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Case No IV/M.423 - NEWSPAPER PUBLISHING

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 14.03.1994

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.03.1994

MERGER PROCEDURE
ARTICLE 6(1)b DECISION

PUBLIC VERSION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.423 - Newspaper Publishing
Notification of 11.2.1994 pursuant to Article 4 of Council Regulation No. 4064/89

1. On 11th February 1994, Promotora de Informaciones S.A. (PRISA), Editoriale l'Espresso S.p.A. (Espresso) and Mirror Group Newspapers plc (MGN) notified jointly a public bid for the acquisition of joint control of Newspaper Publishing plc (NP).

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. NP is a U.K. newspaper publishing company which produces "The Independent" (daily) and "The Independent on Sunday". Both PRISA and Espresso each already own about 18% of NP's shares, but NP is not currently controlled by any one individual person or undertaking.

4. PRISA is a Spanish media holding company with interests in publishing companies, media relations, and pay TV.

5. Espresso is an Italian holding company with interests in newspaper publishing and radio broadcasting. It is controlled by Compagnie Industriali Riunite S.p.A. (CIR), which is in turn controlled by Compagnia Finanziaria de Benedetti.

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6. MGN is a U.K. newspaper publishing company which produces "The Daily Mirror", "The Sunday Mirror", "The People" (Sundays only), and other regional and specialist newspapers.

II. THE OPERATION

7. The proposed operation consists in the joint acquisition (by way of a public bid) of NP by PRISA, Espresso and MGN.

III. CONCENTRATIVE JOINT VENTURE

a) Joint Control

8. If the public bid succeeds, NP will be jointly controlled by PRISA, Espresso and MGN, who together will control the majority of the share capital of NP and have the right to appoint 6 directors (2 directors each) out of a total of seven.

9. The decisions of the Board will be taken by simple majority. PRISA and Espresso have a separate agreement which provides that the two groups will vote together as regards the decisions of the Board of NP; this would effectively give them joint control in the absence of other considerations. However, MGN will have not only the right to propose the business plans and the budget of NP but also a veto right in the event that the NP Board votes against its proposals, in which case the contested matters will be settled by an independent expert agreed by all parties.

b) No coordination of competitive behaviour

10. There will be no risk of coordination either between the joint venture and its parents, or between the parents themselves in the UK market for national newspapers. Espresso and Prisa, although active in newspaper publishing in other countries, (which, for newspapers, are separate geographic markets, - see section V below) are not active in the UK national newspaper market by means other than through their shareholdings in NP. As regards MGN, the group is already an important publisher in the UK national newspaper market through its publications in the popular or "tabloid" segment of daily and Sunday newspapers. As explained in section V on relevant markets (see below), there is very limited substitutability between tabloid newspapers and so-called "quality" newspapers such as "The Independent" published by NP.

c) Concentration

11. NP will be jointly controlled by PRISA, Espresso and MGN, given the agreement between PRISA and Espresso, and the veto rights of MGN. Moreover, it is very unlikely that a risk of coordination of the competitive behaviour either between the JV and its parents or between the parents themselves will exist. In view of the above, the notified operation is a concentration within the meaning of the Merger Regulation.

IV. COMMUNITY DIMENSION

12. CIR, which controls Espresso, has a worldwide turnover in excess of 5.000 million ECU. The Community-wide turnover of each of CIR, Prisa and MGN is in excess of 250 million ECU, but these companies do not achieve more than two thirds of this turnover in one and the same Member State. Thus the operation has a Community dimension.

V. THE RELEVANT MARKET

a) The relevant product market

13. If the wider "media market" is taken into consideration, it would seem evident that regional newspapers and television/radio are not close substitutes for national newspapers from a consumer viewpoint. Regional newspapers by definition concentrate on local as opposed to national issues (particularly as far as items such as sports and business coverage are concerned). Television and radio, besides their physical (eg portability) differences from newspapers, offer more rapid coverage of news events, but cannot normally match the range and depth of newspaper coverage.

14. Secondly, within the national newspaper market itself, three identifiable "segments" are normally distinguished, that is, the popular tabloids (eg the Daily Mirror), the mid-market titles (eg the Daily Express), and the quality segment (eg The Times). There is a clear element of product differentiation and marked price differences between the tabloid segment on the one hand, and the quality segment on the other (the two "quality extremes"). Quality titles are almost twice the price of some tabloid titles, the volume and depth of news coverage and analysis is far greater, and the range of news items, particularly those dealing with international issues, is much more extensive. Different types of reader, in terms of socio-economic groupings are attracted to the different segments. In view of these factors, it may be concluded that there is very limited substitutability over even a short time period between tabloid and quality titles from the readers', or repeat-buyers', viewpoint. This was indicated by the recent decrease in the price of the quality newspaper "The Times", which had no effect on the tabloid segment.

15. Apart from readers, who are the final consumers, the other category of customers for newspapers consists of companies or agencies who use newspaper "space" as vehicles for advertising (both 'display' and 'classified' advertisements). Advertising revenue constitutes a very important proportion of total newspaper revenue, (46% in the U.K. in 1992, the other 54% being derived from copy sales to readers). In the U.K., quality papers depend more on advertising revenue than do the tabloids (in 1992, the U.K. quality daily segment attracted 48% of total advertising revenue, and this constituted 58% of its own total revenue; the corresponding tabloid figures were 27% and 30%).

16. Newspaper advertisements are intended to promote the sales of goods and services to readers, and their success depends crucially on "targeting" appropriate socio-economic groupings. These latter, as already indicated, tend to be attracted to specific newspaper segments, and thus it is clear that from the viewpoint of

an advertising agency wishing to purchase newspaper "space", there will be very limited substitutability between the tabloid and quality segments, which will provide different "channels" through which to reach different socio-economic groupings of readers.

b) The relevant geographic market

17. Although there are some imports and exports of newspapers, and some printing of U.K. newspapers outside the U.K., this is not significant. The relevant geographic market is clearly the U.K., given language and cultural specificities, and the focus of national newspapers on national issues.

VI COMPATIBILITY WITH THE COMMON MARKET

18. Given that there is very limited substitutability for consumers, whether readers or purchasers of advertising "space", between tabloid and quality newspapers, there is no overlap between MGN's and NP's products (either daily or Sunday versions). "The Independent" is a quality newspaper which costs approximately twice as much as the tabloid "Daily Mirror" ("The Independent on Sunday" is also double the price of "The Sunday Mirror"). On the supply side, although quality and tabloid newspapers could be easily substituted as far as physical production (printing, etc) is concerned, they are not substitutable from the point of view of quality of content, quality of editorial comment and so on (as indicated in section VIII below, U.K. regulatory authorities, will be concerned to maintain this product differentiation).

19. News International, which produces "The Times" and "The Sun" (inter alia), has larger shares of the U.K. national newspaper market in terms both of copies sold, and of total newspaper advertising revenue, than NP and MGN combined.

20. Finally, there is clearly no overlap between NP and PRISA or Espresso, which operate on different geographic markets.

VII CONCLUSION

21. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.

VIII. ACTION BY THE U.K. AUTHORITIES UNDER ARTICLE 21(3) OF THE MERGER REGULATION

22. Article 21(3) of the Merger Regulation provides that Member States "may take appropriate measures to protect legitimate interests other than those taken into consideration by the Regulation", such legitimate interests to include plurality of the media. The proposed transaction involves issues such as the accurate presentation of news and free expression of opinion, and the U.K. Secretary of State must grant formal consent under the relevant provisions of the U.K. Fair Trading Act.

23. The notes annexed to the Merger Regulation include the following passage concerning Article 21(3):

> "In application of the principle of necessity or efficacity and the rule of proportionality, measures which may be taken by Member States must satisfy the criterion of appropriateness for the objective and must be limited to the minimum of action necessary to ensure protection of the legitimate interest in question. The Member States must therefore choose, where alternatives exist, the measure which is objectively the least restrictive to achieve the end pursued."

24. In view of this, the Commission must be kept informed of any conditions which the U.K. authorities might deem it appropriate to attach to the transaction.

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For the above reasons, the Commission has decided not to oppose the notified concentration and to declare it compatible with the common market. this decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission