

***Case No COMP/M.4122 -
BURDA / HACHETTE /
JV***

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

Article 6(1)(b) NON-OPPOSITION
Date: 26/04/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.04.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Madam and Sirs,

Subject: Case No COMP/M.4122 – Burda / Hachette / JV

1. On 03.03.2006, the Commission received the notification of the proposed concentration by which Burda Verlag Osteuropa GmbH (“BVO”), and Hachette Filipacchi Presse (“HFP”), acquire within the meaning of Article 3(1)(b) of Council Regulation (EC) No 139/2004¹ (The Merger Regulation) joint control of a newly created company constituting a joint venture (JV) by way of subscription of capital and transfer of assets. On 21 March 2006, the Republic of Poland requested the referral to its competent authorities of the proposed concentration with a view to assessing it under Polish national competition law, pursuant to Article 9(2)(a) of the Merger Regulation. This request was withdrawn on 25 April 2006.

I THE PARTIES

2. BVO publishes magazines in Poland, Russia, Ukraine, the Czech Republic, Romania and Kazakhstan through affiliated companies. It belongs to the German Hubert Burda Media group which operates worldwide in communications, media and publishing.
3. HFP is a French publisher of consumer magazines belonging to Lagardère. Lagardère controls a group of companies doing business worldwide in two main areas: (i) communication/media/publishing and (ii) the aerospace industry and high technology.

¹ OJ L 24, 29.1.2004 p. 1

4. JV will publish magazines in Poland.

II THE OPERATION AND THE CONCENTRATION

5. BVO and HFP will combine their respective publishing activities in Poland (Burda Polska and Hachette Polska) through the JV that will be named Hachette Filipacchi Burda Polska Sp. Z.o.o.
6. BVO will subscribe 51% of the JV's initial capital and HFP will subscribe 49%. Subsequently, BVO will contribute EUR [...] and HFP EUR [...] to the JV. Thereafter, BVO and HFP will sell to the JV their respective publishing subsidiaries Burda Polska (for EUR [...]) and Hachette Polska (for EUR [...]).

Joint control

7. The JV will have an advisory board composed of five members, three to be appointed by BVO and two by HFP. The JV will not approve the annual budget or the business plan without the approval of at least four of the members of the advisory board of the company. Under these circumstances, according to the Merger Regulation, the JV will be jointly controlled by BVO and HFP.

Full functionality on a lasting basis

8. Burda Polska and Hachette Polska are both full function entities. They are already active in Poland on a stand-alone basis as regards their respective parent entities and perform all the functions normally carried out by undertakings operating on the magazines markets. Burda Polska and Hachette Poska both have a management dedicated to their day-to-day business. They also both have sufficient staff for their activities (Burda Polska has 42 employees, Hachette Polska has 76 employees and Interdeco Polska has 17 employees), and they both have their own editorial staff. The situation as regards independence of the parent companies will not change with the creation of the JV.

III. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate worldwide turnover of more than EUR 5 billion² [BVO: EUR [...], HFP: EUR [...]]. Each of the parties have a Community-wide turnover in excess of EUR 250 million [BVO: EUR [...], HFP: EUR [...]], 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.

² 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).

IV. COMPETITIVE ASSESSMENT

Relevant product market

10. The Commission has always taken into account the different trading relationships in the written press market and has considered that these markets comprise a reader market and an advertising market.
11. As regards the reader market, it is further subdivided into markets for newspapers and magazines. The reader market for magazines can also be further segmented in specialised magazines which can be further divided by the topic of the respective specialised magazine (TV magazines, women magazines, business and finance magazines, mass market specialised publications, professional specialised publications etc.). In the present case it is not necessary to take a position on whether the reader market for magazines can be further segmented because, under any conceivable market definition, the concentration would not significantly impede effective competition.
12. As far as the advertising market is concerned, according to Commission's past decisions³, there are two possible ways to delineate it. The first way is on the basis of the topic of the relevant magazines in relation to the reader market and the second way is the so called 25% test (according to this test, two magazines can be regarded as belonging to the same advertising market when they have at least 25% of advertisers in common). In this respect, the Commission has recently declined to use the 25% test as the sole criterion for delineating advertising markets for magazines⁴. In the end, the Commission however left open whether such markets actually existed. In the present case, it is not necessary to take a position on whether advertising markets for magazines can be defined on the basis of the 25% criterion as the proposed concentration does not threaten to significantly affect competition in Poland under any market definition.
13. Finally, classified advertising also constitutes a relevant market. However, it will not be analysed in the present decision given that the activities of the parties are *de minimis* (their combined annual turnover is only EURO [<200,000]).

Relevant geographic market

14. With respect to the relevant geographic market, according to previous decisions, the written press markets (newspapers and magazines at both reader and advertising levels) have been always defined as national in scope because of language barriers and national preferences⁵. For the same reasons, in the case of Poland the relevant markets can be considered as being national in scope. In this respect, it should be underlined that all the magazines that will be published by the JV have a national coverage in Poland.

³ Case COMP M. 3420 GIMD/Socpresse

⁴ Case COMP M. 3420 GIMD/Socpresse

⁵ Cases IV M. 1401 Recoletos/Unedisa; COMP M. 3420 GIMD/Socpresse; COMP M. 3817 Wegener/PCM/JV

Assessment

15. Poland is the only EEA country concerned by the present operation. The concentration gives rise to horizontal overlaps in the reader and advertising markets for magazines and certain specialised magazines where, according to the data supplied by the parties, their combined market shares would be the following:
- Magazines taken as a whole (data for 2004): [0-10%] at reader level (Burda: [0-10%], HFP: [0-10%]) and [0-10%] at advertising level (HFP: [0-10%], Burda: [0-10%]);
 - Specialised magazines including all topics (data for 2004): [0-10%] at reader level (HFP: [0-10%], Burda: [0-10%]) and [0-10%] at advertising level (HFP: [0-10%], Burda [0-10%]);
 - Women magazines (data for 2004): [0-10%] at reader level⁶ (HFP: [0-10%], Burda: [0-10%]) and [10-20%]⁷ at advertising level (HFP: [10-20%], Burda: [0-10%]);
 - Decoration magazines (data for 2005): [0-10%] at reader level⁸ (HFP: [0-10%], Burda: [0-10%]) and [0-10%] at advertising level⁹ (HFP: [0-10%], Burda: [0-10%]).
16. The parties also publish specialised magazines in other segments and have significant market shares but their activities do not overlap (eg. Gardening magazines where BVO has a market share of around [40-50%] at reader level¹⁰ and [50-60%] at advertising level¹¹, health magazines where HFP has a market share of [20-30%] at reader level¹² and [20-30%] at advertising level¹³ and movie magazines where HFP has a [90-100%] market share).
17. If the advertising market for magazines is defined on the basis of the 25% criterion (see paragraph 12), there are no overlaps between the parties' activities.
18. In view of the absence of substantial overlaps between the parties' activities under any possible market definition and the absence of vertically or horizontally affected markets,

⁶ Source: ZKDP (ABC Poland)

⁷ Source: Expert Monitor

⁸ Source: ZKDP (ABC Poland). This calculation takes into account "Elle Decoration" (HFP) which was considered as a Women magazines in the data supplied for 2004 and *Mój piękny dom* (BVO) which was first published in 2005

⁹ Source: Expert Monitor. This calculation takes into account "Elle Decoration" (HFP) which was considered as a Women magazines in the data supplied for 2004 and *Mój piękny dom* (BVO) which was first published in 2005

¹⁰ Source: ZKDP (ABC Poland)

¹¹ Source: Expert Monitor

¹² Source: ZKDP (ABC Poland)

¹³ Source: Expert Monitor

it is concluded that the concentration would not significantly impede competition in the common market or in a substantial part of it.

V CONCLUSION

19. 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 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission