

***Case No COMP/M.2996 -
RTL / CNN / TIME
WARNER / N-TV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 05/11/2002

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05/11/2002

SG (2002) D/232473

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2996 – RTL / CNN /Time Warner / N-TV
Notification of 02.10.2002 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 02/10/2002, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings RTL Television GmbH (« RTL ») belonging to the RTL Group, and CNN Germany, Inc. and Time Warner Entertainment Germany & Co. Medienvertrieb OHG both belonging to the group AOL Time Warner, Inc. (« AOL/Time Warner ») acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking n-tv GmbH & Co. KG (« n-tv ») and, through n-tv, of TV media Gesellschaft für Audiovisuelle Wirtschaftsinformation mbH (« TV-media ») 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 the Merger Regulation and does not raise serious doubts as to its compatibility with the Common Market and with the EEA Agreement.

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).

I. THE PARTIES

3. RTL Group is a Luxembourg-based broadcasting and media group solely controlled by the German media group Bertelsmann AG. RTL Group is mainly active in free-access television, TV production and radio broadcasting in various Member States. Bertelsmann's further activities comprise the publication of books, magazines and music records.
4. AOL Time Warner is active in the areas of Internet services, filmed entertainment (including movies and TV programming), television broadcast and cable networks, music and publishing. CNN International is AOL Time Warner's world-wide news and information channel.
5. N-tv is a German-language news and information TV station that broadcasts free-access television programmes, namely information on politics and economic affairs, and infotainment formats, i.e. an amalgamation of news, information and entertainment. TV-media is a company producing formats for n-tv's in-house use only.

II. THE OPERATION

6. The proposed operation consists of two closely linked transactions. The main transaction involves RTL's acquisition of a 47.33 % interest in n-tv from Holtzbrinck, the other one leads to the ultimate acquisition by n-tv of Holtzbrinck's [...] % stake in TV-media.²

III. CONCENTRATION

Joint control

7. Following the operation, RTL (47.33 %) and CNN/Time Warner [...] will jointly control n-tv. CNN/Time Warner will have [...] seats and RTL will have at least [...] seats on the Advisory Board composed of [...] members. The Advisory Board decides with a two-thirds majority on a number of important issues, such as the approval of the business plan. Moreover, each individual shareholder holding more than [...] of the shares and being represented on the Advisory Board has the right to block a number of strategic decisions, such as the appointment or removal of n-tv's management board and the approval of n-tv's business plan.

Full-function joint venture

8. N-tv will continue to perform on a lasting basis all functions of an autonomous economic entity, and thus be a full-function joint venture. The proposed operation, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

² [...] After completion, TV Media will thus be a 100%-subsidiary of n-tv.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have an aggregate world-wide turnover of more than EUR 5 billion, and both Bertelsmann's and AOL Time Warner's Community-wide turnover is above EUR 250 million. Neither Bertelsmann nor AOL Time Warner achieve two thirds of their respective Community-wide turnover within one Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

1. Relevant product and geographic markets

10. According to the Parties the relevant product market is the market for free access television. In a series of previous decisions the Commission found that free access TV comprises advertising-financed private television and public television financed through fees or through fees and partly through advertising.³ This market, where broadcasters compete for advertising revenues, must be distinguished from the market for pay-TV.⁴
11. The Parties suggest that the relevant geographic market for free access television is national in scope. They point out that n-tv's activities are limited to Germany, its programme being merely re-transmitted in Austria via cable and satellite. In previous decisions the Commission found that TV broadcasting still generally takes place on national markets although in certain niche markets there are already programs broadcast throughout Europe.⁵ The national character of TV broadcasting is mainly due to different regulatory regimes, existing language barriers, cultural factors and other different conditions of competition prevailing in the various markets.

2. Compatibility with the Common Market

12. The Parties are active in a number of markets but a competitive overlap only exists on the German market for free access television. According to the Parties, the notified operation will increase RTL Group's market share by [0-5] % in terms of audience and by [0-5] % in terms of advertising revenues. Following the transaction, RTL Group will have an audience share of 25.3 % as compared to 43.3 % for public TV broadcasting stations and 24.1 % for Kirch group. In terms of advertising revenues, RTL Group's market share will be 42.2 % as compared to 5.6 % for public TV broadcasters and 48.4 % for Kirch group. AOL Time Warner is active in the German market for free access television only through its music channels (VIVA) and CNN International reaching a combined market share of [0-5] % in terms of audience and of [0-5] % in terms of advertising revenue. In view of the competitive market conditions,

³ See Case No COMP/M.1958- Bertelsman/GBL/Pearson, of 29.06.2000, paragraph 10; Case No IV/M.1574 – Kirch/Mediaset.

⁴ See Case No IV/M.469 - MSG Media Service, OJ L 364, 31.12.1994, paragraphs 32 and 33; Case No IV/M.779 - Bertelsmann/CLT of 7 October 1996, paragraph 16.

⁵ See Case No IV/M.553 - RTL / Veronica / Endemol, OJ L 134/32, 5.6.1996, paragraph 25, confirmed by the Court of First Instance; Case no. COMP/M.1958 – Bertelsman/GBL/Pearson, of 29.06.2000, paragraph 13.

the proposed transaction will not lead to the creation or strengthening of a dominant position on the German market for free access television.

13. TV media will continue to produce exclusively formats for (captive) in-house use and is therefore not active on the market for independent television production. Thus, the notified operation does not raise any competition concerns in respect of this market.
14. The proposed operation is unlikely to raise vertical competition concerns neither. On the different segments of the German (upstream) market for TV rights licensing (fiction, non-fiction and sports), RTL Group's market share varies between less than [0-10] % and [10-20] %. AOL Time Warner's activities on upstream markets in Germany are *de minimis*, generating turnover of approximately EUR [...] with TV productions and of EUR [...] with licensing of US-produced content. In view of this situation, any risk of market foreclosure can be excluded.
15. Owing to the small size of n-tv and the competitive market situation described above, a coordination of RTL Group's and AOL Time Warner's competitive behaviour in the sense of Art. 2 (4) ECMR is unlikely, both on the market for free access television and on the upstream markets for TV content.

VI. CONCLUSION

16. 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