

***Case No COMP/M.2785 -
PUBLICIS / BCOM3***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 18/06/2002

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Brussels, **18/06/2002**

SG (2002) D/230211

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2785 –PUBLICIS/ BCOM3
Notification of 15.05.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 15 May 2002, the Commission was notified a proposed transaction pursuant to Article 4 of Council Regulation No 4064/89, as amended², by which the french undertaking Publicis Groupe SA (“Publicis”) acquires the sole control of the American company Bcom3 (“Bcom3”).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the Merger Regulation and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Publicis is an international advertising group operating in 76 countries worldwide. It owns three advertising worldwide networks (Publicis Worldwide, Saatchi & Saatchi, Nelson Communications Worldwide), a network active in media planning and buying services (Zenith Optimedia Group), and an advertising production (régie publicitaire)

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).

² 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).

network specialised in the sale of advertising space (Medias & Regies Medias). It also owns an advertising agency active on the US market (Fallon).

4. Bcom3 is another international advertising and marketing communications services group operating through a network of companies in over 90 countries worldwide. It brings together Leo Burnett Worldwide, D'Arcy Masius Benton & Bowles, Bartle Bogle & Hegarty (a 49% owned subsidiary), Starcom MediaVest Group, Medicus Group International and Manning Selvage & Lee.

II. THE OPERATION

5. Under the Merger Agreement, the merger will take place by way of a statutory merger under Delaware (USA) law whereby a wholly owned subsidiary of Publicis will be merged with Bcom3. Publicis will accordingly indirectly own all of the common stock of Bcom3. Following the transaction, and after the cancellation of Bcom3 shares, Bcom3 shall cease to exist as a legal entity, and shall be incorporated into the wholly owned subsidiary, which will henceforth exist as the sole surviving entity. As a corollary, the present shareholders of Bcom3 shall become shareholders of Publicis.

III. CONCENTRATION

6. The operation concerns the acquisition by Publicis of sole control of Bcom3 according to Article 3(1) (b) Regulation 4064/89. The proposed transaction therefore constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation

IV. COMMUNITY DIMENSION

7. [] The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

A. RELEVANT PRODUCT MARKETS

8. The parties are both active in the provision of a range of advertising and media communication services. The notifying parties believe that advertising sector constitutes a single global product market but accept that in previous cases³, the Commission defined separate product markets for (i) media buying and (ii) marketing communication services.
9. Media buying includes purchasing time and/or space in various types of media (including broadcast and cable television, radio, newspaper, magazines, billboards and 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. The question whether media buying activities can be divided into several

³ See for example cases n° COMP/M. 2601 – WPP/Tempus, COMP/M. 2558 – Havas/Tempus, Comp/M. 2415 – Interpublic/TrueNorth

markets according to the media in question can be left open in the present case as the market investigation has not provided evidence that a distinct market exists.

10. Marketing communication services comprises 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. The question whether marketing communication services cannot be divided into several markets according to media, industry or product can be left open in the present case as the market investigation has not provided evidence that a distinct market exists.
11. 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.
12. It is also relevant to consider the possibility that the supply of international marketing and communication services constitutes a separate 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 international communication 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

13. The parties believe, in line with the Commission's practice, that numerous factors (language, culture, customs, the fragmentation which occurs as a necessary function of geographic division by agencies, etc) support the national dimension as the relevant geographical dimension in the context of the present concentration.
14. 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.
15. For the purpose 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. ASSESSMENT

16. On the narrowest possible basis, namely national markets, the combined market share of the parties would be below 15% in all the relevant product markets except for the global market for advertising and for marketing communications services in France.
17. With regard to the global market for advertising, the parties account for a combined share of sales of [10-20] % (Publicis: [10-20] %; Bcom3: [0-10] %), placing them in third place behind Omnicom ([15-25] %) and Havas advertising ([10-20] %).

18. With regard to the marketing communications services, the parties account for a combined share of sales of [10-20] % (Publicis: [10-20] %; Bcom3: [0-10] %), placing them in third place behind Omnicom ([15-25] %) and Havas advertising ([10-20] %).
19. More over, according to the notifying parties there exists a very large number of agencies in each country and that the geographical break-down is quite fragmented. In particular, they would be facing strong competition from Carat(Aegis), Interpublic, WPP, Omnicom, Grey, Havas Advertising and Cordiant that would lead the markets in question. In addition, entry would be easy and the number of medias like television, print, radio and internet would be available to customers.
20. 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%.
21. 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

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
Mario MONTI
Member of the Commission