

***Case No COMP/M.3209 -  
WPP / CORDIANT***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 25/07/2003

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COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 25.07.2003  
SG (2003) D/231046

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.3209 – WPP/CORDIANT**  
**Notification of 25.06.2003 pursuant to Article 4 of Council Regulation**  
**No 4064/89<sup>1</sup>**

1. On 25 June 2003, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>2</sup> (the Merger Regulation), by which the undertaking WPP group plc (“WPP”, UK) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the Cordiant Communications Group plc (“Cordiant”, UK) by way of an agreed public bid announced on 19 June 2003.
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.

**I. THE PARTIES**

3. WPP is an international communications services group listed in both London and New York (NASDAQ), operating in 103 countries world-wide. WPP is active in communications services such as advertising, media investment management and public relations & public affairs. It is essentially a holding company whose operations are carried out by the relevant subsidiaries in each segment of activity.
4. The target company Cordiant is a public company listed in both London (CRI) and New York (CDA). Cordiant’s operations are divided into two business segments, advertising and integrated marketing, and specialist communications. As mentioned earlier, Cordiant holds a 25% stake in the Zenith Optimedia Group (“Zenith”), with the remaining 75% stake being owned by Publicis Groupe S.A., which holds sole control of that company. WPP will either not be acquiring this minority stake in Zenith at all, or upon acquiring it, will shortly thereafter dispose of it to the majority shareholder, Publicis Groupe S.A.

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<sup>1</sup> 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).

<sup>2</sup> OJ L 395, 30.12.1989 p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

## **II. THE OPERATION**

5. WPP announced on 19 June 2003 an acquisition by means of a scheme of arrangement (“the Scheme”) under which WPP will issue ordinary shares in exchange of ordinary shares held by Cordiant’s shareholders.
6. Upon application of WPP supported by Cordiant and based on the situation of financial distress of the target company, on 18 June 2003 the transaction has been granted a derogation from the suspension obligations provided for in Article 7(1) pursuant to Article 7(4) of the Merger Regulation. On that basis, an agreement was reached between WPP and a majority of bank lenders and with certain noteholders for the transfer to WPP of Cordiant’s debt as a preliminary step to the acquisition of Cordiant’s share capital. In addition, WPP has declared that the transaction (henceforth “the Transaction”) should not encompass Cordiant’s minority interest in Zenith Optimedia (“Zenith”) nor encompass the two businesses: Scholz & Friends and FD International, which Cordiant is expected to divest shortly thereafter.
7. The proposed acquisition of Cordiant should proceed either by way of a recommended scheme of arrangement (approved by a Court) or, should the same not be sanctioned by the Court nor approved by Cordiant’s shareholders, it could proceed by purchase of Cordiant’s undertakings from an administrator or receiver.

## **III. CONCENTRATION**

8. Following completion of the Scheme or the acquisition of the shares or business of Cordiant by other means, all of the issued and outstanding shares of Cordiant will be held by WPP (under the Scheme) or WPP will own all the assets and liabilities of Cordiant, excluding Cordiant’s shareholding in Zenith. The proposed concentration will for the purposes of the Merger Regulation result in the acquisition of sole control by WPP of Cordiant.

## **IV. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> ([...]). Each of WPP and Cordiant have a Community-wide turnover in excess of EUR 250 million ([...]), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. COMPETITIVE ASSESSMENT**

### **A. THE RELEVANT MARKETS**

#### a) Relevant product markets

#### ***Marketing communications services***

10. The principal economic sector involved and the only area of overlap between the parties’ activities is marketing communications services. As acknowledged by previous Commission’ decisions (for example WPP/Young & Rubicam), marketing communications services encompass a range of activities: advertising, information, insight and consultancy, public relations; consumer relationship management/event management, branding, identity and design, and other areas of specialist

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<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

communications. These activities are normally carried out by the agencies controlled by the companies concerned.

11. In line with previous Commission decisions<sup>4</sup>, according to the parties, all these services represent different methods for a business to communicate with a group of people, be they consumers/customers, the press, industry, other companies, government or other regulatory bodies. Clients can either use such services on a stand-alone basis for a particular project or issue, or as part of a wider strategy or campaign, and instruct either individual agencies or a number of agencies. Such services are provided through all types of media, including the Internet.

*Supply-side*

12. The parties contend that there is a high degree of supply-side substitutability between different types of marketing communications services. In general, even though the largest groups own many different agencies positioned within particular fields, these agencies, as with smaller independent agencies, will provide a range of services to clients. It is claimed as being rather unusual for an agency to specialise in providing only one particular type of service focused on one segment. This could be inferred from the significant blurring of the lines of division between these various activities, as many agencies, which focus on different segments of the market, can be considered to be in direct competition with each other. It is argued that both advertising agencies and PR agencies will advise clients on sponsorship and promotions opportunities, and can carry out strategic planning, branding, direct mailing and other types of marketing communications services. Likewise, there would be no reason to distinguish the provision of specialist communications advice, such as in the healthcare sector or for internet based services.

*Demand-side*

13. Similarly, the parties argue that there is a degree of demand side substitution between these different types of marketing communications services, as clients are able to use a number of types of service as alternatives to achieve the same goal of communicating with a group of people. In particular, it is argued that in the same way that agencies' advice will not necessarily be restricted to one particular area, the advice and solution that a client needs from an agency for a particular issue can be found in a range of different services, be it an advertising campaign, a public relations exercise to raise the public profile of such an issue, direct mailing customers or sponsorship, such as sponsorship of a conference concerning a particular issue. It may also include rebranding/identity promotions and providing literature to the target audience on the issue. Therefore, WPP argues that the distinction between the segments of this market is meaningless.
14. The market investigation has not established clear evidence as to the exact definition of the relevant product market. However the market investigation has shown that, concerning supply side substitutability, larger companies (through their various agencies) can offer the full range of marketing communication services, whereas smaller companies tend to specialise in a certain area of marketing communication services and do not offer the full range. It seems that in each division of marketing communication services there exist expert agencies. On the demand side, the market investigation has shown that each element of marketing communications services offering performs a specific function. However, it is not necessary to conclude whether

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<sup>4</sup> COMP/M.2000 WPP/Young & Rubicam

the market for marketing communications services has to be split up on the basis of type of marketing communication services as the competitive analysis would not substantially differ.

#### *Types of media*

15. Furthermore, the parties contend that no distinction should be made between different types of media (including the Internet). In this respect it is purported that all agencies are able to choose which would be the most appropriate media to communicate their client's message. Supply-side arguments would demonstrate that such a distinction would not have a bearing: campaigns will often be developed to use either a combination of media or one particular type of media, depending on factors such as the intended audience for the campaign and the budget allocated by a client to it. On the demand side, it is stated that all types of media can satisfy a client's need to communicate its message to its target audience<sup>5</sup>. All segments of the market would have significant competitive constraints on the others. Therefore, the parties contend that to divide the relevant market for marketing communications services into separate sub-markets by reference to different media/activities would be meaningless.
16. The market investigation has not provided clear evidence that the marketing communications market should be further segmented by type of media. However, there are indications that different media types may be complementary rather than interchangeable, since different media can address different audiences in different ways. In addition, there are indications that Internet could be a different media segment with its own specificity. However, as the competitive analysis would not substantially differ, it is not necessary to conclude whether the market for marketing communication services has to be subdivided by type of media.

#### ***Media buying (media investment management)***

17. In previous decisions in the advertising sector, the Commission has identified a separate market for “media buying”. This is considered to be a market which “includes purchasing time and/or space in various types of media [...] for clients running advertising campaigns. Media buying agencies will also usually provide media planning or strategic advice...” (see the Publicis/Bcom3 decision). There is no overlap between the parties’ activities in this sector. Cordiant has no interest in media buying activities other than through its minority stake in Zenith (which, for the reasons expressed above, will either be disposed of immediately or will not be acquired by WPP at all). Accordingly, there will be no change in the media buying market as a result of this transaction.
18. The market investigation has in general shown that while in some cases advertising and public relations are interchangeable, these marketing communications services are not interchangeable with media buying activities which are by their nature technical and are not directly related to the creation of an advertising campaign.
19. For the purpose of the present decision, it is not necessary to define the precise boundaries of the relevant product market, in particular whether or not media buying should be considered separately from marketing communications services, since the operation would not create or strengthen a dominant position however the product markets are defined.

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<sup>5</sup> IV/M.147 - *Eurocom/RSCG*, para 10

## b) Relevant geographic markets

20. The parties submit that, as accepted by the Commission in previous decisions (including the WPP/Young & Rubicam and Interpublic/True North cases) the relevant geographic market for marketing communications services remains largely national, on account of language differences, different media conditions in different countries, pricing differences between countries and the need to inform the public, government or other institutions and therefore plan a campaign on a national basis. The market investigation has in general supported the views of the parties.
21. In the decisions mentioned above, the Commission has left open the issue as to whether there could be a separate market for multi-national customers, wider than national in scope. Such a market would serve multinational customers, as they develop international advertising budgets and campaigns and may wish to access a network of marketing agencies through a single contact point. In its most recent decision (Publicis/Bcom3), the Commission stated: “the Commission's market investigation has not provided strong evidence that a distinct market exists for the provision of international services”. The market investigation concerning this notification has neither provided strong evidence that a distinct market for the provision of international services.
22. In any event, it is not necessary to consider the possible existence of a separate market for multi-national customers in the present case, as the impact on competition in such a market appear *prima facie* to be limited, given Cordiant's limited activities in serving the needs of multi-national clients. Therefore, the likely assessment of the transaction would not be materially affected, should such a separate market exist.
23. For the purpose of this decision it is not necessary to decide whether the markets are national or wider, since however they are considered, the operation will not lead to the creation or strengthening of a dominant position on any market.

## **B. COMPETITIVE ANALYSIS**

### ***Marketing communications services***

#### *Methodology*

24. The parties explained to the Commission that there is a general lack of market share data for the marketing communications services market. For the purpose of this notification, the parties have put forward a methodology (based on data for 2001 from *Advertising Age* to which they did some adjustments) for the calculation of market sizes and shares.
25. This methodology has been tested through the market investigation. The investigation has not indicated a clear view about the question whether the methodology of the parties is entirely correct. Given the above, the competitive assessment has been carried out on the basis of both the methodology proposed by the parties and alternative calculations of market size and shares put forward by the parties, at the request of the Commission, based on the most significant comments arising from the market test vis-à-vis the methodology of the parties. It can be concluded that under all different scenarios the figures were not substantially different and did not call for a material change of assessment.

#### *Market shares*

26. On the basis of the market share calculations of the parties, there will be five national markets on which the transaction will result in the parties' combined share being above 15%. Based on the market having a national geographic dimension, there are five affected markets (Austria, Ireland, Portugal, Spain and the UK) and only two (Ireland

and the UK) where their combined market share is above [15-20]% (in both cases in the region of [15-25]%).

27. In Austria, the parties have a combined market share of [15-25] % (WPP [10-20]%, Cordiant [5-10]%). Other important competitors such as OMC ([15-25]%), IPG ([10-20]%), Publicis ([5-15]%), Demner Merlicek & Bergmann ([0-10]%) and Grey ([0-10]%) are active on the market.
28. In Portugal, the combined market share of the parties is [15-25]% (WPP [10-20]%, Cordiant [0-10]%). Other important competitors such as IPG ([15-25]%), OMC ([10-20]%), Publicis ([10-20]%), Havas ([0-10]%) and Strat Comunicacao ([0-10]%) are present.
29. In Spain, the combined market share of the parties is [15-25]% (WPP [10-20]%, Cordiant [0-10]%). Other important competitors include IPG ([15-25]%), OMC ([10-20]%), Publicis ([5-15]%), Havas ([0-10]%) and Grey ([0-10]%).
30. In Ireland, the combined market share of the parties is [15-25]% (WPP [10-20]%, Cordiant [0-10]%). Other important competitors include OMC ([10-20]%), Havas ([5-15]%), Publicis ([5-15]%), IPG ([5-15]%) and Grey ([0-10]%).
31. In UK, the combined market share of the parties is [15-25]% (WPP [10-20]%, Cordiant [0-10]%). Other important competitors such as OMC ([10-20]%), IPG ([10-20]%), Publicis ([10-20]%), Havas ([5-15]%) and Grey ([0-10]%) are active on the market.
32. If the revenues for the businesses currently owned by Cordiant but which are being disposed of are excluded, there will be only 4 countries in which the parties' combined share is above 15% (Austria would fall away). Of these, only in one market (the UK), the combined share of the parties would be above [15-25]% (at [15-25]%).
33. In any of these affected markets the parties' combined shares are largely below the threshold for dominance. These markets have been assessed by the Commission as being fragmented markets (*Publicis/Bcom3* COMP/M.2785) and they will remain fragmented also post-merger with a number of strong competitors both at the national level and on a global basis.
34. If the market for marketing communications services is split up by type of service provided, the parties' activities only overlap in advertising in Austria, in advertising and public relations in Ireland, in advertising in Portugal, in advertising and direct and indirect communication service in Spain and in advertising, public relations, branding-identity-design and direct and indirect communication service in UK. In all cases there are other strong competitors active in these segments of the market. Furthermore, the market investigation has shown no elements that the parties would have particularly strong positions in individual type of services as opposed to the overall market for marketing communications services.
35. If the market for marketing communications services is split up by type of media used, the information put forward by the parties suggests that the positions of the parties and competitors would not substantially differ. If the market for marketing communications services via Internet is taken, the parties have shown that in Austria, Ireland, Portugal, Spain and UK there is a sufficient number of competitors active in this market. Furthermore, the market investigation has shown no elements that the parties would have particularly strong positions in individual type of media as opposed to the overall market for marketing communications services.

#### *Agency autonomy*

36. Furthermore, it has to be noted that in this market clients frequently adopt a multi-agency strategy, maintaining relationships with more than one agency in any country.

Within the WPP Group, all agencies operate autonomously and even in competition with each other. In effect, WPP, which is only a parent company, has no clients; all clients have a relationship at the operating level with an agency within the Group. The agency has complete autonomy on pricing and which work it will pitch for new accounts in competition with each other.

### **Media buying**

37. Regarding media buying, there would appear to be no overlap between the parties' activities. As stated above, Cordiant has a 25% minority interest in Zenith who is active in this market. This does not represent a controlling interest. In any event, WPP have declared that they will immediately divest any acquired interest in Zenith.
38. On the basis of the above, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or a substantial part of it in relation to the provision of marketing communication services or media buying in the EEA or any Member State therein.

### **VI. CONCLUSION**

39. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission  
Signed Mario MONTI,  
Member of the Commission