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*Case No COMP/M.3488 – 3i/ The Telegraph Group*

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**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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**Article 7(3)  
Date: 9.6.2004**





COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 9.06.2004  
C(2004) 202302

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 7(3) DECISION

**To the notifying parties:**

Dear Sirs,

**Subject : Case No COMP/M.3488 – 3i/ The Telegraph Group**

Request of derogation pursuant to Article 7 (3) of Council Regulation No. 139/2004<sup>1</sup>

1. I refer to the letter of Travis Smith Braithwaite of 28 May 2004, requesting, on behalf of 3i Group plc (3i) in advance of notification of a possible future concentration, a derogation from the obligation imposed by Article 7(1) of Council Regulation No. 139/2004 ("the Merger Regulation")<sup>2</sup> to suspend the implementation of that concentration until it has been declared compatible with the common market pursuant to a decision under Article 6(1)(b) or Article 8(2) or on the basis of a presumption according to Article 10(6). I refer also to the letter of Veronis Suhler Stevenson dated 4 June 2004 by which VSS requests that it be joined to the above-mentioned request of 3i.
2. The Commission may, upon request, pursuant to Article 7(3) of the Merger Regulation, grant a derogation from the above-mentioned obligation. In taking its decision, the Commission takes into account, *inter alia*, the effects of the suspension on one or more of the undertakings concerned by the concentration or on a third party, and the threat to competition posed by the concentration.

## **I THE FACTS**

### **The Parties**

3. 3i Group plc is a FTSE 100 venture capital and private equity company listed on the London Stock Exchange which holds investments in various sectors of industry and services.

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 24, 29.01.2004, p. 1.

4. Veronis Suhler Stevenson (VSS) is an investment bank with offices in New York and London which focuses on advising companies in the media, communications and information industries. VSS's private equity arm, Veronis Suhler Stevenson International Limited, manages private equity funds which invest in the same industries. It is not active in the UK market for national newspapers nor in upstream or downstream markets.
5. The Telegraph is a major UK newspaper publisher. It is the publisher of the largest quality daily newspaper in the UK, "The Daily Telegraph" and the second-largest Sunday newspaper in the UK, "The Sunday Telegraph". The Telegraph group achieved a turnover of approximately EUR 420 million, almost exclusively in the UK in the last financial year.

### **The proposed transaction**

6. The proposed acquisition of The Telegraph Group will be made by a new company, Newco, which will be controlled either solely by 3i Investments plc (a subsidiary of 3i) or jointly by 3i and Veronis Suhler Stevenson ("VSS").
7. The combined world-wide turnover of the 3i Group, VSS and the Telegraph Group exceeds EUR 5 billion (3i Group € 434, VSS €110, The Telegraph Group €420), and each of 3i VSS and the Telegraph Group has a Community-wide turnover of more than €250 million (3i € 896, VSS €270, the Telegraph Group €420). Although the Telegraph achieves more than two-thirds of its Community-wide turnover in the UK, this is no longer the case for 3i. The proposed transaction therefore has a Community dimension.

### **The reasons for the request**

8. Lazard & Co. Ltd (Lazard) is currently conducting an auction process for the sale of Hollinger International Inc. and/or its constituent parts, including The Telegraph Group.
9. 3i has informed the Commission that it is now through to the next stage of the sale process but that it will be required to complete the proposed acquisition without delay on or before 18 June and on a date which will be communicated to it by the seller. 3i understands that the timing constraints for completion of the proposed acquisition arising from ongoing litigation and involving the seller Hollinger International are such that the seller cannot accept a conditional contract. 3i also points out that the other remaining financial bidder for the Telegraph Group has been granted a derogation from the suspension obligation in Article 7 (1) of Council Regulation 139/2004.

## **II ASSESSMENT OF THE REQUEST**

10. In considering whether to grant a derogation of suspension pursuant to Article 7(3) of the Merger Regulation the Commission is required to take into account the likely effects of the suspension on one or more of the undertakings concerned by the concentration or on a third party and of the threat to competition posed by the concentration. A derogation can be granted before a notification has been filed.

#### Purported effects of a failure to grant the suspension

11. If a derogation from the suspension obligation imposed under Article 7(1) ECMR were not granted, 3i and VSS would effectively lose the opportunity to acquire the target on the sole basis of the acquisition by it/them being subject to ECMR approval.
12. The reason for this is that the seller insists on a statement that the bidder is able to execute a binding agreement without conditionality in regard to any competition issues. A derogation would thus contribute to create a level playing field between the different bidders.

#### Threat to Competition

13. The Telegraph's Group operations include The Daily Telegraph, The Sunday Telegraph, The Weekly Telegraph, telegraph.co.uk and related sites and The Spectator and Apollo magazines.
14. The Telegraph is active on the UK market for the publishing of quality newspapers. The Daily Telegraph has an average circulation of 920 000 copies a day (Monday to Saturday), its market share is estimated at around 41%, being followed by The Times (28%), and The Guardian (16%). For Sunday quality newspapers, The Sunday Telegraph ranks second with an average circulation of 710 000 copies. Its market share is estimated at 26%, after The Sunday Times (46%).
15. So far as the Commission can ascertain at this stage, the proposed concentration would not appear to constitute any threat of harm to competition. The concentration will neither lead to overlaps nor have vertical effects, as other companies controlled by 3i or VSS are not active in the same market as the target, in neighbouring markets or in upstream or downstream markets. 3i does control one company which is active in the newspaper sector, Local Press Limited which owns two regional newspaper businesses. These businesses, Century Press and Publishing Limited and The Derry Journal Limited together publish a total of seven regional newspapers in Northern Ireland and the Republic of Ireland. However it is well established that national newspapers, such as those published by The Telegraph Group, and local/regional newspapers, such as those published by Local Press Limited, are in different product markets.

#### Assessment

16. The 3i Group and VSS would suffer a serious disadvantage relative to other potential bidders for the assets if a derogation were not granted. They would be effectively excluded from the bidding process. On the other hand, prior completion of the transaction would not appear to pose any threat to competition. In view of the absence of any threat of harm to competition and the interest in establishing a level playing field between 3i and VSS other potential bidders, a derogation can therefore be granted in the present case.

### **III CONCLUSION**

17. Based on the above considerations and in accordance with Article 7(3) of the Merger Regulation, the 3i Group and VSS are hereby granted a derogation from the obligations imposed by Article 7(1) of the Regulation until the acquisition has been declared compatible with the common market by means of a decision pursuant to Article 6(1)(b) or 8(2) or a presumption pursuant to Article 10(6). The present decision is addressed to the 3i Group and VSS.

*For the Commission*

*(Signed)*

*Mr Mario Monti*

*Member of the Commission*