

EN

***Case No IV/M.579 -
BURDA /
BLOCKBUSTER***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89
MERGER PROCEDURE**

Article 6(1)(b) NON-OPPOSITION
Date: 27/04/1995

*Also available in the CELEX database
Document No 395M0579*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.04.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.579 - BURDA/BLOCKBUSTER

Notification of 23rd March 1995 pursuant to Article 4 of Council Regulation No 4064/89.

1. On 23rd March 1995 Blockbuster Video International Co. notified the creation of a Joint Venture between Burda and itself by way of purchase of shares in Blockbuster Video Deutschland GmbH.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation 4064/89 and does not raise serious doubts as to its compatibility with the common market.

I. THE PARTIES

3. Blockbuster Video International Co. is a U.S. Company with businesses in home videos, music retailing and filmed and interactive entertainments. Blockbuster's parent is Viacom Inc., which is in turn controlled by National Amusements Inc. (NAI).
4. Burda is a German company active in new media activities such as multi-media, online services, electronic TV guides, interactive TV and software, voice mail, fax-on-demand and computer games. Burda is a subsidiary of Burda Holding GmbH & Co. Kommanditgesellschaft which is owned by Dr. Hubert Burda.

5. Blockbuster Video Deutschland GmbH is a Germany-based newly established company entirely owned by Blockbuster Video International Co.

II. THE OPERATION

6. The case was notified on 23rd March 1995. The proposed operation consists in the acquisition by Burda of a 49% shareholding of Blockbuster Video Deutschland GmbH. Hitherto this company has been solely controlled by Blockbuster Video International Co.
7. Under the proposed operation Blockbuster Video Deutschland GmbH will be jointly controlled by Blockbuster and Burda, with 51% and 49% shareholdings respectively. The company's main activity will be to develop Blockbuster Video Superstores in Germany, concentrating on the Berlin and Munich areas. Furthermore it will provide operational support for third party franchisees of Blockbuster Video Superstores throughout the Federal Republic of Germany.

III. CONCENTRATION

Joint Control

8. The Joint Venture Agreement has established procedures of appointment, voting rights and ability to block certain decisions of major importance which provide the parties with equal influence over the company Blockbuster Video Deutschland, which consequently passes from being solely controlled to becoming a joint venture. The company will have an Advisory Board composed of seven members; Blockbuster will appoint four members including the Chairman, Burda three members. The Advisory Board will have an Executive Committee composed of two members, one appointed by Blockbuster and one by Burda. The following decisions require the approval of at least 60% of the votes cast at a shareholders' meeting or 80% of the total number of votes existing in the Advisory Board : the annual business plan, real estate leases, acquisition of stores and sites, closures of sites, appointment of senior management, entry into credit relationships, incurrence of debt, agreements with third parties. In the Executive Committee, these matters require the approval of both members.

Autonomous full function joint venture

9. The joint venture's business will be the rental and the sale of video films, video games, video equipment, accessories and other retail goods. In order to give an economic autonomy to the joint venture the shareholders will contribute a share premium of DM 3.5 million. The downstream activities of the joint venture (commercial relationship with its customers) are independent from its parent companies. The Joint Venture Agreement will only terminate at the end of the term of the final franchise agreement which is entered into for an extendible term of 20 years. Consequently the Commission considers that the joint venture will operate on a lasting basis as an autonomous full function.

Absence of risk of coordination

10. Burda is not active and will not be active in the joint venture's market. Burda's decision to enter this market only through the joint venture is reflected in a non-competition clause.

Both Blockbuster (through its subsidiary, Paramount, which is a film producer) and Burda (producer of CD-ROM and videos) are active in upstream businesses in Germany but their market shares are de minimis (less than 8% and 1% respectively). Moreover, the joint venture will not be an exclusive customer of these businesses.

For the above reasons the Commission considers that there is no risk of coordination of competitive behaviour.

11. In conclusion, the operation constitutes a concentration within the meaning of article 3(1) (b) of the merger regulation.

IV. COMMUNITY DIMENSION

12. The combined worldwide turnover of the parties exceeds 5.000 million Ecu (8.187 Blockbuster and 711 Burda). The aggregate Community wide turnover of each party exceeds 250 million ECU (348 Blockbuster and almost all of Burda's total turnover is achieved within the Community). They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

V. THE RELEVANT MARKETS

A. Relevant Product Market

13. In the notification, Blockbuster defines the relevant product market as the rental and sale of video films, games and equipment, accessories and other video stores related retail goods. In any case it is not necessary to further define the relevant product market because even in the narrowest definition the proposed operation will not lead to the creation or strengthening of a dominant position.

B. Geographical Reference Market

14. The notifying party considers the Geographical Market as being local from the consumers' point of view, as they will only cover a limited distance to go to a video store. Some previous Commission's decisions⁽¹⁾ stress the fact that the Geographic Market for retail products is local. However, certain factors can alter this definition, such as the store's size, commercial infrastructures, existence and state of roads, among others. In view of these circumstances and given the absence of competition concerns, the geographical reference market definition can be left open for the purposes of this assessment.

⁽¹⁾ Case IV/M.242 Promodes/BRMC; Case IV/M.320 Ahold/Jerónimo Martins/Inovacao; Case IV/M.471 Delhaize/PG.

VI. ASSESSMENT

15. There is no affected market, since currently neither Blockbuster nor Burda have any market share in Germany.
16. The proposed operation represents an entry by both Blockbuster and Burda in the German distribution market for rental and sale of video films.
After the proposed operation the joint venture will first concentrate on the Berlin and Munich areas, although it may later open stores in other areas. There seems to be a considerable number of strong competitors in both areas. In Berlin the main firms are Video World (15 stores), Video Inn (10 stores) and Bärlein-video (9 stores) while in Munich the main firms are Montevideo (7 stores), Video Star (4 stores) and Deutscher Videoring (3 stores). The situation is likely to be similar at national level, since there is a number of strong video store chains operating throughout Germany.

VII. ANCILLARY RESTRAINTS

17. Burda is bound by a non-competition clause for as long as it is a shareholder in the company and for a period of one year thereafter. In principle this falls within the provisions generally admitted as ancillary to a concentration, since it is directly related and necessary to the implementation of the concentration.

VIII. CONCLUSION

18. 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 functioning of the EEA agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,