

*Case No IV/M.589 -
Seagram / MCA*

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/05/1995

*Also available in the CELEX database
Document No 395M0589*



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.05.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject : Case No IV/M.589 - Seagram/MCA

Notification of 21.04.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. The abovementioned notification concerns the acquisition by the Seagram Company Ltd (Seagram) of 80% of the shares of Home Holding II Inc. (Home II), an indirect wholly owned subsidiary of Matsushita Electric Industrial Co. Ltd (Matsushita). Through this acquisition, Seagram will acquire sole control of MCA Inc. (MCA).
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation n° 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. The parties

3. Seagram is a company organised under Canadian federal law. It is active worldwide mainly in the production, marketing and distribution of distilled spirits, wines, fruit juices, coolers and mixers. Seagram has also minority holdings, in particular in Time Warner Inc., a company active in the entertainment sector, in which Seagram has a 14.95% stake.
4. Home II is a holding company, wholly owned by Home Holding Inc. (Home), a Delaware corporation, which is a wholly owned subsidiary of Matsushita, a company organised under the laws of Japan. Home II controls MCA and its subsidiaries which are active in several business segments : filmed entertainment, music entertainment, retail activity (gift

and jewellery), book publishing, cable networks, other entertainment activities such as theme parks and real estate development.

II. The operation

5. Home II will issue and sell to Seagram 3 100 shares of its common stock and Home will sell to Seagram 2 604 shares of the common stock of Home II. Together, these shares will equal 80% of the shares of Home II. As a result, Seagram will acquire sole control over Home II and over its wholly owned subsidiaries : Matsushita Holding Corp., MEI Enterprises Corp., MCA Inc. and its subsidiaries.
6. Matsushita, through its wholly owned subsidiary Home, will retain a 20% financial interest in Home II. According to the stockholder's agreement, [⁽¹⁾].
7. The operation is therefore a concentration within the meaning of Article 3 of Council Regulation No 4064/89.

III. Community dimension

8. The combined worldwide turnover of Seagram and Home II exceeds Ecu 5 billion and they have each an EC-wide turnover in excess of Ecu 250 million. Neither Seagram nor Home II achieves more than two-thirds of its EC turnover in one and the same Member State. The operation has therefore a Community dimension.

IV. Market definition

9. Home II is active in the production and the distribution of motion picture films for initial theatrical release, television and home video, in music entertainment (compact discs, records and tapes, music publishing), in book publishing, in cable networks, retail gift and jewellery stores, in theme parks and in real estate development.
10. Seagram is active in the production, marketing and distribution of distilled spirits, wines, champagnes, ports and sherries. The Seagram group is also a leading producer of high-quality branded fruit juices and juice beverages.
11. To the extent that there are no overlaps between Home II's and Seagram's activities, it is not necessary to decide upon the question of product market and geographical market definition.

V. Assessment

12. According to the notifying party, Home II's market shares in 1994, in the Community and in each Member State do not exceed 10% in any of the business segments where Home II is active, except in the United Kingdom where MCA has a 20% market share in the cinemas segment.
13. In view of the respective businesses of Seagram and Home II, the operation will not lead to any overlap of their activities. Seagram's stake in Time Warner constitutes a financial investment and Seagram does not exercise any control over Time Warner. Seagram's

(1) Sentence deleted for business secret reasons and stating that Matsushita will not have joint control of Home II or MCA.

interest in Time Warner has therefore no competitive significance in the context of the MCA acquisition.

14. For the same reasons, there are no vertical or conglomerate aspects which are of interest in the assessment of this operation.
15. As a result, the acquisition by Seagram of Home II, and in particular of MCA, will not lead to the creation or the strengthening of a dominant position.

VI. Ancillary restraints

16. The Stock Purchase Agreement (Section 5.07) provides that Matsushita and Home will not be active and will not have any interest in any business anywhere in the world that competes in any business conducted by Home II and its subsidiaries, without the consent of Seagram, for a period of three years after completion of the operation. This non-competition clause of the Stock Purchase Agreement constitutes an ancillary restraint to the concentration.

VII. Conclusion

17. The proposed operation therefore does not raise serious doubts as to its compatibility with the common market.
18. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market. This decision is adopted in application of Article 6(1)(b) of Council Regulation No 4064/89.

For the Commission,