

***Case No COMP/M.3197 -
CANDOVER / CINVEN /
BERTELSMANN-
SPRINGER***

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

Article 6(2) NON-OPPOSITION
Date: 29/07/2003

*Also available in the CELEX database
Document No 303M3197*



COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 29.07.2003
SG (2003) D/231090

PUBLIC DECISION

MERGER PROCEDURE
ARTICLE 6(2) DECISION

To the notifying parties

Dear Sir/Madam,

**Subject: Case No COMP/M.3197 – Candover/Cinven/BertelsmannSpringer
Notification of 13.06.2003 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 13.06.2003 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertakings Candover Partners Limited ('Candover', United Kingdom) and Cinven Limited ('Cinven', United Kingdom) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control of the undertaking BertelsmannSpringer ('BS', Germany) by way of purchase of shares.
2. 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. Candover is a fully owned subsidiary of Candover Investments plc, the publicly listed holding company of the Candover group. The Candover group is an arranger and provider of private equity for European buy-outs.
4. Cinven is a fully owned subsidiary of Cinven Group Limited, owned by the management. The Cinven group is a venture capital business that is engaged in the provision of investment management advice and services to investment funds.
5. BS is currently part of the Bertelsmann group of companies. BS is active in the market for academic publishing and professional publishing. BS includes around 70 publishing companies in 16 countries in Europe, Asia and the USA. Publications include textbooks, reference works, databases and online services for use by academics, students, practitioners

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).

and professionals. BS publishes in English, German, French, Italian and Japanese. BS also includes an offset printing business and world-wide distribution of academic publications.

6. Candover and Cinven acquire control over the BS business through KAP Global Publishers BV over which Candover and Cinven exercise joint control. KAP Global BV is the parent company of the Dutch publisher Kluwer Academic Publishers ('KAP'). There are no links between KAP and the Dutch publisher Wolters Kluwer from whom the parties acquired KAP in 2002. The acquisition of joint control over KAP by Candover and Cinven was cleared by the Commission on 18 December 2002, Case COMP/M.3018 – Candover/Cinven/KAP.
7. KAP is active in the publication of information products and services to academic and corporate researchers. It publishes in the fields of life sciences, humanities and social sciences, environmental and plant sciences, physical sciences, biomedicine, behavioural sciences and engineering. KAP publishes in English language only.

II. THE OPERATION

8. The notified operation consists of an acquisition of 100% of the shares in the entire BS business by Candover and Cinven via a fully-owned subsidiary of KAP Global BV.

III. CONCENTRATION AND COMMUNITY DIMENSION

9. The proposed operation is therefore a concentration within the meaning of Article 3(1)(b) of the Merger Regulation by which Candover and Cinven acquire joint control over BS.
10. The concentration fulfils the thresholds of article 1(2) of the Merger Regulation. The parties' combined aggregate worldwide turnover exceeds EUR 5,000 million; each of Candover, Cinven and BS have a community-wide turnover of more than EUR 250 million. The two-thirds rule does not apply. The proposed operation therefore has a Community dimension pursuant to Article 1(2) of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

11. BS and KAP have overlapping activities only in relation to publications addressed to researchers and only as regards to English language publications. KAP does not publish in French, German, Italian and Japanese in which languages BS also publishes. Further overlapping activities exist between BS and MediMedia, a French undertaking co-controlled by Cinven, in relation to publications addressed to medical professionals in France and Germany.

A. Relevant Markets

12. The parties content that the relevant product markets are those of academic and professional publishing. According to the parties, academic publishing entails the publishing of books and journals, which are aimed at researchers and academics, whereas professional publishing entails the publishing of books and periodicals, which are intended for professional use and/or provide information to practitioners and professionals.

13. In line with a previous Commission's decision², a strict demand approach to define a market for publications is not appropriate. From a demand-side point of view, it is rare that two different publications be viewed as perfect substitutes. There usually are differences in the coverage, comprehensiveness and content provided by two different publications. From the point of view of functional interchangeability, two different publications could hardly be regarded as substitutable by the end-users, the readers. This applies to publications pertaining to different areas of professional publishing and addressed to different customer groups as well as within professional categories. Therefore, Consumers will rarely substitute one publication for another in reaction to their relative prices. In this case, a strict demand approach would lead to the definition of a multitude of relevant markets of imprecise boundaries and small dimensions. This would not allow to properly assess the competitive relations between the different publishers and the impact of the notified merger on competition.
14. The market investigation in the present case confirmed the approach chosen in previous cases to take supply side considerations into account for defining the market³. The main elements required to launch a publication aimed at professional users appear to be the expertise in a given area, as defined by category of users (i.e. scientists, construction engineers, persons belonging to the medical professions), an established reputation and image of accuracy, reliability and comprehensiveness in the information supplied to professional users, copyrighted content and knowledge of the customer base and channels to access these customers directly and in many cases individually (i.e. university libraries or research institutions, corporate customers, schools, etc.).
15. However, there are limits for the use of the expertise, image and reputation, and access to sales channels in different areas of publishing. The image and reputation by an editor for instance among scientists may have little or no relevance within another group of professionals. The access to the customer may also depend on the target group of professionals for whom publications are intended, it may in particular require a special sales force.

(i) Academic Publishing

16. The parties have submitted in their notification that the market for academic publishing is a distinct product market. Academic publications are distinct from other types of publications in terms of authors, selection of content, the content itself, customers and readers. They submit furthermore, that the market for academic publishing has to be defined as the market for the publication of books and journals in print and electronic (on-line and CD-ROM) format, having specialised academic content. According to the parties, academic publishing encompasses all academic disciplines, including for example technology, life sciences, earth sciences, economics, humanities and other social sciences. Academic publications in these subjects are very often in English, as the lingua franca of the academic community whereas publications for example in the field of law normally focus on a specific national jurisdiction and are therefore published in the language used in this country.
17. Publications for different academic subjects are clearly not substitutable from the reader's point of view. Even within a given discipline, there may be little demand side

² Case IV/M.1377 – Bertelsmann/Wissenschaftsverlag Springer.

³ Cf. also Case IV/M.1377 – Bertelsmann / Wissenschaftsverlag Springer.

substitution from the point of view of the individual academic between different publications.

18. However, direct customers are very rarely individual academics, but purchases of academic publications are nearly exclusively made by libraries being part of universities or other research institutions. They account for the bulk of demand and often purchase the full range of publications across disciplines. From the point of view of libraries and research institutions, publications are insofar substitutable as these customers have to choose which publications to buy for their limited budgets – or, as underlined by the respondents in the market investigation, which subscriptions of journals are being terminated in times of only slightly increasing or even shrinking budgets. To what extent publications belonging to different disciplines may be “substitutable” as regards the library budget, depends on the scope of the collection of the library, the organisation of its budget and its internal organisation. Whereas a central university library with an overall budget may buy across disciplines, a department library may focus on a specific area. However, even looking at department libraries active in certain fields, the diversity of their purchases – depending on the exact focus of their activities - would blur the boundaries of a market definition according to different disciplines.
19. Furthermore, it appears from the submission of the parties and from the market investigation that supply-side substitution is of relevance since important factors for success in the field of academic publishing are access to reputed authors and editors, and libraries and institutions. One important element is also to win highly renowned academics for organising peer review exercises for each journal, thereby maintaining the quality, reputation and attractiveness of the journal. The market investigation confirmed that this appears to be a necessary condition in order to make the journal attractive for leading authors in each field and for readers. There is a certain commonality of these factors across different academic disciplines, although it is unclear where a precise line can be drawn. Publishers will generally have the necessary resources, skills and reputation in order to publish in neighbouring categories if profitable opportunities arise. Like the parties, a number of other big commercial publishers such as Reed Elsevier, Blackwell and Wiley are active across all or nearly all disciplines, including natural sciences, humanities and social sciences.
20. The Commission has found indications that a further subdivision of the market may be necessary for groups of academic disciplines. In particular, strong indications have been found that a distinct market for scientific, technical and medical (“STM”) publications may be considered to exist. However, the market definition may be left open in this respect since the competitive assessment, even on the basis of a narrower market than an overall market for academic publishing, is not changed.
21. The market investigation did not lead to a clear result whether a delineation of the product market according to the format of the publication appears necessary. On the one hand, print versions and on-line distribution of journals, distributing the same content, are interchangeable from the point of view of the libraries whereby on-line distribution of journals has rapidly advanced in recent years. On the other hand, books and CD-ROMs are interchangeable. CD-ROMs are mostly already supplied with a book in one package, in any case, even if distributed separately, books and CD-ROMs are in one market since they provide the same content. The commonality of factors described above, access to reputed authors, editors and libraries, would militate in favour of a uniform market including journals and books, whereas varying purchasing pattern, books are also purchased by individual researchers, and differing pricing structures

between books and journals would lead to the consideration of distinct markets for journals and books. However, for the purposes of this case the market definition can be left open because the concentration, even on the basis of different markets for journals and books, will not raise competition concerns.

Geographic Market

22. The parties submit that the relevant geographic market for academic publishing is world-wide for the following reasons: (1) Academic publications are read world-wide and subscriptions to academic journals are spread throughout the world, (2) almost all important academic publications are written in English and (3) the content of academic publications has no national boundaries, the research is relevant world-wide.
23. The market investigation carried out by the Commission has confirmed that there is a world-wide market for academic publishing in English language.

(ii) Professional Medical Publishing

Product market

24. Professional publishing entails the publishing of books⁴ and periodicals, which are intended for professional use, and/or to provide information to practitioners and professionals. Such publications provide business related information to a particular area. They are, totally or to a considerable extent, dependent on revenues generated from advertising and offer specialised advertising channels for suppliers of products and services.
25. Specialised professional publications exist for many conceivable business sectors (for example construction, computer science, agriculture, tourism, etc.). The market for professional publishing can be further sub-divided according to industry and professional sector. This reflects the differences in content, readership base and advertising.
26. Relevant in the present case is the market for professional medical publishing as there are no overlapping activities as regards publications for other professions. Cinven is active, via the co-controlled company MediMedia⁵, in the field of medical professional publishing aimed at doctors and other professions in the healthcare sector and the proposed transaction will create an overlap within this area by adding BS' activities in this field.
27. Both customers - pharmaceutical companies - and competitors have confirmed that medical professional publications constitute a distinct product market separate from the markets of other professional publications directed at other professions. These publications are primarily aimed at doctors, general practitioners and specialists. The journals, newspapers and magazines address less scientific and more practical topics and are generally targeted to practising doctors rather than the academic community. One of the main uses of professional medical publications is for the continuing education of medical professionals. The publications are strictly for healthcare professionals and are

⁴ The publishing of books is to be attributed to academic publishing, within the area of the particular publication.

⁵ See COMP/M.2809 - Cinven/Carlyle/Vivendi Universal Publishing.

not available for the general public. That is the reason why it is allowed to make advertisements on pharmaceutical products, which can only be obtained, via prescription in these publications.

The market for professional medical publication is characterised by the fact that publications are primarily financed by revenue obtained from advertising. The customers are pharmaceutical companies or companies within the medical sector such as equipment manufacturers. The Commission's market investigation showed that only limited substitution on the supply-side is possible. It requires editorial expertise within the medical field as well as detailed knowledge of the sector to launch a professional medical publication. Whereas this makes it difficult to switch to the medical field from other areas of professional publishing, it gives publishers who are active in a certain segment of the medical market the possibility to extend its activities to other segments in this market. Therefore, a publisher who is active in publications addressed to one segment of specialists can move to areas focussing on other specialists or to medical publications addressed to general practitioners. Furthermore, important criteria for the impact of a medical publication are the reputation of the journal/publication and the possible association with a professional organisation.

Geographic market(s)

28. The parties consider the market to be national in scope due to the fact that such professional magazines have to be published in the language of the country of publication and that those publications generally address the professional community in a particular country. The Commission's market investigation showed that customers and competitors consider the market to be national in scope and not necessarily delineated according to language boundaries. This is in particular due to national pharmaceutical registration issues, regulatory issues and local treatment practice. Since prescriptive drugs are mostly registered on a national basis, pharmaceutical companies would not wish (or would even not be allowed) to advertise on a trans-national basis even for those countries who have the same language.
29. Based on this it can be concluded that France and Germany constitute two separate geographic markets for professional medical publications.

B. Assessment

1. Academic Publishing

(i) Market Characteristics

Must Have Characteristic

30. The market for academic publishing exhibits some specific features. A main feature is the "must have" characteristic of certain journals. Such journals have so called "must-have" content because they are considered as indispensable by customers due to a particular reputation or specific focus of the item. Universities, which are active in a certain field, depend on the information provided in such journals and cannot afford to cancel subscriptions without their researchers risking to lose access to the latest developments in the academic research in this field. Among those "must have" journals there are multidisciplinary journals, the most well-known of which are "Nature" and "Science", as well as more specialised journals which are leading journals in an

individual discipline. These journals are the ones, which are most read by researchers active in a certain field and in which those researchers also aim to publish since publications of articles in such journals will be the most valuable for their career.

31. The generally accepted method to measure the quality of a journal in this respect and to assess whether or not it displays such a “must have characteristic” is the number of citations the journal and the individual article in the journal receives. This is called the impact factor of a journal which is calculated as the number of cites of a given in title in a certain year divided by the number of articles published in this year. The assessment is done on the basis of citation reports published by the Institute for Scientific Information (“ISI”). The number of citations also appears to be one parameter in the market to determine the price of a journal so that a price per citation can be established⁶.
32. This characteristic leads to a significant inelasticity of demand. The market investigation confirmed that due to this feature of the market and the fact that the researchers, as final consumers, are normally not the customers paying for the subscriptions, competition in the market for academic publishing is perceived not to be on price but on quality. An increase of the price of a journal having such “must have” characteristic does normally not lead to a cancellation of this journal and to a switch to a “similar”, but cheaper journal, but at most to a shifting of the library budget away from other publications to cover the price rise.
33. However, the “must have” character also depends on the profile of the library and the university. Whereas more generally oriented journals as “Nature” and “Science” will fit the profile of a great number of universities active in research in natural sciences, STM journals are often highly specialised. For example, a high profile journal for brain research will be indispensable for universities specialised in this field, but its subscription may – in case of a price rise – be considered for cancellation by a university with a general medical department.

Price Increases

34. The market investigation has evidenced that considerable price increases have taken place in the market for academic publishing, in particular for STM journals. Libraries have reported annual price increases for journals between 10 – 20% for the period from 1990 – 2002. A recent study of the Office of Fair Trading also pointed to considerable price increases for STM journals in the period between 1975 – 1995, amounting to a factor of increase of 2.6 on the basis of constant dollars (taking account of inflation the factor of increase would be 7.3)⁷. A study commissioned by US libraries indicated that prices for STM journals increased by approximately 11% per year in the period between 1990 – 2000 and between 21 – 46% (varying according to discipline) in the four year period from 1998 – 2002 whereas the consumer price index in this period only increased

⁶ Cf. Table 3 in Office of Fair Trading, The market for scientific, technical and medical journals, OFT 396, September 2002, p. 11.

⁷ Office of Fair Trading, The market for scientific, technical and medical journals, OFT 396, September 2002, p. 10. Cf. also the decision of the Competition Commission on the merger between Reed Elsevier plc. and Harcourt General, Inc., July 2001, pp. 14 f., 23 f.

by 10%⁸. This study also shows that price rises for STM journals were substantially higher than for journals in social sciences and humanities.

Margins

35. The players in the market appear to enjoy high margins. According to information submitted by the parties, margins reach up to [...] % for the market leader Reed Elsevier Scientific, whereas on average margins are around [...] % in the industry. According to the parties, the combined BS/KAP currently would have a margin of [...] % and aim for an improvement of the margin to [...] % in 2007.

Migration to Online Publishing

36. A further feature of the market is the migration of the publications of journals from print versions to online platforms. According to the market investigation, the most advanced online platform Reed Elsevier's internet service ScienceDirect. BS has launched the SpringerLink online content platform in 1997, now including over 400 STM journals. KAP started to sell electronic journals via its Kluwer Online platform only in 1999, in the meantime now, however, deriving a much higher percentage of total journal revenue from online distribution than BS. Whereas today most of the customers still subscribe to both paper and online version, it is expected in the industry that in medium term customers will switch to the online version of journals only.
37. For the pricing of online content different pricing structures exist in the market. The most important arrangements are the granting of online access to individual journals in addition to print versions against a surcharge (or free of charge), to journals by discipline or the entire range of journals, again against a surcharge depending on the total print value of the subscription held by the library. Another contractual arrangement are consortia agreements between the publisher and consortia of libraries. Those agreement normally foresee that all participating libraries gain online access to the journals held in print by one of the participating libraries against a certain surcharge on the print holdings of the participating libraries.

(ii) Impact of the Merger

Market Shares

38. BS and KAP operate in the market for academic publishing with a combined turnover in this market of EUR [...] million in 2002 (BS EUR [...] million and KAP EUR [...] million). The parties claim that the total volume of the market for academic publishing may be estimated at EUR 7.2 billion for 2002, giving them a combined share of [0-10]%. However, the Commission found indications in the market investigation that the estimated volume of EUR 7.2 billion may grossly overstate the real market volume and includes publications which do not necessarily belong to the product market in question. In any case, by far the market leader is Elsevier Science with a market share around 25 – 30% on the basis of a market volume of EUR 7.2 billion. Other main players in the market are the commercial publishers John Wiley & Sons, Blackwell Publishing, Taylor & Francis and Wolters Kluwer Health, with market shares below 5% (on the basis of the said market volume).

⁸ Information Access Alliance - Thomas Susman/David Carter/Ropes & Gray LLP, *Publisher Mergers: A Consumer-Based Approach to Antitrust Analysis*, Washington 2003.

39. In addition to these main commercial publishers, which produce most journals, there is a great number of smaller publishers that can be strong only in particular niches. These publishers can be divided into learned societies, which generally publish journals of interest to their membership and often publish only a very small number of journals, and university presses which are fewer in number than the learned societies, but each publishes a larger number of titles than most of them.
40. It can be drawn as a general conclusion from the above that the combined BS/KAP is second in the market, but far behind the market leader Elsevier Science. This is confirmed by other methods to calculate market shares. On the basis of the total number of journals listed in the ISI Journal Citation Reports of 8,561 journals, the parties would have a combined number of journals of [...] journals, giving them a share of [10-20]%, whereas Elsevier Science would have a share between 17-25%. The other main players, listed above, have market shares between 5-9%.
41. The parties also submitted studies showing the strength of the portfolio by impact factor, based on the number of citations. According to this study, the combined BS/KAP portfolio of journals would be a clear number 2 in the market according to the impact factor, but lagging far behind Elsevier Science, whose journal portfolio taken into account for this method would be more than three times as big. The other main players in the market, named above, would be well behind BS/KAP. This situation has been confirmed in the market investigation in which the Commission received a representative sample of purchases samples by university libraries. Also according to this sample, the combined BS/KAP would be the number two player in the market, mostly far behind Elsevier Science.
42. The picture does not change substantially when looking at the market by groups of disciplines and, in particular, on the STM segment. In the bulk of the market, the STM segment, the combined BS/KAP's position would not differ from the position outlined above. With regard to the remaining disciplines, no meaningful total volume for a segment including social sciences and humanities and, consequently, no shares according to value for the merged entity can be established. Calculated on the basis of citations, the acquisition of BS would only marginally improve KAP's position since BS' journals only has shares in these segments of [<1]% and [<1]%, respectively. On this basis, the combined entity would be the number [...] in social sciences and the number [...] player in humanities. Again, no market shares according to value can be established if the market is even further divided in groups of disciplines (like mathematics, physics, chemistry, engineering, medicine, etc.). Looking at the market share according to citations in such groups of disciplines, the highest shares for the combined BS/KAP would be reached in mathematics, environmental science and computer/info science with shares around [10-20]%. However, the merged entity would in none of these disciplines be the leader according to this method, in computer/info science they would only be the number [...].
43. Also if the market is divided into journals, distributed as print versions or via an online platform, on the one hand, and books and CD-ROMs, on the other hand, the result would not be different. The market position of the parties in the journal segment is outlined above. Looking at a separated book segment, the parties estimate the total number of new books published in 2002 in the STM segment at 22,669, the SIMBA reports estimates the entire number of newly published English language books in the field of academic publishing at 43,554. Whereas the share of the parties in the publication of new book titles would be around [0-10]% according to their own

estimates, their share according to the SIMBA report would be below [0-10]%. In any case, the parties would only be number two in such a book segment behind the leader Elsevier Science. The general assessment of the combined BS/KAP's position, as outlined above, would therefore not change if the market is divided into different segments for journals and books.

Single Dominance

44. According to all methods to calculate market shares, the proposed concentration of BS and KAP would therefore lead to the creation of a publisher being a solid number 2 in the market, which would remain still far behind Elsevier Science as the unchallenged market leader. The concentration will therefore not lead to a single dominant player.

Collective Dominance

- Although the proposed concentration will lead to the disappearance of one competitor on the market for academic publishing, it will not lead to a collective dominance of the Elsevier Science and the combined BS/KAP.
45. In the context of the proposed concentration, it could be considered whether the current market characteristics in combination with the disappearance of one market player could lead to sufficient market transparency, to effective retaliation mechanisms and to a lack of threatening response from actual and potential competitors and clients, resulting in the creation of a collective dominant position of Elsevier Science and the combined BS/KAP in the market for academic publishing.
 46. As already indicated above, the market for academic publishing consists of very heterogeneous products, being journals and books published in different disciplines and, even within a certain discipline, differentiated from each other. The heterogeneity of the products does not seem to make it likely that the market can be considered as transparent following the merger. Furthermore, the “must have” characteristic of certain journals does not appear to allow for an effective retaliation mechanism. This characteristic seems to make it impossible for other members of the oligopoly to target the products of the deviating member of the oligopoly by retaliatory measures and to force the latter not to depart from the common policy on the market. This assessment is not changed by the increasing on-line distribution of journals.
 47. The “must have” characteristic of certain journals may also be behind the history of significant price increases of academic journals, in particular STM journals, in the past. These price increases, and the high margins enjoyed by publishers, may in particular result from the market power which publisher enjoy on the basis of the strength of their journal portfolios. However, this market characteristic, as outlined above, does not allow for the proposed concentration to be qualified as leading to a collective dominant position of the parties together with Reed Elsevier.
 48. As a conclusion, the position of the combined BS and KAP as number two in the market for academic publishing far behind Elsevier Science and the specific characteristics of the market structure indicate that the envisaged concentration does not lead to competitive concerns in the world-wide market for academic publishing.

2. Professional Medical Publishing

49. Cinven is active in professional medical publishing in France and Germany through the co-controlled company MediMedia and, as a result of the proposed transaction, would become active in the same markets via the BS business. This will create overlaps in professional medical publishing in France and Germany.

Germany

50. The parties estimate the total value of the market for advertising in professional magazines and journal for doctors and other professions in the medical field at approximately € 134 million, based on figures published by GPI Werbestatistik-Fachzeitschriften⁹. These figures include newspapers, magazines, drug directories, etc., for the calculation of the total size of the advertisement market for professional medical journals. The parties indicate that the GPI figures may understate the size of the market since they only take account of which are willing to pay for GPI's services to be monitored in the market. The Commission's market investigation also pointed to the fact that the GPI figures understate the market size. These figures do typically not include the turnover generated by industry sponsored publications and the actual number of magazines and journals for doctors published in Germany may be up to twice as big as the number of magazines monitored by GPI.
51. MediMedia and BS do not achieve turnover from subscriptions in Germany because they send the magazines out to the readers, mostly doctors, for free. The publications are therefore paid by the advertisers.
52. Medimedia only publishes one journal "Der Kassenarzt" and ten different editions of a drug directory called "Die Gelbe Liste". The drug directory is financed on the basis of line fees ([...]%) and advertisements ([...]%). BS, via the publishers Springer, Urban & Vogel and Ärzte Zeitung, publishes around 75 journals, the main magazines being Ärzte Zeitung, Wirtschafts Tip and a series of magazines addressed to all medical groups. BS does not publish drug directories in Germany.
53. The parties combined market share in Germany will be close to [40-50]% in the market for advertising in professional magazines, journals, drug directories etc. for doctors (BS [30-40]%, MediMedia [0-10]%) on the basis of the GPI figures. As confirmed by the market investigation, these market shares may be inflated as the GPI figures understate the total market volume. The main part of MediMedia's turnover in Germany is derived from the sale of advertisements in the drug directory "Gelbe Liste" (constituting a market share of [0-10]%), whereas only a small part of MediMedia's turnover is obtained from the journal "Der Kassenarzt" (equal to a market share of [0-5]%). The GPI Werbestatistik figures do not split the advertising revenues based on advertising directed to general practitioners and specialists.
54. BS' professional medical publishing business and MediMedia face serious competitors on the German market in the magazine and newspaper segment. The most important competitors are Süddeutscher Verlag, publishing Medical Tribune, Reed Elsevier Business Information, publishing Ärztliche Praxis and holding the professional medical

⁹ Gesellschaft für Pharmainformationssysteme is an research firm monitoring medical advertising in Germany.

publisher Urban & Fischer, Deutscher Ärzteverlag, publishing, among other magazines, Deutsches Ärzteblatt, the official journal of the Federal Medical Association with a distribution of 365.000 copies, and Thieme Verlag, publishing in total around 80 magazines for all medical groups. Besides, there are smaller competitors like Kirchheim Verlag, OHV-Verlag and GFI-Verlag.

55. The strength of the competitors is substantiated by looking at the coverage of the journals published by them. A research study made by LA-MED¹⁰ shows the leading journals and newspapers in Germany based on ranking by coverage and reader per issue. Only mentioning the journals listed above, the journal with by far the highest coverage according to the ranking is Deutsches Ärzteblatt, which also has the highest likelihood to be read of 83.0%, third in the ranking is Medical Tribune, BS's journal Ärzte Zeitung ranks fifth, Ärztliche Praxis holds the ninth position in the ranking, another BS journal MMW Fortschritte der Medizin ranks tenth, and Medimedia's journal Kassenarzt holds a ranking as number thirteen. No other journal of the parties appears in the list of the 17 journals with the highest coverage. Considering the market power of the parties on the basis of the coverage of their leading journals shows that the market share of the parties has to be put in perspective and that their market position does not correspond to the market shares calculated on the basis of GPI figures. The analysis also demonstrates that the impact of the proposed transaction on the journal side of the market will be minimal.
56. Also in the field of drug directories MediMedia's Gelb Liste, with which it achieves its main market share (around [0-10]%), faces serious competitors like IFAP and Rote Liste. In this regard, it also has to be noted that the segment of drug directories seems to differ in some respect from the medical magazine and newspaper segment. Whereas the drug directories are published quarterly or only annually (dependent on whether it is addressed to general practitioners or specialists), medical magazines and newspapers may be published daily, weekly, bi-weekly or monthly. Considering these considerable differences in frequency which are also important for the purposes of advertising, it is to be noted that the essential part of MediMedia's turnover in Germany is achieved in a different segment of the market than the turnover achieved by BS.
57. The market investigation of the Commission also confirmed that the customers, mainly the pharmaceutical companies channelled through media agencies, may exert some countervailing buyer power. If prices for advertising are increased, they may consider shifting some of its marketing budget away to other forms of marketing, such as the Internet, direct mailings, visits of doctors by their own sales force etc. However, the market investigation also confirmed that such a shifting may only be done to a small extent. These companies will still rely on professional medical publications, since advertising in specialised magazines is a very economical way to get in contact with doctors and other media will not offer an equivalent access to them.
58. Despite the high market shares on the basis of GPI figures, the inflation of the market shares, the analysis of the strength of the competitors in particular in a qualitative analysis, and the activity of the parties in different segments indicate that the proposed merger will not create competition concerns on the German market for professional medical publications to doctors.

¹⁰ Arbeitsgemeinschaft LA-MED Kommunikationsforschung im Gesundheitswesen e.V.

France

59. The parties are not able to make reliable estimates of the total market for professional medical publishing in France, including subscriptions. Instead, the parties have provided figures for the advertising market the total size of which they estimate at €112.5 million, based on information from the CAM group¹¹. It should be noted that this figure – contrary to the situation in Germany - does not include drug directories, since these are paid on the basis of line fees and do not achieve advertising revenues.
60. Medimedia's market share in France would be approximately [30-40]% in the market for advertising in magazines and journals for doctors. Medimedia is the leading publisher in professional medical publications in France, publishing around 52 journals. BS has a market share of approximately [10-20]% giving the parties a combined market share of [50-60]% based on revenues obtained from advertising. BS publishes 15 journals in this field in France. The largest competitor is JB Bailleres/BNP Paribas with a market share of approximately [10-20]% and a number of smaller competitors with market share below 5%. The concentration would therefore lead to a combination of the two leading players, leaving only the current number three with a considerable market share.
61. The parties claim that a distinction should be made between advertisement driven newspapers, in which segment MediMedia is mainly active, and advertisement driven journals and specialist journals, in which segment BS is active in France. However, the market investigation did not confirm such a split according to the exact format and content of the publication. All publications in this field can in general be considered as substitutable for the purpose of advertising. Even if some differences can be found, as outlined above for Germany, between the segments of drug directories, on the one hand, and magazines and newspapers, on the other hand, due to the considerable differences in frequency of publication, the market investigation did in no way suggest differences or a segmentation between medical journals and medical newspapers for the purposes of advertising. In this respect, it is to be noted that drug directories, in which MediMedia is the main player in France, are excluded from the product market from the outset as they are financed by line fees in France. For these reasons, the Commission does not share the parties' opinion.
62. The market investigation also confirmed for France the existence of a certain countervailing buyer power. However, as described above, pharmaceutical companies can only shift their marketing budget away from advertising in publication to a small extent as advertising in specialised medical magazines is a very economical way to get in contact with doctors and other media will not offer an equivalent access to them. Given the very high market shares of the parties and their position as direct competitors in the field of medical magazines, the buyer power which pharmaceutical companies may exert does not seem to be sufficient to counterbalance the very strong position of the parties on this market.
63. In the light of the above, in particular the high market shares and the fragmentation among the competitors, it appears that the proposed transaction would lead to

¹¹ CAM Group calculates market shares by adding up all pages of advertisements in professional journals in the medical field and multiplying these with the average price of an advertisement. This calculation does not take account of rebates, but it is assumed that the different rebate policies of the players in the market cancel each other out.

competition concerns and raise serious doubts as to the compatibility of the merger with the common market.

V. COMMITMENTS SUBMITTED BY THE PARTIES

Commitments

64. On 7 July 2003, Candover and Cinven offered commitments to remove the competition concerns as regards the market for professional medical publishing in France. The full text of the undertakings is annexed and forms integral part of this decision.
65. The parties commit to divest BS' entire business activity in the market for professional medical publishing in France, consisting of the four companies Groupe Impact Médecine SA, Abstract Médecine SA, Impact Médecine ASA and InfoSante SA (together the "GIM Business"). The business to be divested includes the employees, the tangible and intangible assets, the contracts and records as the divestiture commitment encompasses all the companies named above together forming the GIM Business.

Assessment

66. The competition concern identified by the Commission is that the acquisition by BS of Candover and Cinven would raise serious doubts as to its compatibility with the common market. In order to restore effective competition, the parties submitted undertakings in relation to the French market for professional medical publishing.
67. With regard to this market the proposed undertaking, consisting in the divestiture of BS' entire business activity in this market in France will eliminate the entire overlap created by the concentration. The divested business, acquired by a new or already existing competitor, will remove the possible anti-competitive effects of the concentration. The sale of the business to be divested is subject to the Commission's approval. The divestiture to the purchaser then proposed by the parties should lead to an immediate restoration of effective competition.
68. The GIM Business represents a viable, stand-alone business. The transfer of the employees, assets, contracts and the necessary information will ensure that the new owner of the former BS business will be able to be a viable competitor on the French market for professional medical publishing.

Conclusion

69. It is concluded that the commitment offered by Candover and Cinven represents a sufficient remedy to eliminate the serious doubts raised by the transaction as regards the creation of a dominant position on the market for professional medical publishing in France. Therefore, the undertakings are sufficient to eliminate the serious doubts as to the concentration's compatibility with the common market.

VI. CONDITIONS AND OBLIGATIONS

70. Pursuant to the second subparagraph of Article 6 (2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.

71. The requirement for achievement of each measure that gives rise to the structural change of the market is a condition, whereas the implementing steps, which are necessary to achieve this result, are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the common market no longer stands; where the undertakings concerned commit a breach of an obligation, the Commission may revoke its clearance decision, acting pursuant to Article 6(3) (b) of the Merger Regulation¹².
72. In view of the foregoing, the Commission's decision in the present case must be conditional upon full compliance with the divestment of the BS' French GIM Business active in the market for professional medical publishing as set out in section 1 of the commitments annexed, since only by fulfilling them the structural change on the relevant markets may be achieved. The other undertakings constitute obligations, since they concern the implementing steps necessary to achieve the structural change intended.

VII. CONCLUSION

73. For the above reasons, the Commission has, subject to full compliance with the submitted undertakings, 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) and 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission
Mario MONTI, signed
Member of the Commission

¹² cf. the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

By hand and by fax: 00 32 2 296 4301

Dietrich Kleemann
European Commission – Merger Task Force
DG Competition
Rue Joseph II 70 Jozef-II-straat
B-1000 BRUSSELS

Dear Mr Kleemann,

Case M.3197 - *Candover/Cinven/BertelsmannSpringer* - Commitment to the European Commission

On 13 June 2003, Candover Partners Limited (“**Candover**”) and Cinven Limited (“**Cinven**”) submitted a Form CO notification on a proposed concentration between Candover, Cinven and BertelsmannSpringer Science + Media Group (“**BS**”), collectively “**the Parties**”, pursuant to Council Regulation (EEC) No. 4064/89 as amended by Commission Regulation (EC) No. 447/98 (the “**Merger Regulation**”)

Pursuant to Article 6(2) of the Merger Regulation, Candover and Cinven hereby provide the following Commitment (the “**Commitment**”) in order to enable the European Commission (the “**Commission**”) to declare the acquisition of joint control by the Candover and Cinven over BS compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation (the “**Decision**”).

This text shall be interpreted in the light of the Decision to the extent that the Commitment is attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98.

SECTION A. DEFINITIONS

For the purpose of the Commitment, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in the light of the Commission Notice on the concept of concentration under Council Regulation (EEC) No 4064/89.

Bertelsmann AG: Bertelsmann AG, incorporated under the laws of Germany, with its registered office at Carl-Bertelsmann-Straße 270, 33311 Gütersloh, Germany, and registered with the Gütersloh Regional Court under number HRB 3100.

BS: BertelsmannSpringer Science + Media Group, with its main office at Heidelberger Platz 3, 14197 Berlin, Germany, and consisting of the undertakings which are to be transferred under the terms of the Share Purchase Agreement concluded between Bertelsmann AG (and certain affiliates) and Wing Zweite Akquisition GmbH & Co KG on 12 May 2003.

Candover: Candover Partners Limited, incorporated under the laws of England and Wales, with its registered office at 20 Old Bailey, London EC4M 7LN, United Kingdom, and registered with the Company Register in the United Kingdom under number 1517104.

Cinven: Cinven Limited, incorporated under the laws of England and Wales, with its registered office at Pinner Hall, 105-108 Old Broad Street, London EC2 1EH, United Kingdom, and registered with the Company Register in the United Kingdom under number 2192937.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divestment Business: the business or businesses as defined in Section B and the Schedule that the Parties commit to divest.

Divestiture Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by the Parties and who has received from the Parties the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date on which Candover and Cinven acquire joint control of BS under the terms of the Share Purchase Agreement concluded between Bertelsmann AG (and certain affiliates) and Wing Zweite Akquisition GmbH & Co KG on 12 May 2003.

First Divestiture Period: the period of [...] from the Effective Date.

Hold Separate Manager: the person appointed by the Parties for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

KAP Global Publishers SA: a company that is the ultimate holding company acquiring BS and over which Candover and Cinven exercise joint control. KAP Global Publishers SA is incorporated under the laws of Luxembourg, with its registered address at 398 Rue d'Esch, 1471 Luxembourg, and registered with the Company Register of Luxembourg under number RCSL B.89.452.

Monitoring Trustee: one or more natural or legal person(s), independent from the Parties, who is approved by the Commission and appointed by Candover and Cinven, and who has the duty to monitor the compliance of Candover and Cinven with the conditions and obligations attached to the Decision.

Personnel: all personnel employed by the Divestment Business, listed in the Schedule.

Purchaser(s): the entity or entities approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] from the end of the First Divestiture Period.

SECTION B. THE DIVESTMENT BUSINESS

Commitment to divest

1. The Commitment is submitted on the understanding that it will be returned prior to the Commission issuing the Decision if on further investigation the Commission concludes that the proposed concentration does not give rise to serious doubts as to its compatibility with the common market in the area concerned or if otherwise no longer considered necessary. However, in the event that the Commission concludes that the proposed concentration does give rise to serious doubt as to its compatibility with the common market in the area concerned, Candover and Cinven commit to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 15. To carry out the divestiture, Candover and Cinven commit to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Candover and Cinven have not entered into such an agreement at the end of the First Divestiture Period, Candover and Cinven shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 24 in the Trustee Divestiture Period.
2. Candover and Cinven shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Candover and Cinven has entered into a final binding sale and purchase agreement, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 15 and if the closing of the sale of the Divestment Business takes place within a period not exceeding 3 months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitment, the Parties shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of the business as defined in the Schedule. The present legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business, described in more detail in the Schedule, includes:
 - (a) all tangible and intangible assets (including intellectual property rights), which contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business;
 - (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;
 - (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business (items referred to under (a)-(c) hereinafter collectively referred to as “*Assets*”); and
 - (d) the Personnel.

SECTION C. RELATED COMMITMENTS

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Candover and Cinven shall preserve the economic viability, marketability and competitiveness of the Divestment Business, and in accordance with good business practice, and shall minimise as far as reasonably possible any risk of loss of competitive potential of the Divestment Business. In particular Candover and Cinven undertake:
- (a) not to carry out any act upon their own authority that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;
 - (b) to make available sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;
 - (c) to take all reasonable steps, including appropriate incentive schemes (based on industry practice), to encourage all Personnel to remain with the Divestment Business.

Hold-separate obligations of Parties

6. Candover and Cinven commit, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses they are retaining (*inter alia* the medical professional publishing activities of Cinven in France) and to ensure that Personnel of the Divestment Business – including the Hold Separate Manager – have no involvement in any business retained and vice versa. Candover and Cinven shall also ensure that the Personnel does not report to any individual outside the Divestment Business.
7. Until Closing, Candover and Cinven shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the businesses retained by the Parties (*inter alia* the medical professional publishing activities of Cinven in France). Candover and Cinven shall appoint a Hold Separate Manager who shall be responsible for the management of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties (*inter alia* the medical professional publishing activities of Cinven in France).
8. To ensure that the Divestment Business is held and managed as a separate entity the Monitoring Trustee shall exercise the rights of Candover and Cinven as shareholders in the Divestment Business (except for its rights for dividends that are due before Closing), with the aim of acting in the best interest of the business, determined on a stand-alone basis, as an independent financial investor, and with a view to fulfilling the obligations of Candover and Candover under the Commitment. Furthermore, the Monitoring Trustee shall have the power to replace members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Candover and Cinven. Upon request of the Monitoring Trustee, members of the supervisory board or non-executive directors of the board of directors, who have been appointed on behalf of Candover and Cinven, shall resign as member of the boards or Candover and Cinven shall cause such members of the boards to resign.

Cash Management

9. To ensure that the Divestment Business is managed as a separate entity, its participation in the Bertelsmann AG and/or BS central cash management system shall be reviewed on appointment by the Monitoring Trustee. The Monitoring Trustee, after having heard the Parties, shall either:
- require the installation of sufficient measures to ensure BS does not, by operation of this facility on behalf of the Divestment Business, either receive competitively sensitive information or have

an ability to disrupt or compromise full economic viability, marketability and competitiveness through restricting or controlling cash flow, under the condition that such measures will need to be approved by the Commission; or

- if sufficient measures cannot be so installed, or if approval of the Commission is not obtained, require the severance of the Divestment Business from the central cash management system in a manner that does not compromise or disrupt the full economic viability, marketability and competitiveness of the Divestment Business.

Ring-Fencing

10. Candover and Cinven shall, to the extent possible and reasonably practicable, implement all necessary measures to ensure that they do not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. In particular, the participation of the Divestment Business in a central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. Candover and Cinven may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Candover and Cinven is required by law.

Non-solicitation clause

11. Candover and Cinven undertake, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Personnel transferred with the Divestment Business for a period of [...] after Closing.

Due Diligence

12. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Candover and Cinven shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process:
 - (a) provide to potential purchasers sufficient information as regards the Divestment Business;
 - (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

13. Candover and Cinven shall submit written reports in the English language on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 calendar days after the end of every month following the Effective Date (or otherwise at the Commission's request).
14. Candover and Cinven shall inform the Commission and the Monitoring Trustee on the preparation of any data room documentation, information memorandum and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

SECTION D. THE PURCHASER

15. In the event that the Commission concludes that the proposed concentration does give rise to serious doubt as to its compatibility with the common market in the area concerned, in order to ensure the continuation of effective competition, the Purchaser, in order to be approved by the Commission, must:
- (a) be independent of and unconnected to the Parties;
 - (b) have the financial resources and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
 - (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitment will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).
16. The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When Candover and Cinven have reached an agreement with a purchaser, they shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Candover and Cinven must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitment. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitment. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

SECTION E. TRUSTEE

I. Appointment Procedure

17. Candover and Cinven shall appoint a Monitoring Trustee to carry out the functions specified in the Commitment for a Monitoring Trustee. If Candover and Cinven have not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Candover and Cinven at that time or thereafter, Candover and Cinven shall appoint a Divestiture Trustee to carry out the functions specified in the Commitment for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
18. The Trustee shall be independent of the Parties, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Candover and Cinven in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Candover and Cinven

19. No later than one week after the Effective Date, Candover and Cinven shall submit a list of one or more persons whom Candover and Cinven propose to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Candover and Cinven shall submit a list of one or more persons whom Candover and Cinven proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 17 and shall include:
 - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under this Commitment;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

20. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Candover and Cinven shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Candover and Cinven shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Candover and Cinven

21. If all the proposed Trustees are rejected, Candover and Cinven shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 16 and 19.

Trustee nominated by the Commission

22. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Candover and Cinven shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

23. The Trustee shall assume its specified duties in order to ensure compliance with the Commitment. The Commission may, on its own initiative or at the request of the Trustee or Candover and Cinven, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

24. The Monitoring Trustee shall:
- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
 - (ii) oversee the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Candover and Cinven with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties, in accordance with paragraphs 5 and 6 of the Commitment;
 - (b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 7 of the Commitment;
 - (c) (i) in consultation with Candover and Cinven, determine all necessary measures to ensure that Candover and Cinven do not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Candover and Cinven as the disclosure is reasonably necessary to allow Candover and Cinven to carry out the divestiture or as the disclosure is required by law;
 - (d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and Candover and Cinven or Affiliated Undertakings;
 - (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
 - (iv) propose to Candover and Cinven such measures as the Monitoring Trustee considers necessary to ensure the compliance of Candover and Cinven with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;
 - (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, (a) potential purchasers receive sufficient information

relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and (b) potential purchasers are granted reasonable access to the Personnel;

- (vi) provide to the Commission, sending Candover and Cinven a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitment and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Candover and Cinven a non-confidential copy at the same time, if it concludes on reasonable grounds that Candover and Cinven is failing to comply with this Commitment;
- (vii) within [...] after receipt of the documented proposal referred to in paragraph 15, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.

Duties and obligations of the Divestiture Trustee

- 25. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 15. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Candover and Cinven, subject to the Parties' unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.
- 26. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in the English language on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Candover and Cinven.

III. Duties and obligations of the Parties

- 27. Candover and Cinven shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. In addition, the Trustee shall have full and complete access to any of the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitment and the Divestment Business shall provide the Trustee upon request with copies of any document. The Divestment Business shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
- 28. Candover and Cinven shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Candover and Cinven shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Candover and Cinven shall inform the Monitoring Trustee on possible purchasers, submit a

list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.

29. Candover and Cinven shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Candover and Cinven shall cause the documents required for effecting the sale and the Closing to be duly executed.
30. Candover and Cinven shall use their best endeavours to obtain from KAP Global Publishers SA the undertaking that KAP Global Publishers SA shall indemnify the Trustee and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against any liabilities arising out of the performance of the Trustee’s duties under the Commitment, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
31. At the expense of Candover and Cinven, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to the approval of Candover and Cinven (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Candover and Cinven refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Candover and Cinven. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 29 shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Candover and Cinven during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

32. If the Trustee ceases to perform its functions under the Commitment or for any other good cause, including the exposure of the Trustee to a conflict of interest:
 - (a) the Commission may, after hearing the Trustee, require Candover and Cinven to replace the Trustee; or
 - (b) Candover and Cinven, with the prior approval of the Commission, may replace the Trustee.
33. If the Trustee is removed according to paragraph 31, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 16-21.
34. Beside the removal according to paragraph 31, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitment with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

SECTION F. THE REVIEW CLAUSE

35. The Commission may, where appropriate, in response to a request from Candover and Cinven showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitment, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in this Commitment. Where Candover and Cinven seek an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Candover and Cinven be entitled to request an extension within the last month of any period.

SCHEDULE

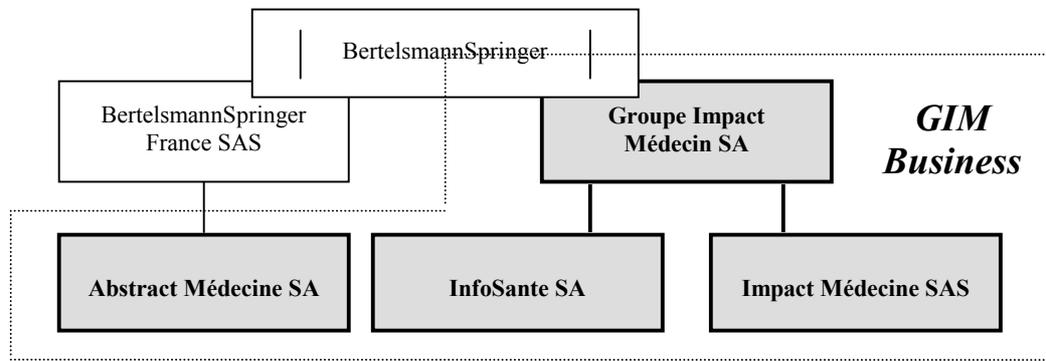
1. The Divestment Business as operated to date has the following legal and functional structure:

(a) The Divestment Business consists of the following legal entities:

- (i) Groupe Impact Médecin SA (“**GIM**”), a limited liability company incorporated under the laws of France (Registration Number B 351 790 118), and with its registered office at 1, Rue Paul Cézanne, 75008 Paris, France. GIM is presently part of BS.
- (ii) Abstract Médecine SA (“**AM**”), a limited liability company incorporated under the laws of France (Registration Number B 385 005 244), and with its registered office at 1, Rue Paul Cézanne, 75008 Paris, France. AM is a wholly-owned subsidiary of BertelsmannSpringer France SAS (which is part of BS and ultimately owned by Bertelsmann AG). AM is one the three operating companies. AM has been kept under the roof of BertelsmannSpringer France SAS for tax reasons.
- (iii) Impact Médecine SAS (“**IM**”), a limited liability company incorporated under the laws of France (Registration Number B 322 708 116), and with its registered office at 1, Rue Paul Cézanne, 75008 Paris, France. IM is a wholly-owned subsidiary of GIM and is therefore presently part of BS. The divestment of IM will therefore be effected indirectly by the sale of GIM. IM is one the three operating companies.
- (iv) InfoSante SA (“**IS**”), a limited liability company incorporated under the laws of France (Registration Number B 382 547 602), and with its registered office at 1, Rue Paul Cézanne, 75008 Paris, France. IM is a wholly-owned subsidiary of GIM and is therefore presently part of BS. The divestment of IS will therefore be effected indirectly by the sale of GIM. IS is one the three operating companies.

Together GIM, AM, IM and IS are referred to as the “**GIM Business**”

(b) The structure of the Divestment Business is as follows:



2. Following paragraph 4 of this Commitment, the Divestment Business includes, but is not limited to:

(a) the following main tangible and intangible assets:

As the Divestment Business will consist of the complete divestiture of GIM, AM, IM and IS, this will include all tangible and intangible assets currently held by GIM, AM, IM and IS.

Please see confidential [Annex 3] for an overview of the main tangible and intangible assets of GIM.

Please see confidential [Annex 4] for an overview of the main tangible and intangible assets of AM.

Please see confidential [Annex 5] for an overview of the main tangible and intangible assets of IM.

Please see confidential [Annex 6] for an overview of the main tangible and intangible assets of IS.

(b) the following main licences, permits and authorisations:

There are no applicable licences, permits and authorisations currently held by GIM, AM, IM or IS.

(c) the following main contracts, agreements, leases, commitments and understandings:

As the Divestment Business will consist of the complete divestiture of GIM, AM, IM and IS, this will include all contracts, agreements, leases, commitments and understandings currently held by GIM, AM, IM and IS.

For further details please see confidential [Annex 7].

(d) the following customer, credit and other records:

As the Divestment Business will consist of the complete divestiture of GIM, AM, IM and IS, this will include all customer, credit and other records of GIM, AM, IM and IS.

For further details please see confidential [Annex 8].

(f) the following Personnel:

As the Divestment Business will consist of the complete divestiture of GIM, AM, IM and IS, this will include all Personnel currently employed by these companies.

For further details please see confidential [Annex 9].

(g) Further Information on the Divestment Business

In addition, please find attached as confidential [Annex 10] the list of journals published by GIM, AM, IS and IM.