

*Case No IV/M.826 -
ESPN / STAR*

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

Article 6(1)(b) NON-OPPOSITION
Date: 11/11/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.11.1996

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No.IV/M.826 - ESPN/STAR

Notification of 09.10.96 pursuant to Article 4 of Council Regulation (EEC) No.4064/89

1. On 09-10-1996, the Commission received a notification of a proposed concentration by which ESPN, Inc.(ESPN) and Star Television Limited (Star) intend to create a joint venture - NEWCO - to which the Parties will contribute their non-standard television delivered sports businesses in several Asian countries (the Territory).

Non-standard television includes all forms of television distribution, other than free, terrestrial UHF or VHF television. Thus it includes cable, microwave, satellite dish services, and any form of encrypted service, including encrypted terrestrial UHF or VHF television.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the application 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

3. ESPN is a Delaware corporation, which is an 80% subsidiary of Capital Cities/ABC, Inc. which, in turn, is wholly-owned by The Walt Disney Company. ESPN operates a number of 24 hour sports television networks which it distributes to all forms of non-standard television distributors and users, primarily in the United States (its principal sales area), Latin America and Asia. All ESPN's Asian services are encrypted. ESPN also licenses sports programming to non-standard television distributors in which it has a minority interest in Australia, Brazil, Canada, Japan and Europe (where the relevant distributor is Eurosport). In addition, ESPN syndicates sports programming to unrelated third parties, principally in Europe. A subsidiary of ESPN, ESPN Enterprises, Inc. conducts ancillary activities such as electronic publishing, development of interactive sports-related software, pay per view, and video sales.

The activities of The Walt Disney Company are diverse and include the production and distribution of filmed entertainment, the operation of theme parks, the sale and licensing of consumer products and the operation of TV broadcasting networks.

4. Star incorporated in the British Virgin Islands, is a member of a group whose ultimate parent is The News Corporation Limited. Star operates several non-standard television networks in Asia, including a sports service, movie service and general entertainment service. These services are both encrypted and non-encrypted, depending on the regional focus.

The News Corporation Limited has diversified interests in the media sector including film production and distribution, book and newspaper publishing, and the operation of terrestrial and satellite television networks.

II. CONCENTRATION

Joint Control

5. Each Party will have 50% interest in NEWCO and which, after initial adjustment, will be equally funded by the Parties. The key business, strategic and budgetary decisions will require the approval of both parties. This includes approval of, or amendment to, each annual operating and capital budget and the hiring of the Managing Director. It follows from the above that ESPN and Star will exercise joint control within the meaning of Regulation 4064/89.

Full function

6. The JV has all the assets necessary to perform on a lasting basis all the functions of an autonomous economic entity engaged in the distribution of sports programming via non-standard television in the Asian countries involved.

The Parties will contribute or license all the assets of their Asian non-standard sports television distribution businesses - including equity in the subsidiaries through which they conduct their Asian business, programming rights, distribution agreements, production, transmission and encryption facilities, transponders, decoders and employees and all other assets used to conduct these businesses - to NEWCO. After an initial period of six to 14 months during which Star will provide technical services to NEWCO under the terms of a Channel Services Agreement to be concluded between the Parties, the Parties' intention is that Star's technical equipment currently dedicated to sports programming and distribution will be relocated to a single NEWCO facility in Singapore.

Each party commits itself to fund, if necessary, NEWCO's operations for a maximum period of [...] ⁽¹⁾ or a maximum amount of US\$ [...] ⁽²⁾ which ever occurs first. This does not prejudice the full function nature of JV given that the business have been loss making for the parents themselves. NEWCO is intended to remain, at least, until June 30, 2095.

Absence of coordination

7. The Parties submit that the joint venture will not give rise to coordination between the parents and no geographical overlap exists.

Distribution of sports programming - Following the transfer of their activities, both Parties will withdraw from the direct distribution of sports programming by means of non-standard television within the Territory.

Acquisition of Asian rights to Asian-interest sports programming - ESPN and Star are not formally prohibited from bidding for Asian rights to Asian-interest sports programming. However, this is only likely in the exceptional circumstances where Asian and non-Asian rights for sports events are sold in bundled form.

In any event, such coordination would be irrelevant for the purposes of EC competition policy since it would only arise outside EEA market.

III. COMMUNITY DIMENSION

8. The combined aggregate turnover of the Parties exceeded the world-wide and EC-wide thresholds specified in Regulation 4064/89 of ECU 5 billion (Disney: ECU 9,438.9 million/ News Corp: 7,675.3 million) and ECU 250 million (Disney: ECU [...] ⁽³⁾ / News Corp: ECU 1,369 million) respectively. The Parties do not generate more than two thirds of their aggregate community wide turnover in one and the same Member State. The operation therefore has a Community dimension.

IV. COMPATIBILITY WITH THE COMMON MARKET

Relevant Product Market

9. The operation concerns the distribution of Asian-interest sports programming via non-standard television in several Asian countries and the acquisition of rights to distribute Asian-interest sports programming. NEWCO will initially provide both encrypted and non encrypted services, although it is anticipated that ultimately all of JV's services will be encrypted.
10. In view of the fact that the main impact of all transaction is outside of EC/EEA market, for the purpose of this case the exact definition of the relevant product market can be left open since the concentration is not likely to raise serious doubts as to its compatibility within the EEA market.

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Relevant Geographic market

11. NEWCO will distribute principally Asian-interest sports programming via non-standard television in 27 Asian countries and will acquire rights to distribute such programming. Concerning the European market only one of the Parties has sales within, so no geographical overlap exists. Given the insignificant impact of the merger in the EC/EEA market, the exact definition of the relevant geographic market can be left open because the concentration will not lead to the creation or strengthening of a dominant position.

Assessment

12. No assets of any value in the EEA are being transferred to NEWCO and only the ESPN, has sales in Europe. In fact, in 1995, Star made no sales in the EEA and ESPN estimates that its syndicated sales of Asian sports programming in Europe amounted to less than US\$[...]⁽⁴⁾. As the primary objective of the NEWCO is to operate in Asian countries and not in EEA, it is unlikely that JV will have any significant sales in Europe. In addition, any effects of the JV on sellers of Asian-interest programming rights located in the EU/EEA would not involve any effect on trade within since such programming would be purchased only for distribution outside the EU/EEA. Consequently it is not considered that the concentration creates or strengthens a dominant position in the common market.

V. CONCLUSION

13. It follows from the above that the proposed concentration would not create or strengthen a dominant position as a result of which competition would be significantly impeded in the common market or in a substantial part of it.
14. 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

⁽⁴⁾ Deleted business secret