

**Case No IV/M.655 -
Canal+ / UFA / MDO**

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/11/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.11.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No. IV/M.655 - CANAL+ / UFA / MDO.

Notification of 9.10.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. On 9.10.1995, the Commission received a notification of a proposed concentration pursuant to Article 4 of a Council Regulation (EC) No. 4064/89 by which the undertaking Ufa Film und Fernseh GmbH ("UFA") belonging to the Bertelsmann group acquires within the meaning of Article 3(1)b of the Council Regulation joint control of Monégasque des Ondes ("MDO"), already jointly controlled by Canal+ s.a. ("CANAL+") and Générale d'Images s.a. ("GDI"), belonging to Générale des Eaux s.a. ("GDE").
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 and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. The business activities of the undertakings concerned are :
 - for UFA : media sector
 - for GDE/GDI : water distribution, energy production, waste management, cable networks, media sector

- for CANAL+: television broadcasting
 - for MDO: television broadcasting.
4. The operation consists of the acquisition by UFA of joint control of MDO, through the sale by CANAL+ to UFA of half of its recently acquired shareholding in MDO. The acquisition of CANAL+'s interest in MDO, in June 1995, was an operation without Community dimension as such not notifiable under the Merger regulation. As a result of the operation, the shareholding of MDO will be the following: GDI 47.5%; CANAL+ 23.75%; UFA 23.75%; and MMP 5%.
 5. MDO will be jointly controlled by CANAL+, GDI and UFA. Under the terms of the shareholders' agreement entered into by GDI, CANAL+ and UFA, the board of directors of MDO will consist of nine members, with two directors designated by each of UFA and CANAL+, four directors designated by GDI and one director designated by the other shareholder of MDO, M.M.P. All major decisions, such as the adoption and any substantial modification of the business plan are to be taken with the affirmative vote of at least eight directors.
 6. MDO fulfils and will continue to fulfill all the normal functions of a general interest television channel, on a lasting basis.
 7. The entry of UFA into the controlling block of MDO will not lead to any risk of coordination since UFA does not broadcast or produce any French language television program (apart from through MDO) and does not market French language programs. In addition, Bertelsmann does not sell any tv advertising time. There is currently no indication that Bertelsmann will enter any of these markets in the near future. Consequently, there is no likelihood of Bertelsmann coordinating its activity on this market either with GDE/GDI or with CANAL+.

II. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate worldwide turnover in excess of 5,000 million ECU. Each party has a Community-wide turnover in excess of 250 million ECU, but 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, but does not constitute a cooperation case under the EEA Agreement.

III. COMPATIBILITY WITH THE COMMON MARKET

A. Relevant product market

9. The businesses being acquired include television broadcasting and sale of tv advertising time. Tv broadcasting, which is the main parameter for determining the broadcasters' position on the tv advertising market (which is separate from other forms of advertising). In tv broadcasting, broadcasters compete for audience shares. However, in view of the fact that there is no direct trade relationship between broadcasters of "free tv channels" (as opposed to pay-tv) on the "supply side" and viewers on the "demand side", it can be argued that tv broadcasting does not constitute a market in the strict economic sense of the term. It is however necessary, for the purposes of this case, to decide on this issue, and the question is here left open.

B. Relevant geographic market

10. Tv broadcasting and tv advertising are currently limited for competition analysis to national markets. The relevant factors to be taken into account are the still existing differences in condition of competition, like the applicable regulatory regime, language barriers, cultural factors.

C. Assessment

11. MDO holds an insignificant share of broadcasting and TV advertising in France. In addition, UFA does not broadcast or produce any French language television program, does not market French language programs, and does not sell any tv advertising time.

V. CONCLUSION

12. 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.

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For the Commission,