EN

Case No COMP/M.3817 - WEGENER / PCM / JV

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 07/07/2005

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) and 6(2)
DECISION

To the notifying party

Dear Sir / Madam,

Subject: **Case No COMP/M.3817 – Wegener / PCM / JV**
Notification of 19 May 2005 pursuant to Article 4 of Council Regulation No 139/2004

1. On 19/05/2005, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation No 139/2004[1] ("the Merger Regulation") by which the undertakings PCM Holding B.V. ("**PCM**") and Koninklijke Wegener N.V. ("**Wegener**") acquire joint control of a newly created company constituting a joint venture ("**JV**"). PCM and Wegener are hereinafter referred to as "**the Parties**". The Dutch competition authority, *Nederlandse Mededingingsautoriteit ("**DCA**")* has not requested a referral of the case pursuant to Article 9 of the Merger Regulation.

2. In the course of the proceedings, the Parties submitted undertakings designed to eliminate competition concerns identified by the Commission. After examination of the notification, and in the light of these modifications, 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 the functioning of the EEA Agreement.

I. THE PARTIES

3. PCM is active in the publishing of regional and national daily newspapers, free sheets, books and the development and sale of educational and professional

1 OJ L 24, 29.1.2004 p. 1

software in The Netherlands. PCM is controlled by British investment group Apax, which is ultimately owned by the Hirzell Trust, an independent trust organised under the laws of Guernsey[2].

4. Wegener is active in the publishing of regional daily newspapers, free sheets and special interest magazines and the development and selling of internet products and the offering of graphical products and services in The Netherlands. In the direct marketing sector its subsidiaries are active in The Netherlands, Belgium, France, the United Kingdom and Scandinavia. Certificates of shares of Wegener are listed on the Euronext stock exchange in Amsterdam.

II. THE OPERATION

5. Based on a Memorandum of Understanding of 5 April 2005, the Parties will establish a JV, into which they will contribute one of PCM's national daily newspaper titles (Algemeen Dagblad), all of PCM's three regional newspapers (Rotterdams Dagblad, Rijn en Gouwe and De Dordtenaar) and two of Wegener's regional daily newspapers (being four titles, as each of those dailies has two local editions, Utrechts Nieuwsblad/Amersfoortse Courant and Haagsche Courant/Goudsche Courant). PCM will hold an estimated share of 63% in the new entity, whereas Wegener will have a 37% shareholding.

6. Through the JV, the Parties will publish a new "national-regional" daily newspaper in The Netherlands. Its 19 separate editions will combine a national segment common to all of The Netherlands with local news. The main focus of the newspaper will be on the Randstad area[3]. Outside the Randstad, a purely national edition will be available. Amsterdam will not have a local edition when the newspaper is launched, however, this should come in time.

III. CONCENTRATION

7. The Parties shall have equal voting power in any body of the JV in which they can exercise voting rights. In addition, PCM and Wegener will have *de facto* veto rights over commercial strategic decisions within the meaning of the Commission's Notice on the concept of concentration[4]. The JV agreement will be entered into for an indefinite period of time. Furthermore, from an editorial perspective, the JV will be independent from its parent companies and will have its own editorial staff, chief editor and editorial statute, a full team of dedicated full time employees and its own management. Although some services (e.g. printing and distribution) will be provided to the JV by its parents, its activities in the readers market are completely independent from the activities of its parent companies given that the JV will have an independent editorial board. Moreover, the JV will set the prices for its newspaper (single copy and subscriptions) as well as for the sale of national

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2 See Case N° COMP/M.3452 – Apax / PCM Uitgevers, Commission decision of 25/06/2004.

3 The Randstad is the built-up area in The Netherlands between Dordrecht, Rotterdam, The Hague, Amsterdam and Utrecht. It is the most densely populated area of The Netherlands. The 19 editions will be in the Randstad; most major Dutch cities are in the Randstad and will be covered by a local edition.

4 Commission Notice on the concept of concentration under Council Regulation (EEC) N° 4064/89, OJ C 66/5, 2 March 1998.

and regional advertisements. On the basis of all relevant information that the Parties have submitted in this context, the new entity must be qualified as a full function joint venture. The operation, therefore, constitutes a concentration pursuant to Article 3(4) of the Merger Regulation.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5,000 million[5]. Each of the Parties have a Community-wide turnover in excess of EUR 250 million (PCM: EUR […] million in 2003; Wegener: EUR 829.078 million in 2003, EUR 797.690 million in 2004), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State (PCM: EUR […] million in 2003; Wegener: idem. as world-wide figures). The notified operation therefore has a Community dimension.

V. RELEVANT MARKETS

9. As regards the sales to readers of daily newspapers, the activities of the JV and both parent companies are overlapping. In addition, both parent companies and the JV will be active in the market for the sale of national advertisement space in national daily newspapers in the Netherlands. Moreover, both parent companies carry out, to a significant extent, activities in the market for printing of daily newspapers which is upstream of the activities of JV. In internet advertising, the activities of the Parties and the JV are minor only. Finally, both parent companies will retain newspaper distribution activities.

The readers market for (national and regional) daily newspapers

Product market

10. According to past Commission practice, from a reader's perspective, national daily newspapers constitute a market (at least in the UK, France and Germany) separate from regional newspapers and magazines[6]. In the *Newspaper Publishing* case, it was stated that, as far as the UK is concerned, there are three segments identified within the national newspaper market: popular tabloids, mid-market titles and the quality segment. In the *Gruner + Jahr/Financial Times* case, the Commission indicated that national daily newspapers can be further divided into different categories on the basis of content, editorial line or quality of the publication. However, due to possible overlaps between certain information contained in the newspapers, the distinction between different types of newspapers can to some extent be blurred. In the *Recoletos/Unedisa* case, the Commission considered that daily press in Spain could be divided, according to content, into three main categories: general information, sports and financial daily newspapers. Furthermore, the editorial line of the newspaper or the quality of the publication

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5 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).

6 Case N° IV/M.423 - Newspaper Publishing, Commission decision dated 14.03.1994; Case N° IV/M.665 – CEP/Groupe de la Cité, Commission decision dated 29/11/1995; Case N° IV/M.1455 - Gruner + Jahr/Financial Times, Commission decision dated 20/04/1999.

(quality press as opposed to tabloids) could also been seen as a criterion in some countries[7].

11. As regards The Netherlands, in two decisions adopted in 2000[8] the Dutch Competition Authority (DCA) stated that there are indications of a separate market for regional daily newspapers, as well as a market for regional and national daily newspapers together. In regions where regional daily newspapers overlap, a regional daily newspaper is the closest substitute for another regional daily newspaper and they can constitute a separate segment. However, the DCA concluded also that all national and regional daily newspapers published in The Netherlands compete and that a further market segmentation based on the editorial line of the newspaper or the quality of the publication was not required.

12. The Parties are of the opinion that the boundaries between the different markets in the newspaper sector have eroded during the last years. The Bedrijfsfonds voor de Pers ("The Press Fund")[9] has recently taken as its starting point of discussion a market for regional and national daily newspapers. The Parties also argue that it is becoming more common in The Netherlands to publish regional editions of a national newspaper, the introduction of the JV being an example of this trend[10]. Also, regional newspapers are said to provide international and national news at a level comparable to that of national newspapers. Moreover, the Parties point out that national and regional newspapers cost the same everywhere in their distribution area. Furthermore, according to the Parties, the market for national and regional daily newspapers should also include free daily newspapers[11].

13. The Parties also submit that, in The Netherlands, a division of the newspaper market according to content, editorial line or quality would be difficult to make since all daily newspapers can be considered to be mid-market or quality titles. They argue that there is no major difference with regard to the content of the newspapers: there are no national daily sports newspapers and there is only one Dutch financial daily paper[12].

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7 Case N° IV/M.1401 - Recoletos/Unedisa, Commission decision dated 01/02/1999.

8 De Telegraaf/De Limburger, case 1538, DCA decision dated 12.05.2000; Wegener Arcade/VNU Dagbladen, case 1528, DCA decision dated 13.03.2000.

9 A public body whose objective is to maintain and stimulate diversity of the press.

10 Other examples, although on a smaller scale, are the introduction of a regional edition of the national daily newspaper De Telegraaf in the region of Twente and in the cities of Amsterdam and Rotterdam (and soon also in The Hague), and the introduction of a regional edition of the free daily newspaper Metro in Amsterdam and in Rotterdam.

11 According to a study published by the University of Amsterdam (2004), the circulation of free newspapers has increased from 515 000 copies in 1999 to 696 000 in 2004. The same study notes that free daily newspapers are responsible for a loss of sales by the four biggest national morning papers of 70 000 copies in five years as a result of the introduction of free newspapers.

12 Het Financieele Dagblad.

14. Having regard to the above, the Parties submit that, as far as The Netherlands are concerned, the market for newspapers includes national, regional and free newspapers.

15. According to the market investigation carried out in the present case, from the reader's perspective, although interaction between the two segments cannot be overlooked, free newspapers do not belong to the same product market as paid for newspapers, *inter alia* due to their different content (short, concise news facts that can easily be consumed, virtually all content is bought from the ANP press service), the young audience (typically 18-34 years) and the format.

16. Moreover, the market investigation has shown that, from a reader's perspective, although loyalty to newspapers is particularly high, competition exists to some extent between national newspapers and national newspapers having a regional edition and the latter and regional newspapers. Regional newspapers of different regions do not compete with each other. Furthermore, competition between national newspapers without regional editions and regional newspapers appears to be almost inexistent.

17. As far as the Randstad region is concerned, for the reasons explained in paragraph 25, there is more competition between national newspapers and regional newspapers than in the rest of the country.

18. In addition, a distinction may be justified based on the specific type of content (e.g. the financial daily, Het Financieele Dagblad) or audience (e.g. Nederlands Dagblad, with predominantly Christian readers).

19. Having regard to the above, it can be concluded that, although free newspapers influence the degree of penetration of paid for newspapers and can constitute a competitive constraint, paid for newspapers do not belong to the same product market as free newspapers. Paid newspapers can be further divided into: a market for regional newspapers which are in competition with regional editions of national newspapers, and a market for national newspapers which includes national newspapers with regional editions and national newspapers without regional editions. The market could be further subdivided into specialised newspapers and general information newspapers.

20. However, for the purpose of this decision it is not necessary to decide on the exact product market definition given that in any case the concentration will not significantly impede effective competition in the common market or in a substantial part of it.

Geographic market

21. The Commission always stated in the past that the relevant geographic market for daily newspapers is national in scope (or limited to language areas) given language and cultural specificities and the focus of national newspapers on national issues[13].

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[13] Cf. footnotes 6 and 7.

22. As regards The Netherlands, in 2000 the DCA in cases *Wegener Arcade – VNU Dagbladen* and *De Telegraaf – De Limburger* considered the relevant geographic markets to be regional. In particular, the overlapping distribution areas of the relevant newspapers of the parties were considered in both cases. In the former, this concerned the provinces of Gelderland and Zeeland respectively, whereas in the latter case this concerned the province of Limburg. Specific attention was paid to the different so-called Cebuco-areas or the so-called nodal areas grouped around an economic core[14].

23. According to the Parties, publishers of regional newspapers compete with publishers of national newspapers and national newspapers cannot price discriminate within the national territory. This implies that the relevant geographic market is the entire territory of The Netherlands given that conditions of competition are homogeneous in this area. The Parties also state that the transaction could in theory also be analysed at the level of the Randstad region or at the level of the core distribution area of all the involved titles (the Randstad region excluding Amsterdam), although in their view these regions do not constitute separate geographic markets.

24. The market investigation has confirmed that, as far as regional newspapers and regional editions of daily newspapers (to the extent that they compete with regional newspapers) are concerned, the relevant geographic market is regional or even local in scope. As regards national newspapers the relevant geographic market is national in scope.

25. As regards the situation in the Randstad region, it has a number of peculiarities that leads the Commission to conclude that it may constitute a relevant geographic market. People living in this area feel less strong bonds with the region they live in, a relatively larger percentage of the population in the urban areas is between 20 and 29 years old and they are less interested in regional news than they are in national and world news. This region is characterised by a more significant decline in circulation of daily newspapers compared to the rest of The Netherlands and a larger percentage of sales of national newspapers compared to regional newspapers. Also, there is more competition between national newspapers and regional newspapers than in the rest of the country. Under these circumstances, national newspapers such as De Telegraaf have started to publish regional editions of national newspapers in order to gain market share from regional newspapers in this saturated market.

26. However, in the present case it is not necessary to decide whether the Randstad region constitutes a relevant geographic market given that the concentration will not significantly impede competition in the common market or in a substantial part of it under any possible geographic market definition.

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14 Cebuco-areas are a central concept in statistics on the Dutch newspaper sector. Cebuco is a marketing association for Dutch daily newspapers that gathers statistics about the distribution of daily newspapers in The Netherlands. It divides The Netherlands in so-called distribution centres ("verzorgingscentra") and distribution areas ("verzorgingsgebieden"). A distribution centre is a municipality that from an economic, cultural and social perspective fulfils a central position in relation to surrounding municipalities. These municipalities together, form the distribution area. There are 50 distribution areas in The Netherlands. Nodal areas form a further refinement of the distribution areas. There are 81 nodal areas in The Netherlands.

The market for advertisement space in daily newspapers

Product market

27. The Commission stated in the past that the sale of advertisement space in national daily newspapers constitutes a separate market. In particular, the Commission considered that there are factors that could suggest that the sale of advertisement space in the written press can be considered a distinct market[15].

28. As far as the Dutch market is concerned, the DCA has concluded in case *Wegener Arcade-VNU Dagbladen* and in case *De Telegraaf-De Limburger* mentioned in paragraph 11 that there is a relevant product market for advertisement space for regional and local advertisements in regional and local papers (regional daily papers, free sheets and theme papers). Furthermore, in both decisions reference is made to two previous decisions of the Director-General of the DCA in the same proceedings, concluding that advertisement media that offer a national reach cannot be considered a part of the same market as media with a regional or local reach. However, this matter was not addressed in further detail, as in both transactions no competition concerns had been identified in respect of the sales of advertisement space with a national reach.

29. The Parties agree with this market definition as considered by the DCA and are of the opinion that it would also include the sale of advertisement space in the free daily newspapers. The Parties submit, in line with BBC De Media en Reclame Bank[16], that an advertisement is considered to be national if it fulfils any of the following criteria: (i) it is a communication from a manufacturer or an importer, (ii) the advertised product or service is available nation-wide, (iii) it stems from a retailer associated with the Council for Retail and Wholesale Business, (iv) it stems from a chain or a franchise organisation which has at least 25 branches in The Netherlands spread over at least five provinces or (v) it stems from retailers advertising on nationally broadcasted TV channels. The Parties argue that this definition has been accepted by the majority of undertakings active in the media sector and can be considered as a standard in the industry. Advertising that does not fall under any of these criteria would then be considered regional. There are some regional advertisers (e.g. large retailers) that advertise on a national level due to the fact that they draw customers from the entire territory of The Netherlands. However, such advertisers are classified as a regional advertiser due to the definitions used in the advertising industry.

30. The enquiry carried out by the Commission has confirmed the Parties' view.

Geographic market

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15 Case N° IV/M.1401 - Recoletos/Unedisa, Commission decision dated 01/02/1999, paras. 26-28.

16 BBC De Media en Reclame Bank (BBC) is a leading research company in the field of media expenditure in The Netherlands, http://www.bbc-adex.nl/.

31. According to the Commission's decisional practice, due to cultural barriers, the relevant geographic market for the sales of advertisement space is national in scope[17].

32. As regards regional and local advertisements, the DCA has considered in the past that, from a geographical perspective, transactions should be evaluated on the basis of where the distribution areas of the Parties involved overlap. In doing so, the regional differences in competitive pressure can be taken into account, based on the market position of the publishers that are active in that area.

33. The Parties submit that the relevant geographic market for national advertisements is national in scope. As regards regional advertisements, the Parties submit that any advertisement that does not qualify as a national advertisement (according to the criteria set out in paragraph 29 above) must be considered regional. In particular, the Parties have explained that the relevant geographic scope of the market for regional advertisements is determined by the specific needs of the regional advertiser. These specific needs would normally be regional/local in scope, with the exception of some large retailers that also advertise in national newspapers in order to attract customers from all over the country. As regards this particular type of advertiser which advertises both in regional/local newspapers of "their" region and in national newspapers, the geographic scope would be considered national to the extent that they want to reach a substantial part of the Netherlands. As regards the geographical scope of regional/local markets, in the media sector the segmentation that is generally used and referred to most frequently is Cebuco's segmentation, as the conditions of competition seem to be relatively homogeneous in these areas. In any event, as regards regional/local advertisers (that do not need to advertise nationally), the areas where the activities of the JV and the Parties' activities overlap do not constitute substantial parts of the common market.

34. The market investigation has confirmed the Parties' view.

The market for printing daily newspapers

<u>Product market</u>

35. The Commission has stated in the past that rotogravure printing constitutes a product market different from offset printing (COMP M. 3322 "Polestar/Prisa/Inversiones Ibersuizas/JV", COMP M. 3178 "Bertelsmann/Springer/JV"). Heatset-offset and coldset-offset are different printing techniques. Heatset-offset has in the past been used for products with a smaller number of pages such as books, magazines and advertising. Vertically-integrated newspaper printing presses in The Netherlands use coldset-offset technique. The Parties submit that the relevant product market is that of coldset-offset printing and note that the market could be defined more widely as the rotary printing market, due to growing competition from rotogravure printers, particularly concerning newspapers weekend supplements and advertising flyers.

<u>Geographic market</u>

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[17] Cf. footnotes 6 and 7.

36. As regards the relevant geographic market the Parties submit that the rotary-offset market is national but possibly European in scope. The DCA noted in the *Wegener Arcade-VNU Dagbladen* decision that for newspapers in particular, the first editions can be transported at much greater distances than the last editions and it found that there may exist competitive pressures from bordering countries.

37. In the present case it is not necessary to take a position on the relevant product and geographic markets given that the transaction will not significantly impede effective competition in the common market or in a substantial part of it.

Distribution of newspapers

Product market

38. Both parent companies will retain newspaper distribution activities. The Parties submit that neither the Commission nor the DCA have specifically considered markets for the distribution of newspapers. The Parties are therefore of the view that the distribution of newspapers should not be considered a distinct market.

Geographic market

39. The Parties submit that the geographic scope of a market for the distribution of newspapers would be wider than national due to the fact that cross-border distribution takes place, with the import of papers from abroad into The Netherlands and distribution of newspapers for companies into countries bordering The Netherlands.

40. In the present case it is not necessary to take a position on the relevant product and geographic market definitions, given that the transaction will not significantly impede effective competition in the common market or in a substantial part of it.

VI. ASSESSMENT

The readers market for daily newspapers

41. The overall daily newspaper market in The Netherlands is characterised by three major groups that each have around one third of the market: De Telegraaf Media Groep, PCM and Wegener. The remainder is represented by smaller players such as NDC (Noordelijke Dagblad Combinatie), Het Financieele Dagblad and Nederlands Dagblad. Additionally, in The Netherlands two free dailies are distributed: Metro and Sp!ts.

42. In terms of titles, De Telegraaf publishes its national general information newspaper “De Telegraaf” as well as a number of regional newspapers and the free newspaper Sp!ts. PCM’s national newspaper titles are: De Volkskrant (largest), followed by Algemeen Dagblad (to be contributed to the JV) and NRC Handelsblad; Trouw is its smallest national newspaper. Its regional newspapers are to be contributed to the JV: Rotterdams Dagblad, Rijn en Gouwe and De Dordtenaar. Wegener currently publishes regional newspapers in a number of different regions in The Netherlands, including Utrechts Nieuwsblad/Amersfoortse Courant and Haagsche Courant/Goudsche Courant that are to be contributed in the JV.

43. The newspaper sector in The Netherlands is undergoing similar changes as those witnessed in other countries. Younger people tend to attach increased importance to information and news supplied by broadcast and Internet media. In a fast-paced environment, they also devote less time to reading daily newspapers and turn to free and/or more accessible dailies. Overall, the number of paid copies of dailies has decreased by roughly one percent per year between 1992 and 2002. The fall has been more pronounced since 2002; at around 5% per year, but a substantial part of this acceleration appears attributable to the economic situation in The Netherlands.

44. It is an established pattern that subscription renewals are hit in periods of economic downturn, expenses on newspapers being more readily adjustable than others and seen as not belonging to the category of essentials. There is also a pattern of sharing with family or neighbours for instance, which tends to limit the impact of paid circulation reduction on readership. As indicated by the Parties[18], also, "*one of the main reasons for readers to unsubscribe from a newspaper is the price*" and prices of newspapers in The Netherlands have constantly increased during the last years.

45. It should be noted that The Netherlands are characterized by a very particular situation when it comes to press and press circulation. The percentage of readers of dailies in The Netherlands is one of the highest in the world. The paid circulation is very high, 59 daily newspapers being distributed per 100 households in The Netherlands. Additionally, the total distributed national circulation, including passing-on, puts the reach of the Dutch daily newspapers at 73 percent of households[19]. Also, The Netherlands have the highest subscription rate in the world, with around 90% of the daily newspapers being sold through subscription.

46. This high subscription rate also goes with a very high stability in the readership, increased further by the very high average duration of those subscriptions: [50 – 70%] of those acquiring a PCM newspaper have a running subscription for more than ten years, and more than half of those are subscribed for more than 20 years. Figures tend to be higher for regional newspapers, with 40% of the subscribers having a more than 20 year subscription.

47. Overall, loyalty to newspapers, in particular regional newspapers, appears particularly high and there are no indications that this loyalty is less pronounced in the Randstad. Accordingly, there is limited substitution, and indeed competition, between newspapers. Nevertheless, as already indicated in paragraphs 16 and 17, in spite of the strong consumer loyalty, some competition exists at regional level, between regional newspapers and regional editions of national newspapers. Moreover, in particular in the Randstad region national newspapers may also compete with regional newspapers, given the strong national dimension of such newspapers.

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18 Form CO page 115.

19 N.V. Holdingmaatschappij De Telegraaf, annual report 2004, p.18.

48. However, competition between national newspapers without regional editions and regional newspapers is almost inexistent since historic consumer switching behaviour shows that switching between national newspapers and regional newspapers is negligible, except for the Randstad region where some competitive pressure is exercised by national newspapers.

49. The Parties submit that, with regard to national newspapers, although one current national daily newspaper (Algemeen Dagblad) will stop being published, it will be replaced by another daily newspaper with a national daily circulation. With regard to regional newspapers, the involved regional newspapers will remain unaffected by the JV because the regional editions of the JV's newspapers will function as exact replacements of the current regional newspapers.

50. The market investigation carried out by the Commission has shown that, as regards the regional newspaper segment (which would include regional newspapers and regional editions of national newspapers, although in the Randstad it could also include national newspapers), the geographic dimension is regional/local in scope. The limited areas in the Randstad where the Parties' activities overlap (Utrecht-Zeist-Culemborg-Woerden, Amsterdam-Purmerend, Rotterdam-Schiedam, Leiden-Alphen a/d Rijn, Gouda and Gorinchem) do not constitute, individually or jointly, a substantial part of the common market. In the rest of the Dutch territory there will be no overlap between the regional papers and the regional editions of national newspapers of the Parties. For these reasons, the concentration does not raise serious doubts as to its compatibility with the common market in the regional newspaper markets.

51. As regards the Randstad region, considering a market which includes both national and regional newspapers, following the merger the most important overlaps will take place in the areas of Delft and Gouda (Cebuco regions 30 and 33) where all regional newspapers of Wegener and PCM as well as the national newspaper of PCM, Algemeen Dagblad, will be contributed to the JV. The same will be the case in Rotterdam-Schiedam (Cebuco region 28). However, in this particular area, Wegener's market share before the merger was negligible (0.8%). The effect of the transaction here will essentially be an internal restructuring of PCM which will combine in the JV its regional newspaper Rotterdams Dagblad with its national newspaper Algemeen Dagblad. As a result of this combination, the market share of the JV will be 69% and PCM's 17,3% in Rotterdam-Schiedam. It should also be pointed out that, within the Cebuco regions where both PCM and Wegener publish regional newspapers, the specific territories where these newspapers are published do not overlap, except in Gouda (where PCM publishes Rijn en Gouwe and Wegener publishes Goudsche Courant). Significant overlaps will also be the case in The Hague (Cebuco region 29), Amersfoort-Harderwijk (Cebuco region 20) and Utrecht-Zeist-Culemborg-Woerden (Cebuco region 19) due to the presence of Algemeen Dagblad and one or more regional newspapers of Wegener. However, since the above-mentioned cebuco areas do not constitute a substantial part of the common market, the transaction does not raise serious doubts as to its compatibility with the common market.

52. Against this background, the competitive impact of the creation of the JV could conceivably be the elimination of potential competition in those regional areas where Wegener is active, notably if PCM through regional editions of its national newspaper De Volkskrant were to enter these regional markets. As is evidenced by

the investigation, however, this possibility can virtually be ruled out. Last year PCM attempted to enter the region of the city of Utrecht with a weekly regional section in its national paper De Volkskrant, but due to the significant costs involved compared to only a minor increase in the number of subscriptions the attempted entry failed and the project was abandoned. It is unlikely that there would be any further attempts by PCM to enter regions with regional editions of its national newspapers.

53. Under these circumstances, it is not to be expected that the transaction will significantly impede competition in the common market or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.

The market for national advertisement space in daily newspapers

54. There is only very limited overlap in regional advertising in most of the different distribution areas where the activities of the Parties overlap: Utrecht-Zeist-Culemborg-Woerden (Cebuco region 19), Amsterdam-Purmerend (Cebuco region 21), Rotterdam-Schiedam (Cebuco region 28) and Leiden-Alphen a/d Rijn (Cebuco region 31), except in Gouda (Cebuco region 33) and Gorinchem (Cebuco region 34). In any event, since such isolated areas do not constitute a substantial part of the common market, the transaction does not raise serious doubts. Moreover, the local areas *within* the Cebuco regions covered by each regional newspaper of the Parties' do not overlap, with the exception of Gouda where both Rijn en Gouwe, belonging to PCM, and Goudsche Courant, belonging to Wegener, are distributed. This means that, prior to the merger, advertisers who wanted to advertise at local level were already faced with local monopolies and the merger does not change this. Finally, regional advertisers that advertise at national level will still have the same number of national newspapers available for national coverage as before the merger. For these reasons, the Commission’s analysis below is focused on national advertising.

55. In the market for national advertising, some daily newspaper publishers directly sell advertisement space to national advertisers, and others offer advertisement space through Nationale Regiopers (NRp)[20].

56. On the seller side the market is highly concentrated, whereas it is much less so on the buyer side. Indeed, for national advertising, there are currently only three sellers, i.e. De Telegraaf for its national newspapers, PCM for its national and regional newspapers and the rest and thus the bulk of the newspapers are included

[20] NRp is a JV of 35 regional daily newspapers (including Wegener and De Telegraaf’s regional newspapers) of 15 regional publishers throughout The Netherlands. NRp takes care of the joint sales and marketing activities of associated regional newspapers in the market for advertisement space for national advertisements. NRp does not set its own advertisement rates but instead calculates its rates on the basis of the rates of the associated regional newspapers. NRp was set up in 1998 partly in response to market demand from advertisers and media selling offices for a more simple and transparent system for national advertising in regional titles, and partly due to perceived competition from the national daily newspapers in advertising sales. The latter was due to the then inability of regional newspapers to present a competing alternative product to the national daily newspapers and the large amount of commercial red tape involved in placing adverts with different regional newspapers (i.e. the high transaction costs related to negotiating with individual newspaper publishers). This cooperation was found by the DCA to fall outside the Article 6 Dutch Competition Act restriction on anti-competitive agreements between undertakings (which mirrors Article 81 of the EC Treaty).

in the co-operative structure NRp. NRp represents [40 - 50%] of the sale of national advertising in regional newspapers[21]. In total, PCM, NRp and De Telegraaf account for [80 – 90%] of the total sales of national advertising in 2004.

57. On the buyer side, compared to other countries, concentration remains still somewhat limited. For instance, the 8 main media bureaus represent [80 – 90%] of the market, but the main bureau represents only [10 – 20 %] of the market and the 8th accounts for [5 – 15%].

58. On the basis of a product market for the sale of advertisement space for national advertisements in regional and national daily newspapers, the situation (expressed in value) is set out in the table below. As a result of the transaction, the Parties will be able to jointly control 50% of the national advertising market, whereas the Telegraaf represents one third.

	Before the transaction (2004)	After the transaction
PCM	[20 – 30 %]	[10 – 20 %]
Wegener	[20 – 30 %]	[20 – 30 %]
JV	-	14%
De Telegraaf	[30 – 40 %]	[30 – 40 %]
Metro	[5 – 15 %]	[5 – 15 %]
NDC (Noordelijke Dagblad Combinatie)	[0 – 10 %]	[0 – 10 %]
Others	[0 – 10 %]	[0 – 10 %]

59. Overall, advertising in the newspaper sector has been very dynamic. Gross media expenditure for paid-for daily newspapers has jumped from EUR 396 million in 1995 to EUR 672.9 million in 2004, i.e. a massive 70% increase. In recent years, an increase in discounts has led to an attenuation of the overall increase. Those dynamics have profited both the regional and national newspapers, as 43% of the national advertising is carried out in regional newspapers, predominantly Wegener's (see also paragraph 61 below).

60. The strong degradation in economic growth and increase in unemployment since 2000 appears to have led to a stabilisation and in some cases to a reduction of advertising prices. However, volumes for national advertisements have continued to rise in 2004. On balance, these developments in the dailies market resulted in decrease in advertising volume of 1.5% and a decline in advertising revenue of 6.4%.

21 This includes all of Wegerer's sales as well as [20 – 30%] of De Telegraaf's sales.

61. Regional newspapers play a key role in the market for national advertising, with nearly half (43%) of the turnover for national advertising and 62% of volume in 2004. This explains why Wegener, despite having no national newspaper, represents nearly as much as De Telegraaf group in terms of national advertising.

62. The Commission notes that Wegener and PCM will retain, to a significant extent, activities in the same market as the JV (national advertising). As a result, there is the risk that the concentration might have as its effect the co-ordination of the competitive behaviour of the undertakings concerned. In particular, given that advertisement sales and the processing of and provision of services for national advertisers will be carried out by PCM for the JV. Together with the JV, the Parties would represent [45 – 55%] of the market, with their main rival De Telegraaf representing only [30 – 40%] of the market post-merger. This situation could lead to co-ordination of the competitive behaviour in the sale of national advertisements by all three parties involved: PCM, Wegener and the JV. The geographic specialisation of Wegener, through its regional focus, would seem to add to the risk of co-ordination, when advertisers seek a truly national reach. Indeed, in the Commission's market investigation it has been submitted that the parent companies will not compete with the JV on the advertising markets and that it is likely that Wegener and PCM will co-ordinate their strategic behaviour in those markets where the JV is not active, because of the relative significance of the JV in relation to the remaining publishing activities of both parents. It has also been submitted that following the transaction the Parties would try to engage in tying practices, for instance by forcing customers to use packages of newspapers.

63. The above indicates that the concentration may create or strengthen a dominant position on the market for the sale of advertisement space for national advertisements in daily newspapers and may result in the co-ordination of competitive behaviour of undertakings that remain independent on that market. The Commission therefore considers that the concentration raises serious doubts as to its compatibility with the common market.

The market for printing of daily newspapers

64. PCM's market share in the printing market (excluding captive production) is [20 – 30%] and Wegener's [10 – 20%]. As a result of the transaction, the JV will be included in the captive production of the parent companies. Under these circumstances the risk of foreclosure or co-ordination between the parent companies' activities can be excluded.

Distribution of daily newspapers

65. The Parties' market shares in The Netherlands (excluding captive distribution) are [20 – 30%] for PCM and [0 – 10%] for Wegener. The situation post-transaction will remain unchanged since the distribution of the JV's newspapers will remain captive within the parent companies.

VII. UNDERTAKINGS

66. On 16 June 2005, the Parties submitted undertakings in accordance with Article 6(2) of the Merger Regulation, for the purpose of achieving clearance of the

merger; additional undertakings were submitted on 28 June 2005 (hereinafter referred to as "undertakings" or "commitments"). These commitments are set out in Annexes I and II to this decision and form an integral part thereof.

67. The Commission is of the view that the commitments address and resolve in a satisfactory manner the competition concerns arising from the concentration.

Summary of the commitments

68. The Commission has received the commitment from the Parties that, for the duration of the JV, Wegener commits to refrain from selling or offering to national advertisers advertisement space in its daily newspapers, in any combination whatsoever, jointly with advertisement space in the daily newspapers of PCM or the JV. During this period Wegener shall sell and offer to national advertisers advertisement space in its daily newspapers independently from PCM via NRp or, alternatively, on its own or via any third party that is neither directly nor indirectly a group company of PCM or one of its affiliates, including the JV.

69. In addition, the commitments offered consist of certain corporate governance provisions in the articles of association of the JV, *inter alia* providing for a supervisory board that is independent from the shareholders of the JV and that shall ensure that the managing board does not share information of the JV relating to the composition of its turnover, e.g. pricing of advertisement space, special offers, etc., with its shareholders (except for customary half year and annual figures)[22]. Additionally, the managing board shall need the prior approval of the supervisory board to establish the prices to be charged to third parties for advertisements in the newspapers and for sales of the newspaper to third parties. The managing board shall ensure that the JV does not share information relating to the composition of its turnover with its parent companies.

Conclusion on the commitments submitted by the Parties

70. Following the merger, Wegener will still represent [20 – 30%] of national advertising and will act, on the basis of its commitment, independently from PCM and the JV. Even if PCM's activities are combined with the JV's, they will only represent a [20 – 30%] market share. By ensuring that Wegener's significant level of advertising sales made outside the scope of the JV are kept separate from PCM and/or the JV in the future, the remedy package offered by the Parties seems sufficient to address the competition concerns identified. In addition the supervisory board will be under the specific obligation to to ensure that the JV does not share information relating to the composition of its turnover with its parent companies. Under these circumstances, the transaction does not raise serious doubts as to its compatibility with the common market.

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22 According to the Parties, the JV will communicate to PCM its gross prices for advertisement space for national advertisers in order to allow PCM to sell the advertisement space, but this kind of information the Parties do not consider "information relating to the composition of its turnover" within the meaning of the commitments. The Parties argue that gross prices are not a reliable proxy for net prices and, as a result of the composition of the JV's turnover, given that gross prices and net prices differ substantially. The Parties further submit in this context that gross prices are public information, that are generally available in the market.

VIII. CONDITIONS AND OBLIGATIONS

71. Under the second paragraph 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.

72. Where a condition is not fulfilled, the Commission decision declaring the merger to be compatible with the common market no longer stands. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3)(b) of the Merger Regulation. The undertakings concerned may also be subject to fines and periodic penalty payments under Articles 14(2)(d) and 15(1)(c) of the Merger Regulation.

73. In accordance with the basic distinction described above, the Commission makes its decision subject to the condition of full compliance with the following commitments:

(a) the whole of the commitment set out in Annex I concerning the prohibition for Wegener to sell or offer to national advertisers advertisement space jointly with advertisement space in the daily newspapers of PCM or the JV.

(b) the commitments described in paragraph 69, and set out in Annex II, except for the requirement of prior approval by the supervisory board of the prices charged by the JV for sales of newspapers to third parties, that constitutes neither a condition nor an obligation of this decision.

IX. CONCLUSION

74. The Commission has concluded that the commitments submitted by the Parties are sufficient to address the competition concerns raised by this concentration. Accordingly, subject to the full compliance with the commitments submitted by the Parties the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and the functioning of the EEA Agreement. This decision is adopted in application of Article 6(1)(b) and Article 6(2) of Council Regulation (EC) No 139/2004 and of Article 57 of the EEA Agreement.

For the Commission
signed
Neelie KROES
Member of the Commission

Annex I

CASE M.3187 – PCM/Wegener/JV

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) No. 139/2004 (the **“Merger Regulation”**), PCM Holding B.V. (**“PCM”**) and Koninklijke Wegener N.V. (**“Wegener”**) (together the **“Parties”**) hereby provide the following Commitments (the **“Commitments”**) in order to enable the European Commission (the **“Commission”**) to declare the creation of a full-function joint venture between PCM and Wegener (the **“Joint Venture”**) compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the **“Decision”**).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are 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 802/2004.

Commitment

For the duration of the Joint Venture, Wegener commits to refrain from selling or offering to national advertisers advertisement space in its daily newspapers, in any combination whatsoever, jointly with advertisement space in the daily newspapers of PCM or of the Joint Venture. During this period, Wegener shall sell and offer to national advertisers advertisement space in its daily newspapers independently from PCM via Nationale Regiopers or, alternatively, on its own or via any third party that is neither directly nor indirectly a group company of PCM or one of its affiliates, including the Joint Venture.

Review

The Commission may, where appropriate, in response to a request from the Parties showing good cause, waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

[28] June 2005

Anthonie Zoomers		Jan Houwert

duly authorised for and on behalf of

PCM Holding B.V.		Koninklijke Wegener N.V.

Annex II

REMEDY PROPOSAL UNDER ARTICLE 6(2) AND 10(1) OF REGULATION 139/2004

CASE COMP/M.3817 – PCM/WEGENER/JV

The following provisions will be inserted into the statutes of the joint venture:

Statutory provision relating to the supervisory board

1. Supervision of the policies of the managing board and of the general course of the company's affairs and its business enterprise shall be exercised by the supervisory board. It shall support the managing board with advice.

2. The supervisory board shall ensure that the managing board does not share the information of the company relating to the composition of its turnover, particularly but not limited to the pricing of advertising space, special offers, etc., with its shareholders, except for the customary half year and annual figures.

3. In fulfilling their duties the supervisory directors shall serve the interests of the company and its business enterprise. The managing board shall in due time provide the supervisory board with the information it needs to carry out its duties.

4. The supervisory board shall consist of at least three members. Each member of the supervisory board shall be independent from the shareholders of the company at all times.

Statutory provision relating to the managing board

1. The managing board shall manage the affairs of the company on a day to day basis, provided that it shall need the prior approval of the supervisory board to establish the prices to be charged by the company to third parties for (i) advertisements in the newspapers, and (ii) sales of the newspapers to third parties.

The managing board shall ensure that the company does not share its information relating to the composition of its turnover with its shareholders.