

***Case No COMP/M.4353 -
PERMIRA /
ALL3MEDIA GROUP***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 22/09/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.09.2006

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sir/Madam,

**Subject: Case No COMP/M.4353 PERMIRA / ALL3MEDIA GROUP
Notification of 18/08/2006 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 18 August 2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004² (“the Merger Regulation”) by which the Permira Europe III Fund belonging to the group Permira Holdings Ltd (“PHL”, UK) acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking All3Media Group Limited (“A3M”, UK) by way of purchase of shares.

I. THE PARTIES

2. PHL controls private equity investment funds that acquire shareholdings in portfolio companies which are active in a wide variety of sectors.
3. A3M is active in independent television production, distribution (i.e. licensing) of television programmes and talent management. Active primarily in the UK, A3M’s productions include drama, entertainment, sport and factual programmes.

¹ OJ L 24, 29.1.2004 p. 1.

² OJ L 24, 29.1.2004 p. 1

II. THE OPERATION

4. The operation entails the acquisition of sole control of A3M by a special purpose vehicle controlled by a Permira investment fund (the Permira Europe III Fund). The special purpose vehicle will purchase the entire share capital of A3M.

III. CONCENTRATION

5. The acquisition of sole control of A3M constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion³. Each of them have a Community-wide turnover in excess of EUR 250 million, but neither of them achieves 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. RELEVANT PRODUCT MARKETS

INTRODUCTION

7. The target, A3M is active in independent television programme production, licensing of television programmes and talent management⁴. It is active mainly in the United Kingdom where it generates [>75] % of its EU turnover. Outside the UK A3M's revenue is minimal except in the Netherlands which, in 2005, accounted for slightly over [10-20] % of it.
8. The only investee company controlled by PHL that is active in a market neighbouring the markets in which A3M is active is SBS Broadcasting S.A. ("SBS"). PHL does not have sole control of SBS. SBS is jointly controlled by PHL and Kohlberg Kravis Roberts & Co ("KKR")⁵. SBS is active in pay television, commercial free-to-air television, television advertising, radio broadcasting, radio advertising, localisation services (i.e. subtitles and dubbing), the publication of magazines containing radio and television listings and magazine advertising. SBS is primarily active in the Netherlands and in Scandinavia.

³ 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.

⁴ Talent management is described as "managing the rights of television stars".

⁵ COMP/M.3961 Permira-KKR/SBS Broadcasting

A. PRODUCT MARKETS

9. While the business activities of SBS and A3M have only negligible horizontal overlaps because both companies are active in different areas of the TV sector, the analysis in the present case focussed on vertical issues arising from the transaction in the Netherlands and in Scandinavia. Hence, the following relevant product markets have been identified:

- i) Production of captive and non-captive TV programmes
- ii) Distribution (i.e. licensing) of TV broadcasting rights

i) Production of Captive and Non-captive TV programmes

10. A3M in the Netherlands controls the Dutch independent production company IdtV, which is active in the market for non-captive TV production⁶. A3M is also active in independent production of television programmes in the UK and in Germany. SBS has captive local content production services for its own stations in the Netherlands such as local language news, weather reports and sports programming. Furthermore, SBS through one of its subsidiaries produces local news, show-news, weather reports and reality programmes in the Netherlands. Most of the captive production of SBS (news and weather reports) is not suitable for licensing to other broadcasters. SBS is active in captive television production in the Netherlands, in Hungary and in Denmark.

11. The Commission has, in previous cases, distinguished the markets for (i) TV productions produced by broadcasters for captive use on their own channels and (ii) non-captive TV productions⁷. As only the latter are offered on the market, the relevant product market must, therefore be limited to TV productions which are not for captive use⁸.

12. The Commission's market investigation confirms that the market as previously defined still operates in this way. For the purpose of the present case however, the precise definition of the market can be left open since the transaction will not give rise to competition concern.

ii) Distribution (i.e. licensing) of TV broadcasting rights

13. The Commission has distinguished the distribution (licensing) of premium film rights and football rights from rights to other types of non-premium television programming⁹. It has also distinguished separate markets for the licensing of television broadcasting rights to pay TV and to free-to-air TV¹⁰. A3M is active in the distribution (licensing) of television broadcasting rights of non-premium nature. It provides TV content primarily to free-to-air operators but also licenses a small

⁶ IdtV produces drama, comedy, documentaries, advertiser-funded programmes and feature films.

⁷ COMP/M.1958 Bertelsman/GBL/Pearson TV, COMP M.1943 Telefonica/Endemol, COMP M.1754 Kirch/Mediaset, IV/M.533 RTL/Veronica/Endemol

⁸ COMP/M.1574 Kirch/Mediaset

⁹ COMP/M.2876 Newscorp/Telepiù.

¹⁰ COMP/M.2876 Newscorp/Telepiù

amount of material to pay-tv operators. A3M through its subsidiary All3Media International is active in licensing finished programmes and programme formats in many countries worldwide (including those in the Nordic region). All3Media International not only licenses its own material from the All3Media Group (produced in the United Kingdom, the Netherlands and Germany) but also licenses material on behalf of third-party producers such as the BBC, Zenith Productions, Tiger Aspect and World Productions¹¹. Market investigation respondents reveal that there is a wide choice of both distributors and of content to choose from. Licensing content is often more appealing to a broadcaster as in-house production costs can far exceed the cost of licensing a ready-made film or TV series. For the purpose of the present case, the precise market definition can be left open since the transaction will not give rise to competition concerns.

B. GEOGRAPHIC MARKETS

i) Production of Captive and Non-captive TV programmes

14. The notifying party proposed that the geographical scope of this market is national and possibly wider. In previous cases, the Commission has taken the view that the market for Dutch TV productions was national¹². Furthermore, although the demand for the rights to TV productions may be EU-wide or even worldwide, rights - particularly for sport events and film premieres - were still granted for a specified country or language region¹³.
15. The market investigation confirms that TV content is made for a national market despite the existence of what are termed as “localisation services” which add dubbing or subtitling to ready made programmes. In the *Bertelsmann / GBL / Pearson TV* case¹⁴ the market was left open but the Commission commented that “*TV broadcasting still generally takes place on national markets*” and further that “*The markets for sale of TV productions may be sometimes broader and comprise a particular language region*”. There are no indications of any need to depart from this geographic scope in the present case.

ii) Distribution (i.e. licensing) of TV broadcasting rights

16. In previous decisions, the Commission took the view that the geographic scope of the distribution market may be national¹⁵ or linguistically homogenous¹⁶ (e.g. Germany, Austria and the German-speaking part of Switzerland; the UK and Ireland). The precise geographic scope can be left open in view of the negligible activities of A3M in this market.

¹¹ www.all3media.com

¹² IV/M.533 RTL/Veronica/Endemol, para. 29

¹³ See also M.1943 Telefonica/Endemol in which the Commission left the geographic market definition open.

¹⁴ COMP/M.1958, para. 14

¹⁵ COMP/M.2876 Newscorp/Telepiu

¹⁶ COMP/M.3595 Sony/MGM

VI. COMPETITIVE ASSESSMENT

17. The markets where the activities of A3M and SBS require further analysis are in the Netherlands and in Sweden.

i) Production of Captive and Non-captive TV programmes

18. As outlined above, in the Netherlands A3M controls IdtV whose activities in the market for non-captive TV production are upstream to that of SBS. The market for independent TV production in the Netherlands has been described as fragmented¹⁷. Respondents to the Commission's market investigation describe the barriers to entry as low.

19. Idtv enjoys a market share of approximately 15%. The estimated market shares of competitors are: Endemol an approximate 40% market share, Eyeworks with a market share around 15%, BlueCircle with approximately 14% and Stokvis with about 11%¹⁸. SBS is not in competition with IdtV because in the Netherlands SBS does not sell programming material to other broadcasters. In any event, any potential issue of foreclosure is unlikely to arise as the Dutch market for independent TV production is characterised both by choice of supplier and choice of content.

ii) Distribution (i.e. licensing) of TV broadcasting rights

20. Through its subsidiary, All3Media International, A3M licenses its own material as well as that of third party producers. In Belgium, Denmark, Finland, Sweden and Norway, the activities of A3M are confined to the distribution of TV content to local broadcasters. In the Netherlands A3M's biggest customers are RTL, Publieke Omroep, Talpa and SBS. In 2005 A3M derived less than 5% of its turnover in the Netherlands from transactions with SBS. It appears that the concentration would have a negligible effect on the market for licensing non-local television rights in the countries in which the parties operate given the small size of A3M outside the UK. The global leaders in television programming distribution are the U.S. major television studios followed by the larger British broadcasters. Television broadcasters such as SBS in the Netherlands and others in the Nordic region and elsewhere therefore have a wide range of television distributors to choose from.
21. In Sweden, SBS owns broadcaster Kanal5, which attracts about [10-20]% of viewers. Competitors like TV4 attract approximately [20-30]% and TV3 about [10-20]%. A3M licenses to broadcasters in Sweden. The potential for foreclosure is again very unlikely as in the Swedish market for licensing TV content as customers can choose not only from large, internationally active distributors that have attractive content but also from many smaller distributors. Switching costs appear to be low and switching can happen relatively quickly and easily. New contracts can be negotiated and concluded shortly before the expiration of a current contract which are typically for a duration of approximately three years. Hence, the proposed transaction would not give rise to competition concerns in Sweden, or any other country with respect to A3M's distribution business and SBS presence.

¹⁷ The Dutch office of statistics lists 175 independent TV producers of which between 10 and 20 are considered medium-sized entities, the vast majority being very small companies.

¹⁸ Stokvis is controlled by Endemol.

VII. CONCLUSION

22. 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 (EC) No 139/2004.

For the Commission
signed
Neelie KROES
Member of the Commission