C/2024/7390

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Summary of Commission Decision

of 9 June 2023

declaring a concentration compatible with the Internal Market and the functioning of the EEA Agreement

(Case M.10433 – VIVENDI/LAGARDERE)

(notified under document number C(2023) 3717)

(only the French text is authentic)

(C/2024/7390)

On 9 June 2023 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings [1]*, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in French on the website of the Directorate-General for Competition, at the following address: https://competition-cases.ec.europa.eu/search.*

1. THE PARTIES

(1) The attached Decision declares the acquisition of the whole of Lagardère S.A. ('Largardère' or 'the Target', France) by the Vivendi S.E. group ('Vivendi' or the 'Notifying Party', France) (together referred to as the 'Parties') by means of an exchange offer (the 'Transaction') to be compatible with the Internal Market and the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.

(2) Vivendi is a listed company with its registered office in France. It has sole control of the Vivendi group, which is mainly active in the following sectors: (i) television, (ii) provision of advertising space purchasing services, (iii) publishing of mobile video games, (iv) press (in particular Gala and Voici magazines), (v) publishing (via the Editis group), (vi) provision and hosting of video content on the internet, (vii) live performance and (viii) ticketing. The Vivendi group is itself solely controlled by the Bolloré group, which holds 29.5 % of the capital and 29.7 % of the voting rights in Vivendi.

(3) Lagardère is a listed company with its registered office in France. It is the leading company of the Lagardère group, which is mainly active in the following sectors: (i) publishing (via its subsidiary Lagardère Publishing, within which Hachette Livres covers all book publishing activities), (ii) retail travel, (iii) the audiovisual sector, (iv) press (including the Paris Match magazine) and media (including advertising), and (v) live performance and entertainment and (vi) ticketing. Lagardère is not controlled by any shareholder within the meaning of merger control.

2. THE TRANSACTION

(4) On 24 October 2022, the European Commission (the 'Commission') received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (the 'Merger Regulation') by which Vivendi (France) intends to acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of Lagardère (France) by way of a public bid.

(5) In its Decision of 30 November 2022, the Commission concluded that the Transaction raised serious doubts as to its compatibility with the Internal Market and initiated proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Commission sent the Notifying Party a Statement of Objections on 22 February 2023.

[1] OJ L 24, 29.1.2004, p. 1.

(6) On 12 April 2023, the Notifying Party submitted commitments pursuant to Article 8(2) of the Merger Regulation in order to address the competition concerns identified by the Commission.

3. THE MARKETS PRINCIPALLY CONCERNED BY THE TRANSACTION

(7) Although the Transaction affects a number of relevant markets, the Commission raised concerns in relation to the following product and geographic markets ('markets in question'):

Re the publishing sector:

(a) The primary markets for the acquisition of French-language publishing rights for works in French or in a foreign language in the categories of general or youth literature, for each of which the geographic dimension is global;

(b) The secondary market for the acquisition of French-language publishing rights for paperback editions of works of general literature, for which the geographic dimension is global;

(c) The markets for the provision of marketing services on behalf of third-party publishers by type of reseller, and the market for the provision of distribution services on behalf of third-party publishers, for each of which the geographic dimension is the French-speaking area of the European Union, including France, Belgium and Luxembourg; and,

(d) The markets for the sale of books to resellers by type of reseller and category of books concerned, for each of which the geographic dimension is the French-speaking area of the European Union, including France, Belgium and Luxembourg (with the exception of school books, for which the geographic dimension is national).

Re the press sector:

(e) The market for celebrity magazines, for which the geographic dimension is national, covering the whole territory of France.

4. COMPETITIVE ASSESSMENT

(8) The in-depth investigation confirmed that the Transaction has a number of horizontal effects on the relevant markets. The following sections of this note summarise the main findings of the Commission.

4.1. Publishing sector

(9) The book usually follows a route known as the 'book publishing chain', which traditionally involves several players, i.e. the publisher, the marketer, the distributor and the resellers, before reaching the reader. The Commission's investigation has shown that, beyond the Parties' position at each level of the book publishing chain, these different links are largely interdependent, and that these dynamics should be taken into account in the competitive analysis.

4.1.1. *The finding about a significant impediment to effective competition as a result of non-coordinated horizontal effects on the global markets for the acquisition of publishing rights*

(10) The investigation carried out by the Commission shows that the merged entity, grouping together the publishing houses of Hachette and Editis, would enjoy a significant position in the primary markets for the acquisition of French-language publishing rights for works in French or in a foreign language in the categories of general and youth literature. The Commission's analysis has shown that, after the Transaction, the merged entity will benefit from a number of competitive advantages over its rivals which will contribute to increasing its attractiveness to authors, owing to its marketing and distribution capacities, its ability to offer multi-media services and its financial capacity. The merged entity's ability to acquire the primary publishing rights to the most profitable authors would have a negative impact on its competitors by depriving them of a significant source of income. By jeopardizing the viability of publishers, the Transaction would subsequently lead to a reduction in the number of book publishers. Moreover, the elimination of an important competitive force would allow the new entity to worsen authors' contract terms in the absence of sufficient similar alternatives in those markets.

(11) The Commission's analysis also showed that the merged entity will have significant purchasing power on the secondary market for the acquisition of general literature publishing rights. This purchasing power will be based in particular on the importance of its paperback collections and will be reinforced by its financial capacity and attractiveness, given its vertical integration and membership of a conglomerate. Therefore, the Commission has concerns that, after the Transaction, the merged entity's increased market power would allow it to impose less favourable contract terms on its rival primary publishers.

4.1.2. *The finding that there is a significant impediment to effective competition as a result of horizontal effects on the markets for the provision of marketing services on behalf of third parties by type of reseller, and the market for the distribution of books on behalf of third parties*

(12) The Commission's analysis identified the Parties as close competitors in the markets for the provision of book marketing and distribution services, with combined market shares of more than 50 %. These markets are also characterised by high barriers to entry and expansion, and the Parties' customers have limited countervailing power owing to the nature of these activities.

(13) The Commission's analysis has shown that the Transaction would have the effect of giving the merged entity a dominant position on the markets for the provision of marketing and distribution services in the French-speaking area of the European Union. As these markets require the mobilisation of significant financial and logistical resources, the entry of other competitors after the Transaction seems unlikely. It follows that, after the Transaction, the merged entity would have a market position and market power that would prevent its few and smaller competitors from exerting effective competitive pressure on the merged entity.

4.1.3. *The finding about a significant impediment to effective competition as a result of non-coordinated horizontal effects on the markets for the sale of books to resellers by type of reseller and category of books*

(14) The analysis carried out by the Commission has shown that the Transaction will bring together two of the main market players across the major categories of books and will create or strengthen a position of market leader in all these markets. The merged entity will have a market share at least twice as large as that of its main rival in most book sales markets.

(15) The Commission's investigation has shown that many of the Parties' current competitors already have limited ability to compete effectively with the merged entity and that the Transaction will exacerbate this situation. Moreover, customers would not be able to exercise sufficient countervailing power. As a result, the bargaining power of booksellers, as customers of the merged entity, will only decrease. It would be very difficult for booksellers to negotiate against a backdrop of deteriorating commercial conditions, and the merged entity would be able to impose its books more easily and oblige booksellers to commit to quantities or placements in order to obtain additional discounts.

(16) The Transaction might therefore lead to a reduction in the discount granted to booksellers and an increase in the price of the book for the final consumer.

4.2. **Press sector**

4.2.1. *The finding about of a significant impediment to effective competition as a result of non-coordinated horizontal effects on the market for the celebrity magazines*

(17) The merged entity would have had a high combined market share in the market for celebrity magazines.

(18) It is apparent from the market survey of the readership of celebrity magazines, competing magazines and magazine advertisers that the Paris Match magazine belongs to the celebrity magazine competitive environment, with Gala as a very close competitor owing to its high-end status among traditional celebrity magazines, and Voici as only a close competitor. Political and general news magazines are only remote competitors, and only for the Paris Match magazine. These results have been confirmed by the Commission's price analysis, the coverage analysis of the last three years and the Parties' internal documents showing close and systematic monitoring of each other's magazines.

(19) In the celebrity magazine market thus defined, the Parties had a market share equal to or greater than 50-60 % in the last three years in a particularly concentrated market in which they faced three competing groups.

(20) Moreover, in addition to the closeness of competition between the magazines, the results of the market investigation showed that, after the Transaction, there would not be enough market players to exert sufficient competitive pressure to counter the combined competitive pressure exerted by the Parties' magazines.

(21) The market investigation conducted by the Commission also showed that the celebrity magazine market is characterised by high barriers to entry, owing to high operating costs and a declining trend in marketing.

(22) In this context, the Commission's analysis showed that the Transaction would give the merged entity a dominant position and lead to the elimination of a major competitive constraint in the celebrity magazine market. The Transaction might, in particular, lead to more frequent or marked increases in magazine sales prices, a slowdown in the Parties' efforts to improve the quality of the content of their magazines or a reduction in editorial diversity among celebrity magazines.

4.3. **Conclusion**

(23) The Decision therefore concludes that the Transaction would significantly impede effective competition in a substantial part of the internal market within the meaning of Article 2(3) of the Merger Regulation.

5. **COMMITMENTS SUBMITTED BY THE PARTIES**

5.1. **Initial commitments**

(24) On 15 December 2022, the Notifying Party presented as a commitment the sale of Editis via a mixed scheme involving Vivendi's distribution of Editis' securities to its shareholders in the form of an interim dividend in kind and the subsequent direct transfer by the Bolloré Group (shareholder controlling Vivendi with a 29.46 % stake) of the portion of Editis' capital due to it to an independent third party.

(25) On 14 February 2023, the Notifying Party presented as a new commitment the sale of Editis via a similar scheme. The block to be transferred to the reference shareholder was, however, larger than under the commitments of 15 December 2022, since the purchaser of the block would thus have held 37.06 % of Editis' capital from the time of the listing, corresponding to the 29.46 % plus the shares held by Vivendi itself.

(26) In its Statement of Objections, the Commission considered that, compared to a sale of 100 % of Editis' capital to a suitable purchaser, the proposed listing and distribution process was more complex, involved implementation risks and gave rise to uncertainties and risks as to (i) the lasting nature of the control exercised by the purchaser of the block, (ii) the long-term viability and competitiveness of Editis, (iii) the incentives to expand the divestment business, (iv) the ability to develop the divestment business, and (v) the links between the divestment business and the Notifying Party.

(27) Moreover, the proposed commitments did not cover the celebrity magazine market.

(28) The Commission therefore considered that the original commitments did not entirely address the competition concerns.

5.1. **Revised commitments**

(29) On 5 and 12 April 2023, the Notifying Party submitted the commitments described below to address the competition concerns identified in the markets in question.

5.1.1. *Sale of Editis*

(30) The revised commitments consist of the sale of 100 % of Editis' capital to an appropriate buyer.

(31) Furthermore, the Notifying Party undertakes not to implement the Transaction until it has concluded the Editis Divestment Agreement and the Commission has approved the purchaser and the terms of sale.

(32) The Notifying Party also undertakes not to actively approach (i) third-party publishers marketed and/or distributed by Editis for a period of three years from the closing of the acquisition of Editis by the purchaser, (ii) authors contractually bound to Editis by a publishing contract for a period of three years from the closing of the acquisition of Editis by the purchaser and (iii) directors of Editis publishing houses or editorial departments.

(33) The Notifying Party will also take all necessary steps to ensure that any confidential information concerning Editis cannot be used by its employees to benefit Hachette Livres.

(34) Finally, the Notifying Party undertakes to sell Editis to a purchaser that is independent of the Parties and has the financial capacity and incentives to expand the business, does not raise competition concerns or prima facie implementation risks and has solid experience in the publishing or media sector.

5.1.2. *Sale of Gala*

(35) The revised commitments also consist of the sale of the magazine Gala, edited by Prisma Media, a wholly-owned subsidiary of Vivendi.

(36) The divested assets cover Gala's magazine material and paper stock, intellectual property rights related to the operation of Gala, digital tools, social networks, lists of active clients and free newsletter subscribers, 56 full-time equivalents occupying journalist or editorial staff positions, and 65.6 full-time equivalents covering support functions.

(37) The assets sold also include service contracts entered into for the exclusive benefit of Gala. The contracts shared with the other magazines of the Vivendi Group will be the subject of transitional service agreements for a period of 12 months.

(38) The commitments also provide for 12-month transitional service agreements for (i) premises housing staff involved in running Gala, (ii) office and IT equipment related to the running of Gala, and 18-month transitional service agreements for the provision of operational services, including the temporary provision of the technological environment, back-office and management tools.

(39) The Notifying Party undertakes to ensure that the Transaction is not be implemented until the Notifying Party or the divestiture trustee has entered into the Divestment Agreement for the sale of Gala and the Commission has approved the purchaser and the terms of sale.

(40) Finally, the Notifying Party undertakes to sell Gala to a purchaser that is independent of the Parties and has the financial capacity and incentives to expand the business, does not raise competition concerns or pose prima facie implementation risks and has solid experience in the printed and digital press sector or the printed press sector and a proven knowledge of the specific features of the French market and a proven ability to operate in that market.

5.1.3. *Assessment of the commitments submitted*

(41) The Commission launched two consultations with the relevant market participants on 5 and 13 April 2023, covering the commitments relating to the sale of Editis and the sale of Gala.

(42) The results of the market tests were generally positive in terms of the scope, viability, competitiveness and attractiveness of the commitments concerning the publishing and celebrity magazine markets. On the basis of these consultations and its analysis of the final commitments, the Commission considers that the proposed commitments are sufficient and effective to address the concerns raised by the Transaction in the markets in question.

(43) In particular, the Commission considers that, as a result of the sale of the whole of Editis to a suitable purchaser, the risks and uncertainties regarding the terms of sale via listing and distribution have been addressed. The Commission notes that the sale of the Editis group eliminates almost all overlaps between the Parties' publishing activities and will make it possible to replicate the competitive pressure exercised by Editis prior to the Transaction in a viable and competitive manner, without implementation risks.

(44) In addition, the Commission considers that, as a result of the sale of Gala magazine, the scope of the final commitments in the celebrity magazine market is sufficient to eliminate the risk that the Transaction would significantly impede effective competition in the market for celebrity magazines. The Commission also considers that the final commitments cover all tangible assets, intangible assets, staff and contracts necessary to ensure Gala's competitiveness and viability, and do not pose implementation risks.

(45) In its Decision, the Commission therefore concludes that, on the basis of the commitments proposed by the Notifying Party, the notified concentration would not impede effective competition in the markets in question.

6. **CONCLUSIONS**

(46) For the reasons mentioned above, the Decision concludes that, subject to full compliance with the commitments submitted by the Parties, the proposed concentration will not significantly impede effective competition in the Internal Market or in a substantial part of it.

(47) Consequently the Transaction should be declared compatible with the Internal Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement, under the conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission.