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*Case No IV/M.717 -
Viacom / Bear Stearns*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/03/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.03.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.717 - Viacom/Bear Stearns

Notification of **22.02.1996** pursuant to Article 4 of Council Regulation No 4064/89

1. On 22 February 1996 Viacom Inc. ("Viacom") and The Bear Stearns Companies ("Bear Stearns") notified a proposed concentration by which the two companies Nickelodeon (Deutschland) GmbH & CO KG ("Nickelodeon") and VH-1 GmbH & CO OHG ("VH-1"), which companies are presently under the sole control of Viacom, are to be jointly controlled by Viacom and Bear Stearns. Thus, the concentration is a passage from sole control to joint control of Nickelodeon and VH-1.
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:

Viacom is a diversified entertainment and publishing company with operations in five segments: (1) networks and broadcasting, (2) entertainment, (3) video and music/theme parks, (4) publishing, and (5) cable television.

Bear Stearns is a leading United States investment banking, securities trading and brokerage firm.

Nickelodeon and VH-1 are two Germany based companies in the business of German language TV broadcasting to cable and direct-to-home viewers in Germany, Austria and German-speaking areas of Switzerland.

4. The proposed concentration results in Viacom and Bear Stearns taking joint control of two businesses, i.e. Nickelodeon and VH-1, which companies previously were under sole control of Viacom. Joint control over Nickelodeon and VH-1 is conferred upon the parties via a special purpose holding company, Viacom Holdings (Germany) B.V. ("Viacom Holdings") which company controls Nickelodeon and VH-1.
5. Under the terms of the shareholders' agreement entered into by Viacom and Bear Stearns, Viacom Holdings shall have []⁽¹⁾. Among the decisions that shall require the approval and signature of not less than []⁽²⁾ are the approval of the Annual Business Plan of the company and the appointment or replacement of any senior managers of the company. Consequently, Viacom and Bear Stearns will have joint control of the joint venture.
6. The joint venture is an existing company with all the assets and resources necessary to enable it to perform all the functions of an autonomous economic entity, including the necessary broadcast licenses and transponder leases. Furthermore, since Bear Stearns is not involved in the markets of the joint venture or in markets related to the joint venture the creation of the joint venture will not give rise to coordination of the competitive behaviour between Viacom and Bear Stearns or between them and the joint venture.

II. COMMUNITY DIMENSION

7. 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 and geographic markets

8. Only Viacom contributes businesses to the joint venture, that is German language, advertiser-supported TV broadcasting to cable and direct-to-home viewers in Germany, Austria and German-speaking areas of Switzerland. There is no overlap in this business since even in the widest possible definition of the product markets Bear Stearns is not involved in businesses related to the joint venture. Therefore, it is not necessary to define the relevant product and geographic markets.

B. Assessment

9. There is no affected market as Viacom and Bear Stearns are not engaged in business activities in the same product market, or in a product market which is upstream or downstream of a product market in which either of them is active. Accordingly, no addition of market shares will result from the concentration.

⁽¹⁾ Deleted - business secret

⁽²⁾ Deleted - business secret (total including at least one appointee of the parent companies)

IV. ANCILLARY RESTRICTIONS

10. The parties have notified as ancillary restrictions Articles 5.2.A, 5.2.C, 5.3.A, 7.1 and 7.2 of the Shareholders Agreement.
11. Article 7.1 is intended to avoid a situation whereby one of the partners would be obliged to accept a new partner in the joint venture through a share transfer. The Article provides []⁽³⁾
12. Articles 5.2.A and 5.3.A provide that []⁽⁴⁾
13. Article 5.2.C provides that Bear Stearns shall not acquire, directly or indirectly, more than ⁽⁵⁾
14. In so far as the above mentioned provisions can be considered as restrictive to competition they aim at expressing the reality of the lasting withdrawal of the parents from the market assigned to the joint venture or they protect the legitimate interest of the parent companies in the identity of their partner in the joint venture. Thus, these provisions can be recognized as integral parts of the operation and hence ancillary.

V. CONCLUSION

15. 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,

⁽³⁾ Deleted - business secret

⁽⁴⁾ Deleted - business secret (limitation to voting rights intended to preserve the full effect of Article 7.1.)

⁽⁵⁾ Deleted - business secret (limitation to acquisition into competing businesses)