

*Case No IV/M.878 -  
RTL 7*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 14/02/1997

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.02.1997

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

**Subject: Case No IV/M.878 -RTL 7**

Notification of 16.01.1997 pursuant to Article 4 of Council Regulation N° 4064/89

1. On 16 January 1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 4064/89 by which the undertaking CLT-UFA, controlled by Audiofina and Bertelsmann AG, (CLT - UFA) and Universal Studios TV Channel Poland, BV, a subsidiary of Universal Studios, Inc., controlled by The Seagram Company Ltd., (Universal) acquire within the meaning of Article 3 (1) b of the Council Regulation joint control of RTL 7 SA et Cie. RTL 7 will broadcast a general entertainment programming television service via cable and satellite in Poland in the Polish language.
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**

3. CLT - UFA is a media company and also serves as the holding company of the CLT - UFA group which is active in the television and radio broadcasting sectors.
4. Universal Studios, Inc., produces and distributes films worldwide, engages in the licensing of merchandising rights and film property publishing rights, encompasses

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<sup>1</sup> OJ No L 395 of 30.12.1989; Corrigendum OJ No L 257 of 21.09.1990, p.13.

record labels, manufacturing, sales, and distribution operations, music publishing and a live event promotion division, has interests in various theme parks and property developments and has also publishing activities.

## **II. CONCENTRATION**

5. Given equality between both partners of the joint venture as to ownership and control, RTL 7 will be jointly controlled by CLT - UFA and Universal. RTL 7 will perform on a lasting basis all the functions of an autonomous economic entity. Each of the parent companies will commit to provide capital contributions to the joint venture, and RTL 7 will also be financed through advertising and other revenues generated by its business. The operation will not give rise to coordination of the competitive behaviour of the parties amongst themselves or between them and RTL 7, as neither parent company broadcast other Polish TV programs.

## **III. COMMUNITY DIMENSION**

6. The present operation has a Community dimension within the meaning of Article 1(2) of the Merger Regulation. The aggregate worldwide turnover of all the undertakings concerned amounted to more than ECU 5 billion (CLT - UFA more than 10 billion ECU) and both undertakings concerned achieved a Community-wide turnover of more than ECU 250 million (CLT - UFA more than 5 billion ECU, The Seagram<sup>3</sup> more than 1 billion ECU). None of the parties achieved more than two-thirds of its respective Community-wide turnover within a single Member State.

## **IV. COMPETITIVE ASSESSMENT**

7. RTL 7 is a free-access commercial television company that will be active in the television advertising market. The viewer shares of television programs affect the market position of a television company in the television advertising market. Normally, the more successful a company is with respect to viewer shares, the more successful it is in the television advertising market. It can be left open whether the viewer market constitutes a distinct relevant product market in the strict economic sense of the notion, since the viewer share will be taken into account in any event in the assessment of the company's position in the advertising market.
8. RTL 7 is active in Poland with a Polish language program. In view of the specialized focus of RTL 7 in terms of language, distribution and customers, the relevant geographic market for the television advertising market therefore appears to be Poland. If there were a viewers' market, it would also be regarded as a national market. Even if the channel can technically be watched in the EEA territory, the small potential audiences in the EEA can be regarded as irrelevant for the assessment.
9. The broadcasting of a Polish TV program in Poland by RTL 7 will not have a significant impact on the competitive structure of the EEA markets.

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<sup>2</sup> See IV/M.779 Bertelsmann/CLT.

<sup>3</sup> See IV/M.589 Seagram /MCA.

10. Consequently, the proposed concentration does not create a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

## **V. ANCILLARY RESTRAINTS**

11. According to point 9.5 of Form CO, the parties have requested that clauses of their agreement be considered as ancillary to the concentration.
12. [...] <sup>4</sup>. These provisions obligate the parties to offer each other the opportunity to participate on an equal basis in the ownership, operation, control or management of competing services by one of the parties or its controlled affiliates. The parties state that this clause would not restrict competition. They however request that these provisions should be cleared as ancillary restraints, as they were inherent in the concentrative nature of the joint venture. These provisions are only related to activities of the parents outside the joint venture and do not prohibit such activities in competing companies. The provisions are therefore not directly related and necessary to the implementation of the concentration and cannot therefore be considered as ancillary to the concentration. They can also not be regarded as a non-competition clause. However, it should be noted that the effect of this clause appears to be limited to Poland.
13. According to the parties, an affiliate of Universal Poland will enter in a license agreement with the joint venture to assure that the joint venture will have sufficient product to conduct its business. [...] . As far as this agreement grants rights for the Polish territory, it can again be questioned in how far this could restrict competition in the EEC. However, for a start-up period of 3 years the granting of exclusive rights to the joint venture could be regarded as ancillary.

## **VI. CONCLUSION**

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 N° 4064/89.

For the Commission,

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<sup>4</sup> Deleted for publication.

<sup>5</sup> Deleted for publication.