media Buying – Market Shares of main competitors

2000	Total Value	Publicis		Aegis		Interpublic		Mediacom	
		Value	%	Value	%	Value	%	Value	%
	\$ m								
Italy	7,269	[...]	[10-15]	[...]	[10-15]				
The Netherlands	2,945					[...]	[10-15]		
Sweden	1,909			[...]	[10-15]	[...]	[10-15]	[...]	[10-15]

20. In Italy, the combined entity will have a combined market share of [20-25]% (WPP [10-15]%, Tempus [10-15]%). Two other competitors have market shares of greater than 10% (Publicis and Aegis).

21. In the Netherlands the parties combined market shares will be [15-20]% (WPP [10-15]%, Tempus [0-5]%), and they will continue to face competition from Interpublic ([10-15]%), as well as a number of other agencies. It is of note that of 14 members of the Dutch branch organisation PMA (Platform Media Adviesbureaus) in total 11 are local subsidiaries or

affiliates of large worldwide media networks. Nine of these are also related or partly owned by worldwide creative agencies.

22. In Sweden, the parties combined market shares will be [15-20]% (WPP [0-5]%, Tempus [10-15]%). Three other competitors have market shares of greater than 10% (Aegis, Interpublic and Mediacom).
23. These market shares are not indicative of competition concerns in these countries. Although the Commission's market investigation has indicated there may be certain barriers to entry created by the importance of scale in relation to media buying, access to buying groups appears to give smaller competitors the scope to compete. In the Netherlands, for example, a buying group owned by some of the advertising agencies (The Media Center) provides media buying services for these agencies as well as for other advertising agencies and media buying agencies (including WPP's Mindshare⁵), as a sub-contractor. This buying group represents 25-30% of media buying volumes in the Netherlands.
24. On the basis of the above, the proposed concentration in these three affected markets does not create or strengthen a dominant position in relation to the provision of media buying in any Member State.
25. Given that the main business of the Tempus Group is in media buying (through *CIA Media Communications*), the size of the Tempus business is limited in the wider marketing communications services market. Its revenue in this latter market only amounted to £[...] million within the EEA. Tempus is only active through its non-media buying businesses in four Member States - France, Germany the Netherlands and the UK. In relation to these four Member States, even if all Tempus non-media buying revenues were attributed to the advertising segment of the relevant market for marketing communications services, no market share of more than 15% is created for that segment, as shown in Table 3. In relation to all other Member States, as Tempus is not active outside of its media buying activities, there will be no increase in the market shares of WPP in the relevant market for marketing communications services (or any segment thereof). Therefore, on this basis, there would be only limited overlaps and nowhere would the combined market share for marketing communications services be greater than 15%.

⁵ WPP's agency The Media Edge undertakes its media buying activities on a standalone basis.

Table 3 - Marketing communications services - Advertising segment⁶

Member State	WPP revenues (\$m)	Tempus revenues (\$m)	"Market" size estimate (\$m)	No. of agencies in "market"	Market share (%)
France	[...]	[...]	2,903.4	149	[5-10]%
Germany	[...]	[...]	3,900.0	150	[5-10]%
Netherlands	[...]	[...]	769.6	165	[10-15]%
UK	[...]	[...]	9,618.6	300	[5-10]%

26. On the basis that the relevant markets for either media buying or marketing communications services are EEA-wide, the parties' combined market share would be below 15%.

27. The proposed concentration therefore does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it in relation to the provision of media buying or marketing communications services in the EEA or any Member State therein.

VI. CONCLUSION

28. 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

(Signed)
Mario MONTI
Member of the Commission

⁶ The notifying party gives the source of these data as Advertising Age (April 2001) and Tempus' own estimates of revenues. The Market size estimates are derived from Secodip and RECMA for France, AC Nielsen/Horizont for Germany, Adformatie Bureauanglijst for the Netherlands, and AC Nielsen NMS for the UK.