II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 September 1995

relating to a proceeding pursuant to Council Regulation (EEC) No 4064/89

(IV/M.553 — RTL/Veronica/Endemol)

(Only the English text is authentic)

(96/346/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1], and in particular Articles 8 (3) and 22 thereof,

Having regard to the Commission Decision of 22 May 1995 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission,

Having regard to the opinion of the Advisory Committee on Concentrations [2],

Whereas:

(1) On 21 April 1995 the Commission received a request from the Dutch Government pursuant to Article 22 of Council Regulation (EEC) No 4064/89 (Merger Regulation) to examine the proposed joint venture Holland Media Groep SA (HMG) between RTL 4 SA (RTL), Vereniging Veronica Omroeporganisatie (Veronica) and Endemol Entertainment Holding BV (Endemol). The operation was made known to the Dutch Government on 23 March 1995 by means of a press release sent by the parties to the Dutch Government. The request pursuant to Article 22 has therefore been made within the one-month period provided for in Article 22 (4).

(2) After examination of the abovementioned request the Commission found that this request was admissible within the meaning of Article 22 of the Merger Regulation and that the concentration raised serious doubts as to its compatibility with the common market. By decision of 22 May 1995, the Commission accordingly initiated proceedings pursuant to Article 6 (1) (c) in conjunction with Article 22 of the Merger Regulation.

I. PARTIES

(3) RTL is a company incorporated under the laws of Luxembourg which supplies mainly Dutch-speaking TV and radio programmes broadcast under the responsibility of Compagnie Luxembourgeoise de Télédiffusion (CLT). CLT holds — directly and indirectly — 47,27 % of the share capital of RTL. CLT is a broadcasting company, established under the laws of Luxembourg, involved in television, radio, publishing and related businesses in various national markets. The consolidated turnover of CLT in 1993 was ECU 1 937 million. The Dutch publishing company NV Verenigd Bezit (VNU) holds indirectly 38 % in RTL. RTL broadcasts two free commercial TV channels in the Dutch language, RTL 4 and RTL 5, which are directed to the Netherlands.

[1] OJ No L 395, 30. 12. 1989, p. 1. Corrigendum: OJ No L 257, 21. 9. 1990, p. 13.
[2] OJ No C 160, 5. 6. 1996, p. 3.

(4) Veronica is an association established under the laws of the Netherlands acting on the Dutch TV and radio market until September 1995 as a public broadcasting organization. Veronica was one of the three public broadcasting organizations that broadcast their programmes on the public channel 'Nederland 2'. In 1994 Veronica announced its intention to leave the public broadcasting system in order to become a commercial broadcaster. The decision to withdraw from the public broadcasting system became binding in January 1995 when Veronica did not apply for a new licence to operate as a public broadcaster as from 1 September 1995.

(5) Endemol is a company established under the laws of the Netherlands. Endemol is the result of a merger between JE Entertainment BV and John de Mol Communications BV in 1994. Endemol is an independent producer of TV programmes, the centre of its activities being in the Netherlands.

II. THE OPERATION

(6) The purpose of the operation is the creation of a new company, HMG, the business of which is the packaging and supply of TV and radio programmes broadcast by itself, CLT, Veronica or others to the Netherlands and Luxembourg. In view of the fact that the normal suspensions provisions set out in the Merger Regulation do not apply to cases initiated under Article 22, the parties have been entitled to complete the operation in this case, as described more fully below.

RTL holds 51 % of the shares of HGM while Veronica and Endemol, through the holding company Veronica Media Groep (VMG), hold the remaining 49 %. RTL has also acquired 20 % of the share capital in Veronica Blad BV (a subsidiary of Veronica which publishes the weekly TV magazine of Veronica) and 24,99 % in Endemol.

(7) All existing radio and TV activities of the parties that are directed to the Netherlands have been transferred to HMG.

The assets transferred by RTL include the TV channels RTL 4 and RTL 5 and related assets, the RTL rock radio channel, the right for HMG to benefit from CLT's broadcasting licence ('concession'), the business consisting of the supply and packaging of mainly Dutch-speaking television and radio programmes to be broadcast in the Netherlands and Luxembourg, and its 50 % shareholding in IPN SA (IPN), the advertising company which sells TV advertising time for the RTL 4 and RTL 5 channels.

(8) The assets transferred by Veronica and Endemol include the Veronica TV channel and related assets, and the Endemol radio activities (i.e. the Holland FM Radio channel).

(9) The TV programmes of HMG have been broadcast since 1 September 1995 through three separate channels. The RTL 4 and RTL 5 channels are broadcast under CLT's Luxembourg broadcasting licence ('concession'). The Veronica channel is broadcast under a Dutch licence for commercial broadcasting.

III. CONCENTRATION

(10) The operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation. HMG is a concentrative joint venture.

On the one hand, [...](*).

(11) [...].

Even if the interpretation of Article 3 (4) now put forward by the parties was correct [...], the Commission's view is that there is still joint control of HMG. The fact that there is a casting vote for a parent company in case that reconciliation is not possible despite the best efforts of all parent companies, does not necessarily mean that there is no joint control (see notice on the notion of a concentration OJ No C 385 of 31 December 1994, p. 5 (paragraph 37)). This is, in particular, the case where each parent company provides a contribution to a joint venture which is vital for its operation (paragraph 34). In the present case, the basic purpose of the joint venture is to combine the two RTL channels with the new commercial Veronica channel and to ensure the supply of programmes from Endemol which is, according to the parties, vital for maintaining the profile of the HMG channels. Both the RTL side and the Veronica-Endemol side thus provide a contribution which is crucial to the operation of HMG. In these circumstances, the parent companies of HMG are only able to operate the joint venture with each other's agreement on the most important strategic decisions. The use of the contested casting vote by RTL, therefore, would in practice be limited to unusual situations and does not prevent the joint venture from being jointly controlled.

(12) However, even in the event that there was no joint control of HMG within the meaning of Article 3 of the Merger Regulation, there would, nevertheless, be a concentration in the present case in the form of the acquisition of sole control by RTL over the assets transferred by VMG to HMG. In the specific circumstances of this case, this would not change the assessment set out below. In particular, the assessment of the effects of the concentration on the production market would remain the same, since there would still be a structural link between Endemol and HMG (see paragraph 100 below).

(*) Deleted — business secret.

(13) Since the parent companies transfer to HMG virtually all their activities in the markets of the joint venture (commercial TV and radio in the Netherlands) there is no scope for coordination of the competitive behaviour of the parents outside the joint venture.

IV. NO COMMUNITY DIMENSION

(14) On the basis of the figures provided by the parties the combined aggregate worldwide turnover threshold of ECU 5 thousand million is not met. It follows that the proposed concentration has no Community dimension within the meaning of Article 1 of the Merger Regulation.

(15) It can therefore be left open whether or not the VNU is an undertaking concerned within the meaning of Article 1 of the Merger Regulation. If it is not an undertaking concerned, only one of the parties (RTL) attains an aggregate Community-wide turnover of more than ECU 250 million.

V. EFFECT ON TRADE BETWEEN MEMBER STATES

(16) The concentration affects trade between Member States within the meaning of Article 22 (3) of the Merger Regulation. The creation of the joint venture will influence the conditions for new entrants on the Dutch TV broadcasting market and the TV advertising market, including broadcasters from outside the Netherlands. It will also have an impact on the market for the acquisition of foreign (in particular English) language programmes within the Netherlands. In addition, the joint venture, HMG, is itself a company based in Luxembourg and at least the two channels RTL 4 and RTL 5 are broadcast under the licence ('concession') conferred by the Grand Duchy of Luxembourg. Moreover, Dutch public TV channels are fed in through cable networks in Belgium. A change in the structure of the Dutch TV market will therefore have at least an indirect impact on the TV markets in Belgium. Furthermore, if the legal situation in Belgium with regard to VTM is changed so as to result in increased competition from foreign channels on this market, such competition would be likely, in particular, from Dutch commercial channels, including the HMG channels.

VI. ASSESSMENT UNDER ARTICLE 2 OF THE MERGER REGULATION

A. Relevant product markets

(17) The concentration has an impact on the following:

(i) TV broadcasting

As explained in more detail below, all TV broadcasters compete against each other for audience shares. However, in view of the fact that there is no direct trade relationship between broadcasters of 'free' TV channels, on the 'supply side' and, viewers on the 'demand side', it might be argued that TV broadcasting does not constitute a market in the strict economic sense of this notion. Since it is not necessary to decide upon this issue for the purposes of the present case the issue is left open. However, given the fact that, in any event, the terms 'broadcasting market' and 'viewers' market' are in such common use by all concerned, the analysis in this decision adopts the terminology generally recognized in this sector;

(ii) the market for TV advertising;

(iii) the market for independently produced Dutch TV programmes, i.e. TV productions excluding in-house productions produced by the Netherlands broadcasters.

Given the competitive structure of the market, and since the market shares related to the radio stations transferred to HMG are very low, the Commission considers that the operation does not create or strengthen a dominant position in the markets for radio broadcasting and radio advertising.

(18) The parties argued that the Commission's enquiry in the present case must be limited to the market for TV advertising since the Dutch Government had invited the Commission to examine whether the concentration would create or strengthen a dominant position as a result of which effective competition in the TV advertising market would be significantly impeded within the Netherlands. Since the Dutch Government did not identify competition problems related to other markets, any examination of other markets would, therefore, in the view of the parties, exceed the mandate contained in the request of the Dutch Government.

(19) The Commission cannot agree with the opinion of the parties. First, Article 22 (3) expressly states that the Commission's finding is related to the concentration in question, and not to specific aspects thereof, such as, for instance, specific product markets. In this respect, Article 22 differs from Article 9. Under the latter, the Commission can

only refer a concentration with regard to a distinct market within a Member State, having regard to the products and services in question and the geographic reference market (Article 9 (3)). It is generally possible to identify markets where competition problems arise only after the examination of the concentration which the Commission has to carry out following the request of the government in question. In this respect, Article 22 provides for the same procedure as for cases having a Community dimension. Moreover, it would be difficult for a Member State to assess markets in which a competition problem may or may not occur where, as in the present case, the Member State concerned has no real investigatory powers in the absence of national provisions relating to merger control.

(i) TV broadcasting

(20) In TV broadcasting, also commonly described as the viewers' market, broadcasters compete for audience shares. This is true, in particular, for commercial TV financed through advertising and for public broadcasters at least partially financed through advertising, since the audience shares in the broadcasting market are a determinant factor for their success in the TV advertising markets. There may also be competition for audience shares between, on the one hand, broadcasters financed through advertising and, on the other hand, public broadcasters financed only through licence fees or pay-TV suppliers financed through subscription fees. Even in the case of those broadcasters which do not carry TV advertising, audience share remains an important indicator of the attractiveness and acceptance of the broadcasting channels by the general public.

On the basis of the above, the viewers market may include all TV broadcasters. However, in terms of trade relationships between broadcasters on the supply side and viewers on the demand side a distinction has to be drawn between on the one hand the market for TV advertising, where broadcasters compete for advertising revenue and, on the other hand, the market of pay-TV, where pay-TV suppliers compete for subscriptions.

(21) In the Netherlands, the public broadcasters are financed through both licence fees and advertising. There is, furthermore, one pay-TV supplier. For the reasons outlined above, all TV broadcasters whose programmes are distributed in the Netherlands are included in the analysis of the viewers' market set out below.

For traditional reasons, all available data on audience shares in the Netherlands has always included that part of the audience which is related to home video. Although it appears that home video is not part of the TV broadcasting market, the analysis of audience shares, set out below, also incorporates home video. However, this does not affect the analysis of the case because the audience share attributed to home video has no relevance for the position of the broadcasters on the TV advertising market.

(ii) The market for TV advertising

(22) Competition in the TV advertising market takes place either through the trade relationship between TV broadcasters and advertisers directly, or alternatively, through agencies which represent advertisers in their contacts with broadcasters.

(23) The market for TV advertising must be distinguished from advertising through other media, in particular through the print media. The consumers targeted through the various types of advertising may differ considerably. In addition, the techniques employed (i.e. short films for TV advertising, graphics for magazines) together with the related production costs, are also entirely different for the various media. Furthermore, the prices in terms of targeted consumers reached are different. In the Netherlands, for example, the cost per thousand advertising contacts in 1993 was US $ 11,22 for TV advertising (average over a whole day) as opposed to US $ 5,04 for advertising in magazines [1]. Although there may be fluctuations between TV advertising and other media, which are dealt with in more detail below, it is concluded that TV advertising and advertising in print media are distinct markets.

(iii) The market for independently produced Dutch TV programmes, i.e. TV productions excluding in-house productions

(24) As explained in more detail in paragraphs 89 to 90 below, independent production of Dutch TV programmes constitutes a relevant product market which is separate from the market of in-house productions produced by broadcasters. In-house productions are mainly used by broadcasters for captive use only. These productions do not compete which those of the independent producers. The market for independent production is characterized by the trading relationship between broadcasters who need programmes to broadcast on their channels, and independent producers, suppliers of these programmes.

[1] *Source*: Young & Rubicam *Media in Europe, European Media Cost Comparison 1993.*

B. Geographic market

TV broadcasting

(25) The relevant geographic market for TV broadcasting is in the present case limited to the Netherlands. The relevant factors to be taken into account include the applicable regulatory regime, the existing language barriers, cultural factors and other conditions of competition prevailing in this market (e. g. the structure of the market for cable networks). On the basis of these elements there is a clear distinction to be made between the Netherlands and other countries.

(26) With respect to Flanders in Belgium, the differences in regulatory requirements (e. g. the specific Dutch system for public broadcasting, exclusive licence for commercial TV in Belgium for VTM) are such that TV broadcasting directed to the Netherlands competes in a geographic market which is distinct even from this neighbouring region. Moreover, RTL 4 and RTL 5 are not distributed in Belgium. Nederland 1, 2 and 3 are received in Belgium, since they are fed into the Belgian cable networks. However, in 1994 they attained prime time (6 p.m. — 12 p.m.) audience shares of only 3 %, 4 % and 2 %, respectively (while attaining 16 %, 17 %, 18 % respectively on the Dutch territory). The Belgian commercial channel VTM cannot be received in the Netherlands, since it is only distributed through the cable networks in Belgium. The Flemish public channels TV 1 and TV 2 are fed into the cable networks in the Netherlands where in 1994 they attained in prime time an audience share of only 2 % and 1 %, respectively (while attaining together 22 % of the Belgian TV market). Cultural barriers constitute a major obstacle to the interpenetration of the Dutch and the Belgian TV markets. TV programmes are broadcast in the same language in Belgium and in the Netherlands. Nevertheless, the differences in verbal expressions, in national taste, and in preferences for certain TV personalities over others are such that, according to the parties and all other broadcasters and producers contacted by the Commission, the TV markets in the Netherlands and the Flanders region of Belgium are to be considered as different geographic markets.

TV advertising

(27) There is also a separate geographic market for TV advertising directed towards Dutch consumers which has to be distinguished from the TV advertising market in Belgium.

(28) Radically different conditions of competition exist with respect to competition for advertising revenue. In the Netherlands, the 50 % subsidiary of RTL - IPN - competes with STER, the joint operation of the public broadcasting organizations, for advertising revenue. In Belgium, VTM until recently has been the only commercial channel permitted to sell commercial advertising. The Dutch STER (which is the only institution to be considered, since RTL 4 and RTL 5 are not broadcast in Belgium), which sells advertising time for the Dutch public broadcasters, does not take account of the impact of advertising on the Flemish part of Belgium, which means that it does not include the TV audience in this region in its rating cards. Similarly, VTM does not sell any advertising time in the Netherlands. In addition, regulatory rules on advertising are different in Belgium and in the Netherlands (e. g. in Belgium there are limitations concerning commercials directed to children around children's programmes, and with regard to the references to price in the course of TV advertising). Moreover, in the same way as for TV broadcasting, as described above, there are cultural barriers (differences in verbal expressions, in taste, preferences for certain presenters of advertising over another) which have to be taken into account in the assessment of the geographic market and which lead to the conclusion that a separate geographic market limited to the territory of the Netherlands exists for TV advertising.

Independent Dutch TV productions

(29) There is a separate geographic market for independant Dutch TV productions. The Belgian Flanders region has to be excluded from the relevant market. Cultural differences are such that virtually no Dutch productions are bought in Belgium and no Belgian productions are bought in the Netherlands. This is confirmed by the Commission's investigation in this case: of all Dutch producers questioned on this point — including Endemol —, only three have indicated that they sold some TV production to Belgium. These sales are minimal in value when compared to the total value of the Dutch independent production market. Differences between the TV productions of the two countries are particularly relevant for entertainment programmes including, for instance, shows and sit-coms and for programmes related to political and cultural features. It is difficult to attract audiences in the Flemish region of Belgium by a programme using stars who are well-known in the Netherlands and not in Flanders and, similarly, it is difficult to attract the Dutch audience with programmes produced for the Belgian audience.

C. Effects of the concentration

(30) The three markets described above are interconnected in such a way that the position of HMG or its parents in one market has a direct impact on their position in the other markets. The audience share in the viewers' market is an essential factor for determining the market position in the TV

advertising market. High revenues achieved in the advertising market enable the acquisition of more attractive programmes and sports rights, which in turn improves the position in the viewers' market. Preferred access to the most attractive programmes strenghtens the position in both the TV advertising and viewers' markets while the link of Endemol as a producer with the biggest broadcaster in the Netherlands strengthens its position in the market for independent production. In particular, as explained in detail below, the combination of the strengths of the partners within HMG confers upon the joint venture itself and also Endemol a very strong position vis-à-vis their respective competitors.

1. TV broadcasting

(i) *The structure of the Dutch TV broadcasting market before the creation of HMG*

(31) TV broadcasting in the Netherlands includes public and commercial broadcasters. In addition to channels specifically directed to the Netherlands, there are also channels from abroad not specifically directed to the Netherlands, which are fed in through the Dutch cable network.

(32) The public sector broadcasts three channels, namely, Nederland 1, 2 and 3. These channels are run by *Nederlandse Omroepprogramma Stichting* (NOS) on behalf of eight major public broadcasting organizations (Algemene Omroepvereniging (AVRO), Vereniging Evangelische Omroep (EO), Katholieke Radio Omroep (KRO), Nederlandse Christeljike Radio Vereniging (NCRV), TROS, Omroepvereniging VARA (VARA), Veronica Omroep Organisatie (VOO) -Veronica-, Omroepvereniging VPRO (VPRO)). NOS is an umbrella organization providing administrative services and which also broadcasts itself, mainly news and sports programmes. These organizations have an 'A' status (which determines the amount of time each organization is entitled to broadcast, that is 676 hours of television per year on a designated channel) which is conferred once an organization has obtained at least 450 000 members. Traditionally, these organizations reflect cultural and political differences existing in the Netherlands, including protestants, catholics, liberals and socialists. According to the *OMROEP Handboek 1994/95* (page 2), the basic characteristics of the major eight organizations are the following:

— AVRO	(independent liberal,	648 000 members),
— EO	(evangelical,	532 000 members),
— KRO	(Roman Catholic,	615 000 members),
— NCRV	(Christian,	548 000 members),
— TROS	(independent popular,	530 000 members),
— VARA	(social democrat,	531 000 members),
— VOO (Veronica)	(independent young people,	1 036 000 members),
— VPRO	(social critical,	543 000 members).

The total number of members of these associations (4 983 000 members) represents 89 % of Dutch households. The structure of each channel as divided between these associations is the following:

NED 1	NED 2	NED 3
AVRO	EO	VARA
KRO	TROS	VPRO
NCRV	VOO	NOS

The *Commissariaat voor de Media* determines the broadcasting time, as a proportion of total broadcasting time, attributed to each of these organizations as well as the days, or periods within a day, when they may broadcast. In addition, the Commissariaat attributes broadcasting time on the three channels to more than 35 other broadcasting organizationssss and bodies such as educational cooperations (Educom, NOT, RVU and Teleac), churches (e.g. IKON, RKK) and social and cultural groups (e.g. HOSS, Socutera), the *Minister van Algemene Zaken* (Prime Minister's Office) and the political parties.

(33) The structure of the public broadcasters resulting from this configuration is quite complex and lacks flexibility. Discussions between the organizations are necessary in order to be able to broadcast. Coordination of programming between them is currently difficult. The Dutch Government has informed the Commission of its attempts to improve the current coordination of programming between the organizations. These attempts move in two directions, in order to achieve better vertical coordination between organizations broadcasting on the same channel and also to achieve horizontal coordination between the different channels. However, it is doubtful whether these attempts will lead to a significant change within the next five

years. The differences of opinions and political orientations are such that vertical coordination will remain difficult in practice for some years at least and horizontal coordination will probably also be limited with respect to the actual content of programmes.

(34) Commercial broadcasters in the Netherlands include channels broadcast in Dutch and channels broadcast in a foreign language. Channels broadcast in Dutch include RTL 4 and RTL 5 and some special interest or niche channels, such as Kindernet and Eurosport. In addition, there are newcomers which include the channel SBS 6 (intended to be broadcast from September 1995) and special interest channels like TV 10 Gold and The Music Factory (Arcade's channels), which began broadcasting in May this year. Channels broadcasting in foreign languages include ARD, WDR, BBC, TV 5, RAI.

(35) Whilst the public channels are distributed by cable and terrestrial transmission (covering 98 % of Dutch households), the commercial broadcasters are mainly distributed via cable networks. In 1994, RTL 4 and RTL 5 reached about 93 % of Dutch households. For a company to be able to broadcast in the Netherlands it must demonstrate its ability to reach at least 30 % of the population connected to the cable networks in the first year of transmission, and 60 % of the population in the second year of transmission. It appears, however, that this legal requirement may be abandoned in the future, in accordance with current proposals to amend the media law in this respect.

(36) RTL began broadcasting in the Netherlands in 1989 when the RTL 4 channel was introduced. Before that year, the public channels had about 80 % of the Dutch viewers' market. By 1992, their share had declined to 53 % of total viewing. The yearly average market shares on the Dutch TV market are (1994 figures in prime time, i. e. 6 p.m. — 12 p.m.) the following:

— Nederland 1: 16 %,

— Nederland 2: 17 %,

— Nederland 3: 18 %,

— RTL 4: 26 %,

— RTL 5: 6 %,

— Others (foreign channels, pay TV, video): 17 %.

In 1994, the public broadcasters attained a 51 % market share, RTL 4 and RTL 5 32 %, the other broadcasters together 17 %. In the first three months of 1995 the market shares of RTL 4 and RTL 5 increased to 34,3 %.

(ii) *Structure of the TV broadcasting market in the Netherlands following the concentration*

(37) In accordance with its previously declared intention. Veronica committed itself to leave the public broadcasting system at the beginning of 1995 and to become a fully-fledged commercial broadcaster, operating seven days a week instead of two and half days. Veronica has obtained a licence from the Dutch authorities to operate a commercial channel and began broadcasting on 1 September 1995.

(38) Without the creation of HMG, Veronica would have been the strongest commercial competitor of RTL 4 and RTL 5. As a result of the creation of the joint venture, however, the programmes of RTL 4, RTL 5 and Veronica will be coordinated Consequently, HMG will become the strongest broadcaster in the Netherlands.

(39) In the business plan for HMG (drafted in January 1995), the parties expected the threee channels to obtain a combined audience share of [...] in 1996 (RTL 4 [...], RTL 5 [...]). The parties now argue that these figures must be corrected since they consider that the new commercial broadcaster SBS, which began broadcasting at the end of August 1995, will attain a better market position than the parties originally envisaged. The parties now expect HMG to attain an audience share of [...] if SBS attains 4 %, and [...] if SBS attains 8 %.

(40) The position of HMG on the broadcasting market will be determined, on the one hand, by the specific strengths of this combination and, on the other hand, by the ability of the public broadcasters, and other commercial broadcasters, in particular SBS, to compete against HMG.

(iii) *Strengths of HMG*

(41) RTL 4 and RTL 5 are the only Dutch commercial channels offering a full programme service to date. The RTL 4 channel, operating since 1989, has established an average annual audience share of 26 %. Its programmes are mainly geared towards families. One particular target group is housewives. RTL 4 can be characterized as the station of the stars, its image derived in particular form entertainment programmes. The success of RTL 4 in this context can be illustrated by the fact that, out of the 56 non-sports programmes with the highest audience ratings in the 1993/94 season, RTL 4 broadcast 33 of these programmes. The RTL 5 channel was introduced in 1993, and, in the meantime, has attained an annual average audience share of 6 %. Its programmes are directed partially towards young people.

Since RTL 4 SA belongs to the CLT group it has access to the large resources of this group, which also operates strong and successful television channels in other European countries.

(42) Veronica is generally acknowledged as being the most popular public broadcaster. On the days it broadcasted on Netherlands 2 Veronica's audience share varied between 17 % in June and July 1994 and 25 % in November 1994. Veronica is the broadcasting association with by far the highest number of members (more than one million as opposed to 500 000-600 000 for each of the other associations). The main target group of Veronica is young people, in particular the 20 to 34 age group, including young families. It is also slightly more male orientated than the RTL channels. As demonstrated by its slogan 'young, wild and exciting', Veronica's image is that of a modern and dynamic television station. Its successful programmes include, for instance, the weekly show 'All you need is love' which, in terms of audience rating, is one of the highest ranking non-sports programmes.

(43) The combination of the three channels RTL 4, RTL 5 and Veronica enables HMG to coordinate their programme schedules in order to attract a maximum of viewers and to react against any competing channel. Unlike a situation where Veronica would have been a commercial channel on its own, there will be no competition between Veronica and the RTL channels. On the contrary, HMG can coordinate the targeting of the different viewer's groups and provide complementary programme schedules on all three channels throughout the day.

(44) The main target groups are covered by RTL 4 and Veronica. RTL 5, therefore, can be used as a 'fighting channel' which can directly counteract the programming of competing channels and, in particular, the programmes of new entrants on the market. In fact, in the HMG 'trend letter' to the personnel of HMG, the Programme Director of HMG stated that RTL 5 will become the fighting channel and will be the most flexible station of the Netherlands which will, through its programming, when necessary, immediately anticipate competing channels.

(45) The combination of the RTL channels and Veronica is further strengthened by HMG's structural link to Endemol, one of its parent companies. As explained in more detail below (see paragraphs 91 to 97), Endemol is by far the biggest Dutch independent producer of TV programmes. Endemol owns the rights to and produces the most popular TV programmes. It has favoured access to successful TV programme formats and has the most popular TV personalities under contract, many on an exclusive basis. Endemol was already in the past the main programme supplier to RTL 4 and RTL 5 as well as Veronica. However, this relationship is now based on a structural link which guarantees the preferential access of the three channels to the most successful productions made by Endemol. While such preferential access flows from the structural link in itself, it is also illustrated by the production agreement between HMG and Endemol which, *inter alia,* grants HMG [...].

(46) Another shareholder in HMG is VENU, one of the leading Dutch publishers. VNU publishes a large number of general family weekly magazines (e. g. *Libelle, Margriet, Panorama, Story* and *Nieuwe Revue*) which incorporate television programme information and other features which may promote specific programmes and stars. A structural link between a TV broadcaster and print media dealing, *inter alia,* with TV-related features can be used to promote the TV programmes of the broadcasters. This may occur, despite the existence of statutes on editorial independence, since experience shows that ownership of print media tends to influence the general orientations of the media. Furthermore, there can be direct cooperation between broadcasters and print media owners which are linked. An example is the health and beauty magazine *Top Santé* in which VNU owns 40 %. This mgazine is related to the television programme broadcast under the same name by RTL 4. No other Dutch broadcaster has similar links to print media.

In this context, it is also of importance that the Veronica association owns *Veronica Gids* the largest Dutch TV programme guide with a weekly circulation of more than 1,2 million copies and a market share for TV guides of around 25 %. This confers upon the three channels of HMG a major competitive advantage for the promotion of their programmes.

(iv) *Possibilities for the public broadcasters to react*

(47) In contrast to HMG, the public broadcasters are not able to coordinate programming on the three public channels in such a way as to provide complementary programme schedules. As outlined above (in recital 33), the different orientations of the various public broadcasting organizations make it inherently difficult for them to achieve coordinated programme schedules on each of the channels and to provide each channel with a specific image or identity. The targeting of import viewer groups, therefore, is much more difficult for Nederland 1, 2 and 3 individually than for RTL 4, RTL 5 and Veronica. Furthermore, experience shows that the overall framework of public broadcasting in the

Netherlands renders it difficult to coordinate programme scheduling as between the three channels. It happens that the same type of programme is broadcast at the same time on more than one public channel. Even if there are attempts to improve horizontal and vertical coordination in public broadcasting, it appears that, for the reasons outlined above, such attempts can only achieve a limited degree of success over the next five years. Any significant improvement would probably require a radical change of the public broadcasting system itself.

(48) The parties argue that the public broadcasters have a guaranteed source of revenue from the licence fees, which amounted to more than Fl 900 million in 1994 and which, together with the advertising revenue, amounted to more than Fl 1,4 billion, thereby conferring upon the public broadcasters a strong competitive advantage. It must be noted, however, that the licence fees and revenue from radio and TV advertising are not only earmarked for NOS and the eight major broadcasting organizations. The revenue of the Dutch Ministry of Culture available for the total public broadcasting system in the Netherlands in 1994 was composed of Fl 968 million derived from licence fees, Fl 460 million derived from radio and TV advertising and Fl 18 million interest revenue. The total amount of Fl 1,446 billion was spread as follows:

(Fl million)

Nationwide public TV and radio broadcasting	1 059
NOB (transmission, studios, archives, radio orchestra, etc.)	120
Dutch world radio	79
Regional TV and radio broadcasting	24
Foundations, etc. (stimulating funds for Dutch productions)	72
Reserves	87
Others	5
Total	1 446

It follows that this budget and also, in particular, the revenue from the licence fees, has to cover a large number of different items which go far beyond the financing of NOS and the eight major broadcasting associations. Even the amount of around Fl 1 billion which is earmarked for the nationwide broadcasting is not all available for the TV activities of these organizations. This amount also covers the financing of the public radio stations (Fl 217 millions) and the more than 35 organizations and bodies mentioned above which also broadcast via the three public channels. With respect to the eight major organizations, each of them received Fl 58,5 million in 1994 from the total public income derived from licence fees and advertising revenue. NOS received Fl 180 million (Fl 129 million for general programming, Fl 35 million for events, Fl 8 for teletext, Fl 7 million for minorities and Friesland television). The advertising revenue (Fl 460 million) is totally earmarked for nationwide TV and radio broadcasting. The total budget of Fl 1 059 million for these activities is covered to the extent of Fl 600. The advertising revenue, therefore, accounts for around 43 % of the budget for all nationwide public TV and radio activities.

On the basis of the above, it can be concluded that the licence fees are intended to finance a broad and complex system of public broadcasting, including radio and TV. NOS, as a TV broadcaster, and the other eight major associations receive only a certain proportion of the licence fee income. Moreover, the advertising revenue plays an important role for them.

(49) In considering the amount of guaranteed income for the public TV broadcasters derived from licence fees, account should be taken of the fact that the level of staff, and hence overhead costs, of the public broadcasters is much higher than that of their commercial competitor RTL 4. The number of employees of the nine principal public broadcasting organizations amounts to around 2 300 whilst RTL 4 and RTL 5 operate on the basis of around 350 employees. HMG, operating three channels like the public broadcasters, will have a staff of around 500 employees. This is still less than one quarter of the staff employed by the public broadcasters. More generally, the complexity of the Dutch public broadcasting system, in particular, the multiplicity of broadcasting organizations and related assets inevitably leads to comparatively higher costs for the public broadcasters as compared with commercial broadcasters.

(50) The parties point out that, in 1995, in addition to the normal licence fee income, the public broadcasters will receive an additional Fl 67 million funding. It should be noted, however, that this additional income, which is sourced from the reserves of the public broadcasters, would appear to be a one-off sum.

(51) By contrast, as explained in detail below, there will be a significant long-term reduction in the advertising revenue of the public broadcasters following the creation of HMG due to the position which HMG will attain on the TV advertising market. This loss of revenue will have a direct impact on the production budget of the public broadcasters which, in turn, will have repercussions on the

viewers' market. These repercussions will be particularly significant if the public broadcasters either lose the right to broadcast major sports events to HMG or are obliged to bid very high amounts in order to keep these rights (1). The parties contend that, whilst the sports rights for the Dutch soccer league currently cost Fl 17 million, this cost is expected by some to increase to Fl 75 million in 1995/96.

In general terms, the parties argue that the acquisition of sports rights requires large investments which can not be counterbalanced by the resulting revenues obtained from advertising, and that, therefore, it is mainly public broadcasters with public funding who would be prepared to pay for such rights. However, the Chairman of HMG stated explicitly [...].

(52) A further disadvantage for the public broadcasters will result from the structural link between HMG and Endemol which will provide HMG with preferential access to the most attractive Endemol formats and programmes. It follows that the public broadcasters are not likely to obtain these programmes. This will make it particularly difficult to fill the gap created by Veronica's departure from the public system since the success of Veronica's programming was to a large degree linked to productions from Endemol.

(53) For the reasons outlined above, which constitute an essential structural element of the Dutch TV market, the possibilities for the public broadcasters to compete against the new entity HMG in the viewers' market are limited. More generally, the very nature of public broadcasting limits the ability of the public broadcasters to react in a commercial manner to a commercial broadcaster such as HMG. Whilst HMG can optimize its programming from a commercial point of view in order to attract a maximum of viewers, the public mission of the public broadcasting associations does not permit them to try to behave in the same manner. The public mission requires that the three public channels provide at least a minimum of programmes which are directed towards the whole spectrum of viewers, including those programmes which are attractive for only a limited number of viewers (e. g. arts and other cultural programmes and information programmes for minorities, etc.).

(v) *Market entrance of SBS*

(54) On 28 August 1995 SBS, a new Dutch commercial broadcaster started broadcasting in the Netherlands. SBS will provide a general entertainment programme channel (SBS 6), including 45 % Dutch language productions. SBS is owned by the Scandinavian Broadcasting System (SBS) which was established in 1990 and which operates commercial TV channels in Scandinavia and, since February 1995, a Dutch-language channel (VT 4) directed to the Flemish region of Belgium. The turnover of the SBS group was around USD 700 million in 1994.

(55) The parties argue that SBS will be a strong competitor to the three HMG channels. It appears, however, that the scope for SBS to compete in the Netherlands is limited in comparison to HMG. RTL 4 and RTL 5 are well established commercial channels in the Netherlands, and Veronica, while new as a commercial broadcaster, is nevertheless well-known to the Dutch TV audience in general and its one-million-plus members in particular. By contrast, the SBS 6 channel is totally new to the Dutch audience and will have to develop an image from scratch. In addition, SBS will only be able to operate one channel, as opposed to the three channels of HMG, which permits the latter to provide overall coordinted and complementary programming scheduling and the coordinated targeting of all viewer target groups.

(56) The parties stress that SBS has announced that the SBS 6 channel will have an annual programme budget of Fl 70 million. The parties conclude from this that SBS will be a major player on the market and will achieve a market share of at least 8 %, if not more. However, it appears that a programme budget of this Fl 70 million for a full commercial channel in the Netherlands is relatively small. According to the business plan of HMG, the programme budget for the Veronica channel alone is around Fl [...].

(57) The parties argue, furthermore, that the most important shareholders in SBS are the US companies ABC and Viacom and that SBS could, therefore, rely on the financial and programme resources of these companies. However, it should be noted that Viacom has no direct stake but only an option to acquire 6 %. Furthermore SBS itself is a relatively small company compared, for instance, to the CLT group.

Moreover, by contrast to CLT which has a strategic interest in supporting the number one broadcaster in the Netherlands, one may question whether a US media company such as ABC, holding a stake of 23,4 % in SBS, would have an equivalent strategic interest in supporting a relatively small Dutch channel beyond establishing a certain foothold in the Netherlands. Moreover, it should be noted that ABC has no film rights of its own. It is true that SBS has concluded an agreement with Paramount Pictures, a subsidiary of Viacom, which provides SBS access to the Paramount library. However, SBS will not be able to capitalize on this opportunity in the next two to three years [...].

(1) It is true that NOS, as a member of the European Broadcasting Union (EBU) has preferential access to certain sports events. However, this does not include, in particular, the Dutch soccer league.

(58) The parties argue, furthermore, that SBS could obtain preferable access to the film rights of the Walt Disney Corporation through the proposed acquisition of Capital Cities — ABC by Walt Disney. However, it should be noted that CLT recently entered into a joint venture with Walt Disney, which will operate the new German TV channel Super RTL. It appears that this operation forms part of a broader cooperation between CLT and Disney to develop jointly Disney channels in European countries. In addition, it should be noted that ABC has a stake in the German TV channel RTL 2, where CLT is another shareholder. [...].

(59) Furthermore, in general terms, the requirement under Dutch law that a new commercial channel must have access to cable networks covering at least 30 % of households over at least five provinces is, for the time being, a major hurdle for new commercial channels which are not yet known to the TV audience. Given this requirement, SBS has had to face a strong negotiating position of the cable companies in order to attain this threshold and to attain a broad coverage of the Dutch TV audience (currently at 45 %). By contrast, Veronica has already obtained full access to all Dutch cable systems as a result of its pre-existing presence in the Netherlands as a public broadcaster and its popularity amongst TV viewers. Even if the requirement of a certain coverage of the Dutch cable networks were to be abandoned in the future, in practice there will still be the necessity to cover a significant amount of households connected to the cable network in order to enter the Dutch TV market, given that the terrestrial frequencies in the Netherlands are reserved for the public broadcasters and that there are relatively few satellite households in the Netherlands, due to the broad coverage of the cable networks. This need to be fed into the cable networks and the control of these networks over capacity within these networks in any event confers a strong negotiating position on the Dutch cable operators vis-à-vis any newcomer, which constitutes a major hurdle for the latter. This situation is likely to be aggravated by the fact that, in accordance with proposals to amend the current media law, cable operators would be able to operate TV channels themselves and to offer their own packages of TV channels which would lead to a further negotiating advantage for the cable operators themselves.

(60) Finally, SBS is particularly vulnerable to the possibility that HMG could use RTL 5 as a 'fighting channel' against new competitors in the market. In fact, SBS stated in the hearing that the programme schedule of RTL 5, which has recently been announced, is an exact copy of the schedule put out to advertisers earlier by SBS. As a result, SBS has been forced to change its schedule in an attempt to distinguish itself from HMG, and fears that this change will reduce the possibility for SBS 6 to retain its audience over an evening.

(61) It follows that, whilst the successful entry on to the Dutch market would in any event be difficult, the chances for SBS to attain a significant position on the Dutch TV market are rendered even more difficult as a result of the creation of HMG.

(vi) *Other channels*

(62) There are some other small Dutch language channels operating in the Netherlands, which are mainly special interest channels such as Kindernet (children), Eurosport (sports programmes) or regional or local stations. These channels have not achieved a significant market share to date.

In addition, the Dutch company Arcade has recently launched two channels, the Music Factory and TV 10 Gold. The former is a music channel. In the event that this channel attains a certain market share, this could be mainly to the detriment of the pan-European music channel MTV which is fed into Dutch TV cable networks. TV 10 Gold is principally a re-run channel which broadcasts existing productions, such as old TV series.

(63) The abovementioned channels are all limited with respect to the scope of their programmes. Any attempt by these channels to extend their scope of programming to any significant extent would be faced with the strong position of the three HMG channels. The existence of HMG, therefore, can only serve to discourage and probably dissuade any such attempts. With respect to the public broadcasting associations, it should be noted that they had the same opportunity as Veronica to become a commercial channel. However, they all applied at the beginning of this year for a licence as a public broadcaster for the next five years. Therefore, at least during this period, there will be no new commercial channel from the side of the public broadcasters.

(vii) *Conclusion*

(64) For all the abovementioned reasons, HMG will achieve a very strong position in the TV broadcasting market in the Netherlands. This is likely to be in the order of around 42 to 43 % and will give the three HMG channels a higher market share than the three public channels collectively. In any event, the market position is likely to be at least around 40 % which would place HMG and the three public channels more or less on the same level. However, it is not necessary to determine the precise audience share since, for the competitive assessment in this case, the prime significance of the audience share is that it is the most important parameter for determining market power in the TV advertising market. As explained below, the Commission's view is that HMG will obtain a dominant position in the TV advertising market in either of the two situations.

2. Impact of HMG on the TV advertising market

(i) *Structure before the creation of HMG*

(65) In 1994 the market share of the public broadcasters as a group in the Netherlands, and of RTL, was around 50 % each. It is noted that RTL had an equal share of the TV advertising market although its audience share was significantly lower than that of the public broadcasters. In fact, RTL 4 and RTL 5 enjoyed a bonus factor of 1,3 (that is, if the channels which do not broadcast directly to the Netherlands market are excluded i.e. those representing the 17 % audience share, the audience share of RTL 4 and RTL 5 was 38,6 % in 1994, which leads to a bonus factor of 1,3 in the TV advertising market since the market share in the latter was 50 %). This bonus factor can be explained, *inter alia*, by the restrictions imposed on the public channels under Dutch media law. The amount of advertising they may broadcast is limited to 6,5 % of total broadcasting time. Furthermore, the public broadcasters are not permitted to interrupt programmes for advertising. In contrast to this, RTL, as a commercial broadcaster, is only limited by the rules incorporating the 1989 Television Broadcasting Directive (which limits advertising to a maximum of 15 % of total broadcasting time and, more importantly, permits commercial breaks within certain limitations). In practice, the possibility of commercial breaks in particular confers a considerable commercial advantage upon RTL. As a commercial broadcaster Veronica now enjoys the same advantage vis-à-vis the public broadcasters.

(66) More generally, the RTL channels enjoyed in the past, and the HMG channels will enjoy in the future, further competitive advantages in the TV advertising market vis-à-vis the public broadcasters. Whilst RTL was able (and HMG will be able) to provide its channels with a specific profile by covering specific target groups, it is much more difficult for the public broadcasters to develop a profile for their channels. Since several public broadcasting organizations are required to share the same channel, the broadcaster, in fact, changes from day to day. Given the different general orientations of the several public broadcasting organizations, it is difficult if not impossible for a public channel to create a coherent programming schedule and, therefore, to develop a permanent identity and profile. In addition, the constraints on the public broadcasters resulting from their public mission and their organizational structure render it much more difficult for them to provide a programme environment on a permanent basis which is particularly attractive for the advertising industry. With respect to the public mission, it should be noted that at least 10 % of its programme is related to culture (including a minimum of 5 % arts) and 15 % to information and education. Furthermore, it should also be noted than that not only the licence fees but also the advertising revenue (which is obtained by STER) are first transferred to the Dutch State. As outlined above, NOS subsequently receives a market share of these revenues on the basis of a budget approved by the Dutch Government. The other eight major broadcasting organizations each receive an equal share of the revenues from the licence fee and advertising income. It is obvious that such a system removes some of the incentives for the public broadcasters to provide programmes mainly with a view to maximizing advertising revenue.

(ii) *Situation after the creation of HMG*

(67) In their business plan the parties expect to attain a market share of [...] in the Dutch TV advertising market in terms of spot revenue in 1996, which would increase to [...] in 1999. The parties now argue that this figure must be reassessed since the competitive potential of SBS is stronger than was considered to be the case at the beginning of the year. According to the parties, the market share of HMG will be [...] in the event that SBS attains a market share of 8 %. The bonus factor now attributed by the parties to HMG is [...].

(68) As outlined above, it is probable that the three channels of HMG would attain an audience share of 42 to 43 %. An audience share of 42 % of the total market would result in a market share of 50,6 % where the foreign stations are excluded. Based on a bonus factor of 1,3 (that of RTL 4 and RTL 5 in the past), this would lead to a share in the TV advertising market of 65,8 %. Based on bonus factor of 1,2 [...], the three HMG channels would attain 60,7 % of the TV advertising market.

(69) The Commission ordered an econometric study carried out by a consultant company experienced in the Dutch media market. (A copy of this study was sent to the parties). The study is based on a economic market model and makes use of some basic parameters relevant for the development of the TV advertising market in the Netherlands and the position of players in this market. The model calculated market shares in the TV advertising market based on alternative assumptions of future audience structures of broadcasters in the Netherlands.

(70) The first scenario takes the assumptions [...] but corrects this figure by taking into account a 4 % market share for SBS 6 [1]. The assumptions of the market shares in 1996 are as follows:

[1] In the study the 4 % is attributed to SBS/Arcade. However, as explained above, the market share gained by Arcade would mainly be to the detriment of MTV and could be included therefore in the market shares of the non-domestic channels.

Assumptions about audience market shares in 1996

(6 p.m. to 12 p.m.)

Veronica	16,4 %
RTL 4 and RTL 5	26 %
HMG	42,4 %
NEDS (1)	36,6 %
SBS 6	4 %
Foreign stations	17 %

(1) Nederland 1, Nederland 2 and Nederland 3 combined.

On the basis of these assumptions the share of TV advertising revenue would be the following for 1996:

Share of TV advertising revenue (1996)

Veronica	24,2 %
RTL 4 and RTL 5	38,5 %
HMG	62,7 %
NEDS	31,7 %
SBS 6	5,6 %

(71) The second scenario is similar to the first except that SBS 6 would obtain a market share of 8 %. Accordingly, the audience market share assumptions are as follows:

Assumptions about audience market shares in 1996

(6 p.m. to 12 p.m.)

Veronica	15,5 %
RTL 4 and RTL 5	24,8 %
HMG	40,3 %
NEDS	34,7 %
SBS 6	8 %
Foreign stations	17 %

On the basis of these assumptions, the market shares in the TV advertising market would be as follows:

Share of TV advertising revenue (1996)

Veronica	22,8 %
RTL 4 and RTL 5	36,3 %
HMG	59,1 %
NEDS	29,9 %
SBS 6	11 %

Both of these scenarios were based on the assumption that the three HMG channels could collectively attain a higher audience share than the public broadcasters.

(72) Another series of scenarios were based on the assumption that the three HMG channels would attain an audience market share equivalent to that of the public broadcasters.

On the basis of a 39,5 % audience share for both the public broadcasters and also for HMG, and a market share of 4 % for SBS 6, the model calculated the market shares in the TV advertising market as follows:

Share of advertising revenue (1996)

Veronica	22,3 %
RTL 4 and RTL 5	37,2 %
HMG	59,5 %
NEDS	34,9 %
SBS 6	5,6 %

On the basis of a 37,5 % audience share for both the public broadcasters and also for HMG, and a market share of 8 % for SBS 6, the model calculated the market shares in the TV advertising market as follows:

Share of TV advertising revenue (1996)

Veronica	21 %
RTL 4 and RTL 5	35 %
HMG	56 %
NEDS	32,9 %
SBS 6	11 %

(73) In the three of the four scenarios described above, the market share of HMG in the TV advertising market was around 60 % or more. In one scenario it was still at the level of 56 % (1).

(74) Given the abovementioned expectations of the parties, the bonus factor for HMG and the results of the econometric model, it is highly likely that the market share of HMG in the TV advertising market will be at least 60 %.

(1) The assumption of the audience shares on which this scenario was based, however, does not appear to be realistic. The same is true for other theoretical scenarios calculated by the model in the study.

(75) Indeed, there are indications that this market share figure could be significantly higher in 1996 itself or at least over time. The important parameters for the future development of HMG's position in the TV advertising market are, in particular, the following:

— improvement in audience ratings and audience shares,

— flexibility in offering suitable slots on the three HMG channels including commercial breaks,

— possibility offering package deals to advertisers,

— sponsoring.

(It should be noted that not all of these parameters were fully taken into account in the study referred to above).

(76) Given the strategic advantages of HMG as a combination of three channels as outlined above, and its preferential access to the most popular Endemol productions, it can be expected that HMG's share of the viewers' market and its audience ratings will increase over time. This will be even more true if HMG is able to acquire the rights to important sports events, such as the rights to the Dutch soccer league. Although the parties argue that advertising revenue generated by sports programmes frequently does not cover the cost of the rights themselves, the broadcasting of sports programmes can be a major feature for the profile of a channel and overall, therefore, can be reasonable from a commercial perspective. Furthermore, given that HMG operates three channels, it has a good opportunity to maximize the use of the rights in broadcasting and advertising terms.

(77) The possibility to make use of commercial breaks generally confers a major advantage on commercial broadcasters. This advantage is further strengthened if a commercial broadcaster operates three channels which are fully coordinated. HMG can maximize the possibility to offer suitable lots to the advertising industry, for example, by offering slots for specific target groups across the three channels in a complementary manner.

(78) More generally, HMG can offer package deals to advertisers which go beyond the normal practice of granting rebates on the basis of the total value of advertising time purchased. HMG can, in commercial terms, link advertising on one channel with advertising on one or more of its other channels. This can be achieved through devising a tariff structure to this effect which makes such a package compelling for advertisers. This can also be achieved through offering hidden discounts to advertisers, for example, by offering a certain amount of free advertising time on a channel which is not performing as well as the others. In principle, STER is also able to offer package deals for the three public channels since it acts as a sales organization for all public broadcasters. However, the package deals offered by HMG are likely to be more commercially attractive than those offered by STER because, given the structure of the public broadcasting system, it is difficult to develop a specific profile for each of the public channels and to cover specific target groups.

(79) A further important factor in TV advertising is sponsoring. It should be noted that the market shares in the TV advertising market outlined above are only related to spot advertising and do not include other kinds of non-spot advertising. Non-spot advertising includes the following:

— bill-boarding (that is, indicating that a programme was supported by a brand),

— in-script advertising (e.g. presenting a specific product or brand during a talk-show),

— in-programme branding (e.g. presenting the brands of products which are gained as prizes in a game-show),

— charity programmes, which promote charitable organizations,

— lotteries, sponsored by advertisers,

— consumer advice programmes, sponsored e.g. by banks or health organizations,

— product placement (i.e. the promotion of specific brands in a drama or other production by drawing the attention of the viewer to the brands used in the programme).

(80) It is estimated that these types of sponsoring account for at least 10 % of the overall TV advertising market in the Netherlands. Given the restrictions imposed on the public broadcasters with respect to sponsoring, non-spot advertising in the Netherlands is largely carried out by RTL 4 and RTL 5. It is likely, therefore, that HMG, with its three channels, will retain this position in the future. It is obvious that deals on sponsoring can also be linked to the sale of spot advertising. The position of HMG in the sponsoring segment on the advertising market will, in turn, strengthen its position in the spot advertising market.

(iii) *Position of advertisers*

(81) The parties argue that the TV advertising market generally is a buyers' market in which advertisers purchase advertising time from both STER, representing the public broadcasters, and IPN, representing RTL 4 and RTL 5, and switch easily between them.

According to the parties, the high level of competition within the Dutch TV advertising market is further evidenced by the fact that, since 1990, there has been an average decrease in prices of 6,3 % (corrected to take account of inflation).

(82) However, this line of argument overlooks, first the fact that the competitive situation to date will radically change as a result of the creation of HMG. Unlike the situation in the past, where RTL has operated only two channels and targeted (with its main channel RTL 4) primarily older families and housewives, HMG, by adding the Veronica channel which targets young families and has a male orientation, will cover all the main target groups which are interesting for advertisers. Given the expected audience share of HMG and its competitive advantages in the TV advertising market, described above, it will be extremely difficult for advertisers to avoid buying advertising time on the HMG channels. Advertisers, therefore, will be dependent on IPN so that it would be almost impossible for advertisers to play STER off against IPN and to avoid a situation where HMG sets the prices.

Secondly, it is true that there was an average price price decrease of 6,3 % if the year 1990 is taken as the reference year. However, this is due to the fact that there was a sharp price decrease from 1990 to 1991 following RTL 4's entry on to the market. By contrast, when a comparison of prices is made using 1991 as the reference year the development of prices clearly shows an increase in real prices i.e. corrected for inflation. According to the statistics of VEA (the association of the advertising agencies) the prices developed as follows in terms of price per thousand contacts.

Index (1991 = 100)	1991	1992	1993	1994	1995 Prognosis
12.00 p.m. to 12.00 p.m.	100	107	102	108	114
6.00 p.m. to 12.00 p.m.	100	108	104	111	120

(This table of the VEA does not take into account the development of special rebates granted to advertisers since no official data is available. The VEA estimates that, due to a certain increase in these rebates, the index for 1994 for 12.00 p.m. to 12.00 p.m. would be around 104 instead of 108. This means, however, that there would still be a significant increase in real prices with the period under consideration leading to an index, including rebates, of 107 in 1995 for 12.00 p.m. to 12 p.m. and 110 for 6.00 p.m. to 12 p.m.).

It follows that the entrance of RTL 4 in the market opened competition and led, in the short term, to a substantial decrease in prices. However, since 1991, by which time RTL 4 had become established on the market, the development of the advertising prices was clearly above the general inflation rate and the price increase was particularly high in prime time viewing hours (6.00 p.m. to 12 p.m.). It is doubtful, therefore, whether, even in the past, the market was as competitive as argued by the parties and, in any event, a price development as outlined above is not very indicative of a buyers' market.

a new advertising strategy rather than to a reaction to changes in prices. This can be evidenced by the fact that there was a significant and continuing growth in the TV advertising market even though price increases, after inflation, for advertising in magazines and newspapers were below the TV advertising during the years 1991 to 1995 (index 1995: magazines 106, newspapers 103).

(iv) *Potential new entrants*

(83) The parties argue, furthermore, that the TV advertising market cannot be seen over time in isolation since advertisers shift parts of their advertising budget over time from TV advertising to print media and vice versa. It is true that, for certain brands, the proportion of TV advertising in the media-mix of their advertising campaigns may increase or decrease over time. However, it will always be necessary for a number of advertisers to have at least a part of total advertising on TV. Changes in the various proportions are due more to

(84) The parties argue that the Dutch TV advertising market will experience substantial growth in the future and therefore, will attract the entrance of newcomers. According to the general expectation in the market, an average annual growth rate of 8 % appears to be realistic. However, an 8 % growth in value does not necessarily result in an 8 % increase in TV advertising time sold. This figure also includes the increase in prices due to general inflation and also, as in the past, price increases in real terms.

(85) It appears that an average annual growth rate of TV advertising revenue of around 8 % over the next four years leaves only limited scope for newcomers. The business plan of the parties shows an increase of their expected spot advertising revenues in 1997 of [...], in 1998 of [...] and in 1999 of [...]. This means an average annual growth of [...]. Given the high market share of the parties (at least 60 % in 1996), an average annual growth of the TV advertising revenues of HMG which is above the expected general growth of the market would clearly lead to a situation where the largest part of the growth of the TV advertising market is captured by HMG. Furthermore, it can be expected that the other broadcasters active in the Dutch TV advertising market will try to retain as much of their market share, which will already be at a relatively low level in 1996. It can be expected, therefore, that despite the comparatively high future growth of the Dutch TV advertising market there will be no significant room for market entrants.

(86) Furthermore, the strengths of HMG, as outlined above, constitute a major obstacle for new entrants. It would be difficult for any newcomer to build up a programme schedule for the Dutch market which would be attractive for advertisers since the main targets are already covered by HMG. Every newcomer could have to face the power of the three combined HMG channels and the latter's possibilities to react immediately to new entrants, *inter alia*, by using RTL 5 as a fighting channel. The existence of HMG, therefore, is, in itself, dissuasive for the market entry of any potential newcomer.

(v) *Conclusion*

(87) For the reasons outlined above, HMG will be the clear market leader in the Dutch TV advertising market having a market position high above the other players in the market and will be in a position to counteract all active attempts to compete from existing players and will render the entrance of newcomers to this market very difficult. In this context it should be noted that a number of media buying agencies and advertisers, whilst generally welcoming Veronica's decision to become a commercial broadcaster, expressed concerns on the combination of the RTL channels and Veronica in HMG.

On the basis of the analysis above, the Commission has reached the conclusion that the creation of HMG will lead to a dominant position in the Dutch TV advertising market.

3. Market for Dutch independent TV production

(i) *Situation before the creation of HMG*

(88) Dutch language TV production is carried out either by independent producers or through the in-house production of Dutch broadcasters. Whilst RTL 4 and RTL 5 have only limited in-house production, the public broadcasters produce a significant proportion of programmes themselves. This is particularly true for NOS which, in terms of hours broadcast, has more than 80 % in-house production (based on a breakdown for programmes broadcast in March and November 1994). With respect to the other public broadcasters, programmes produced by independent producers range, in terms of hours broadcast, from less than 10 % for VPRO to around 50 % or more for Veronica and TROS. However, these figures relate to the total number of hours broadcast, including programmes purchased from abroad. Furthermore, these figures are based on hours of programmes and not on the value of the productions in question. In particular, for Veronica and TROS, which have the highest proportion of independent productions, around half to two-thirds of independent productions are accounted for by entertainment shows which are normally expensive. The share of independent TV productions, therefore, will be significantly higher in terms of value rather than volume. In this context, it should also be noted that the in-house production of the public broadcasters is frequently limited to short life productions (such as news, low budget game shows, talk shows) which are normally only broadcast one time. They do not constitute, therefore, a real asset. In contrast, big entertainment, and drama series produced mainly by independent producers, are usually exploited on a number of occasions and constitute an asset.

(89) The in-house production of the public broadcasters is essentially used for their own purposes. Although these productions are sometimes offered on the international market, they are normally not offered to other boradcasters in the Dutch TV market. There is, therefore, no direct competition between in-house production and programmes produced by independent producers which are offered on the market. The parties argue, however, that in-house production should be included in a general market for Dutch TV productions since a broadcaster will always have to make a 'make or buy decision' with regard to production. This is not, in fact, the case. A public broadcaster with a significant amount of in-house production will have undergone considerable investment in production facilities and, in particular, will have engaged the necessary personnel for this production, which is an important cost factor. In fact, as outlined above, the high number of employees of the public broadcasters as compared with commercial broadcasters, is due, to

a considerable extent, to personnel employed for in-house production. In these circumstances, it is not possible for a public broadcaster to have a free choice to decide whether to produce a programme itself or to commission it to an independent producer. If a public broadcaster were to increase orders from independent producers to a significant extent to the detriment of its in-house production, the broadcaster would have to pay the high overhead and personnel costs for the in-house production facilities without obtaining an adequate return on these costs in terms of programmes produced. Such a policy, therefore, would not be feasible in commercial terms, at least not in the long run. There is, therefore, a market which is limited to independent TV productions, and does not include programmes for captive use.

(90) Furthermore, it appears that, in overall terms, in-house production is largely geared to certain categories of programmes such as, news, other information, culture, youth, documentaries, sports and some types of entertainment. In these segments, the experience and know-how gained by the public broadcasters means that they do not have to rely on independent producers. However, the public broadcasters are not generally recognized as producers of large scale entertainment programmes such as those provided by Endemol and they have indicated that it would be very problematic for them to switch this kind of entertainment to in-house production. Overall, therefore, the structure of the in-house production of the public producers does not provide a significant countervailing power to the position enjoyed by Endemol in the market for independent productions.

(91) The market for independent TV producers in the Netherlands has the following structure:

— one very big producer (Endemol),

— a few relatively small but significant producers,

and

— a large number of very small producers (1 to 10 employees).

Based on the value of programmes produced in 1994 the market share structure is as follows:

— Endemol:	clearly more than 50 %
— IDTV:	5-10 %,
— 4 producers:	2-5 % each
— 5 producers:	1-2 % each
— Rest (around 75):	< 1 % each

This market structure shows that Endemol has an overwhelming position in this market. In fact, the company Endemol results from the merger of the previously two largest Dutch producers JE Entertainment BV and John de Mol Communications BV, which took place in 1994.

The parties argue that the calculation of the market share should be based on the volume of hours produced rather than the value of programmes. Such an approach, however, would give a completely misleading description of the players in the market. According to the investigation of the Commission, their TV productions range in value, per hour, between Fl 30 000 for e.g. cheap documentaries and Fl 300 000 for e.g. expensive dramas and entertainment programmes. In these circumstances, the only appropriate calculation of the market shares is that based on value rather than volume.

(92) In addition to its extremely high market share when compared to its competitors, Endemol possesses a number of further strengths which confers upon it a market position far above its competitors.

Endemol owns a large number of the most popular Dutch formats and, due to its size and its huge resources as compared with the other independent producers, has preferential access to foreign formats which are then adapted to the Dutch audience. For example, in the last three years, more than [...] programmes produced by JE Entertainment BV or John de Mol were based on foreign formats directly licensed to these companies. (The parties argue that a number of these formats were broadcast in 1992, 1993 and 1994 and that only [...] programmes were produced by Endemol during this period based on foreign formats owned directly by Endemol).

(93) Endemol has a high number of the most popular Dutch TV personalities under contract, many on an exclusive basis. Endemol currently has [...] exclusive contracts with TV personalities and has lost only [...] stars in recent years, [...]. Furthermore, Endemol is the only Dutch producer which has the possibility to offer TV stars other media opportunities (e.g. theatre shows), given its activites in other forms of entertainment e.g. in theatre and tours. Finally, Endemol has its own agency for stars. Given these facilities, Endemol can build up stars and bind them to the company in a manner which is not possible for other Dutch producers.

(94) The parties contest that Endemol has the most successful formats and preferential access to foreign formats. They also contest that they have the most successful stars under contract. However, in the investigation carried out by the Commission, these points raised strong concerns for a large number of independent producers and also the public and other commercial broadcasters. They all confirmed the conclusions reached by the Commission as outlined above.

(95) Based on the resources outlined above, Endemol produces the most popular entertainment programmes in the Netherlands. For example, in the 1993/94 season, 28 of the 56 non-sports programmes with the highest audience rating were produced by Endemol. Endemol's programmes are normally broadcast in prime time. They have provided a major contribution to the success of RTL 4 and Veronica and have also contributed appreciably to the determination of the profile of these channels.

(96) Furthermore, Endemol has large activities outside the Netherlands. The value of its international productions currently amounts to around Fl [...] per annum, compared with around Fl [...] for Dutch productions. These international activities further improve the position of Endemol with respect to foreign formats and provide futher resources to its businesses which, in turn, strengthen its position on the Dutch production market. None of Endemol's competitors in the Netherlands has comparable international activities.

(97) For the abovementioned reasons, it is concluded that Endemol already has a dominant position on the market for Dutch language independent TV productions in the Netherlands.

(ii) *Effects of the creation of HMG*

(98) Since Endemol is a parent company of HMG, it has obtained, through the creation of this joint venture, a structural link to the future leading broadcaster in the Netherlands. It is true that Endemol, even before the creation of HMG, was already the main programme supplier for RTL 4 and RTL 5 and also Veronica. However, by contrast to the past, Endemol, due to its participation in HMG, now has a large sales basis for its product which is safe and cannot be attacked by competitors. This can be illustrated by the guarantee granted to Endemol in the production agreement concluded between HMG and Endemol, referred to above. According to this agreement, HMG guarantees to purchase [...] of the value of its Dutch language programmes requirements from Endemol. This means, even in 1996, a guaranteed value of FL [...] for productions will be supplied by Endemol. [...] This demonstrates the strategic importance of Endemol's link to HMG.

(99) Moreover, the abovementioned amount is only the minimum of supplies from Endemol to HMG which is guaranteed. As a parent company, Endemol can use its influence in HMG to obtain even more orders from HMG. No other producer in the Netherlands has a similar possibility to have a safe sales basis for its production and to influence the programme acquisition of a broadcaster.

(100) The parties now argue that Endemol will have no relevant influence on HMG since, in their view, Endemol does not have joint control over HMG. As outlined above, however, the Commission has reached the conclusion that HMG is jointly controlled by RTL, on the one hand, and Veronica and Endemol through VMG, on the other hand. Furthermore, even in the absence of joint control, through its structural link to HMG, Endemol is in a position to influence the general programming and programme acquisition policy of HMG in a manner which strengthens Endemol's current position on the market for independent production.

In economic terms, VMG is a vehicle for the pooling of the participations of Veronica and Endemol in HMG, which together amount to 49 % in HMG. RTL, on the one hand and VMG, on the other hand, are equally represented in the shareholders' meeting in which the major strategic decisions relating to the commercial behaviour of HMG are taken. The participation of Endemol in HMG amounts to 23 % (47 % of 49 %). A participation of 23 % in a company which is active in a downstream market has to be seen as a strategic participation, rather than a financial one. This is even more the case where this participation is combined with a substantial representation of the shareholder in the decision-making body of this company. The shareholder will be able to obtain all information on the strategic decisions and will be involved in the discussions and decision-making procedure, where it can, in particular, influence decisions related to the upstream market where it is itself active.

This general evaluation is even more valid in the present case given the supply relationship between RTL and Veronica, respectively, which have obtained the majority of their programmes from Endemol in the past. The parties themselves have stated that this supply relationship was a major factor in determining the image of the channels RTL 4, RTL 5 and Veronica and that this supply relationship would also be a major factor for the future success of HMG. Against this factual background, it would be unrealistic to assume that the participation of Endemol in HMG is a mere financial participation, and does not confer any relevant influence on Endemol.

(101) The new situation resulting from the creation of HMG strengthens significantly Endemol's already powerful position on the Dutch production market. Endemol is able to foreclose the access of other producers to HMG as the largest broadcaster in the Netherlands and, in particular, to the additional programmes needed by Veronica as a seven day channel. The parties themselves have stressed the point that the Endemol productions will determine to an appreciable extent the image of RTL 4 and RTL 5 and Veronica.

(102) With respect to productions supplied to other broadcasters, Endemol, following the creation of HMG, can even more successfully counteract any competition from other independent productions given its large and guaranteed sales basis. The same is true with respect to the access to attractive formats and the exclusive relationship with the most popular stars.

(103) The parties argue that, in the future, there will be an increase in demand for Dutch language productions given the additional programmes needed by Veronica as a commercial channel, as well by the public broadcasters in order to fill the gap created by Veronica's departure, and also by SBS 6 as a new entrant. However, it should be noted that the largest part of the additional demand for Dutch productions will emanate from Veronica, which will require additional programming for four and a half days' broadcasting. By contrast, the public broadcasters have to fill only a gap of two and a half days' broadcasting, resulting from Veronica's departure from the public system. In this context, it is also doubtful whether the additional programmes ordered by the public broadcasters would have a comparable value to the programmes ordered by Veronica given the losses in advertising revenue of the public broadcasters resulting from the creation of HMG. With respect to SBS, it should be noted that Veronica's programme budget, as outlined above, is nearly three times that of SBS 6. It follows that the largest part of the value of additional programmes will be accounted for by Veronica, which is captured by Endemol. With respect to the remaining additional programmes, Endemol, as explained above, is in a much better position than its competitors.

(104) Given its sales basis in HMG and its influence on programme slots on the HMG channels, it can be expected that Endemol will be successful in entering programme segments where it is not present to date to any significant degree; for example, documentaries. This would have further negative consequences for the possibilites of the small Dutch TV producers to carry on their business.

(iii) *Conclusion*

(105) For the abovementioned reasons, the Commission has reached the conclusion that, as a result of the establishment of HMG, the dominant position of Endemol on the independent Dutch TV production market will be strengthened.

(iv) *Article 22*

(106) The parties argue that, under Article 22 (3), the question is not whether in any way the concentration affects trade between Member States but, rather, the extent to which the concentration affects trade between Member States. In the view of the parties, the impact of the concentration on the Dutch TV broadcasting and advertising markets and, in particular, on the Dutch production markets, does not have a sufficient effect on trade between Member States to empower the Commission to act against HMG.

(107) This line of argument put forward by the parties is not clear. It seems that the parties are of the opinion that the Commission can only intervene under Article 22 with respect to effects on trade between Member States. This would mean that the examination under Article 22 would be limited to those aspects which go beyond the market in the territory of the Member State which made the request. In such circumstances, however, the whole purpose of Article 22 would be meaningless, and would be contrary to the interpretation of Article 22 (5) pursuant to which 'the Commission shall take only the measures strictly necessary to maintain or restore effective competition within the territory of the Member State.'

Alternatively, the parties may be of the opinion that there should be a specific test for the effect on trade between Member States, which is different from the normal test e.g. under Article 86. In such a case, however, the nature of such a test is not clear at all. In fact, Article 22 (2) provides that the concentration in question must have an effect on trade between Member States. There are no indications at all that this effect must be of a higher degree than under the other competition rules in EC law.

(108) The arguments put forward by the parties make sense only if they are understood to mean that the Commission cannot base a negative decision under Article 22 on a dominant position in a specific product or geographic market if the concentration has no effect on trade between Member States with respect to such a market, although there is such an effect on other markets concerned by the operation. It can be left open if such an interpretation of Article 22 would be correct. Even if the strengthening of Endemol's dominant position in the market for independent Dutch TV production did not, in itself, have a direct effect on trade between

Member States, the three markets under consideration, as outlined above, are interlinked and the impact of the concentration on the production market changes the conditions of competition in the other markets. Furthermore, the parties have stated themselves that Endemol's participation in HMG is necessary to improve its market position for TV production outside the Netherlands. In this context, it should also be noted that the concentration increases further the capacity for Endemol to purchase foreign formats, given its preferential access to the biggest commercial broadcaster in the Netherlands.

(109) The parties argue, furthermore, that in a procedure under Article 22 the Commission is not empowered to declare a concentration to be incompatible with the common market without having examined whether other measures are sufficient to restore competition. In the view of the parties, this follows from the provision of Article 22 (5), as mentioned above. This opinion, however, is based on a misunderstanding of the purpose and function of Article 22 (5). Under Article 22 (3) the Commission is entitled to adopt the decisions provided for in Articles 8 (2) second subparagraph 3 and 4. If, in the absence of sufficient commitments within the meaning of Article 8 (2) given by the parties, the Commission has to adopt a negative decision under Article 8 (3), the Commission may also adopt a decision under Article 8 (4) in order to restore conditions of effective competition where the concentration has already been completed. In this situation, Article 22 (5) limits the measures to be taken under Article 8 (4) to those which are strictly necessary to maintain or restore effective competition on the territory of the Member State in question. In the event that the concentration has not yet been completed, Article 22 (5) ensures that the negative decision of the Commission would be limited to the dominant position created or reinforced in the Member State which made the request in order to maintain effective competition in this Member State.

(v) *Other arguments of the parties*

(110) The parties argue that they need HMG in its current structure in order to be competitive vis-à-vis multinational players in the TV market and to be best placed with respect to participation in the future multimedia market. In this context, however, it should be noted that CLT is already itself a large multinational media group. It is difficult to see why the parties need such a strong position in the Dutch TV market to the detriment of other Dutch broadcasters. With respect to future multi-media markets and, in particular, future digital TV, it should be noted that HMG is, for the time being, mainly geared to be active in the current analogue TV environment. In any event, if the parties want to be active in future digital TV, it is again difficult to see why they need this particular combination of leading channels, together with the dominant producer. It appears that, given the combined strength of the parties, HMG could become the only major player in the future digital TV. This could even be counterproductive to the development of digital TV in the Netherlands.

VII. UNDERTAKINGS PROPOSED BY THE PARTIES

(111) The parties have submitted proposal for undertakings in order to remove the doubts raised as to the compatibility of the concentration with the common market. The essential features of these proposals are the following:

[...]

(112) The proposals related to RTL 5 are not sufficient to avoid the creation of a dominant position for HMG on the TV advertising market. On the basis of the parties proposals, HMG would retain a substantial influence in RTL 5, [...]. It cannot be expected, therefore, that RTL 5 would actively compete against the HMG channels [...].

[...] The proposals of the parties related to RTL 5 cannot, therefore be considered to be an adequate measure to establish RTL 5 as a viable independent competitor.

Moreover, there is a risk that a divestiture of RTL 5 would prove not to be feasible on the basis that no potential purchaser could ultimately be found. Even if such a divestiture could be completed it is not possible to evaluate fully, at this stage, whether such a divestiture would be sufficient to reduce the market position of HMG to a level below that of dominance. [...]

Furthermore, the competitive potential of RTL 5 would also depend on the manner in which the channel is run pending its sale to a third party. In this context it should be noted that, [...].

(113) With respect to the undertaking related to Endemol, [...]. The question whether the undertaking as a whole removes the competition problems in the Dutch TV production market, however, does not need to be finally decided upon since the undertaking related to RTL 5 is not sufficient to resolve the competition problems in the TV advertising market and the concentration, therefore, cannot be authorized on the basis of the proposals made by the parties.

VIII. ANCILLARY RESTRAINTS

(114) The Commission's view is that the production agreement concluded between HMG and Endemol cannot be considered as an ancillary restraint within the meaning Article 8 (2) second subparagraph of the Merger Regulation. The guarantee for Endemol to supply [...] of the value of HMG's need for Dutch-language productions, together with [...], as set out in this agreement, is a restriction which is not necessary to the implementation of the concentration.

IX. CONCLUSION

(115) For the reasons outlined above, the Commission has reached the conclusion that the concentration will lead to the creation of a dominant position in the TV advertising market in the Netherlands and to the strengthening of a dominant position for Endemol in the market for independent Dutch-language TV production in the Netherlands through which effective competition in the Netherlands will be significantly hindered. The concentration must therefore be declared incompatibe with the common market, in accordance with Article 8 (3) in conjunction with Article 22 (3) of the Merger Regulation.

(116) The concentration in the present case has already been completed since HMG has been created, all assets have been transferred to HMG and broadcasting within the framework of HMG has begun on 1 September 1995.

The Commission has decided not to include measures in application of Article 8 (4) in this Decision under Article 8 (3). The Commission will adopt a separate decision under Article 8 (4) in order to restore effective competition on the above-mentioned markets. Before such a decision is taken, the Commission invites the parties to propose appropriate measures within a period of three months from the notification of this decision in order to restore effective competition in the market for TV advertising and independent Dutch TV production in the Netherlands,

HAS ADOPTED THIS DECISION:

Article 1

The concentration in the form of the creation of the joint venture Holland Media Groep is declared incompatible with the common market. The Commission invites the parties to propose appropriate measures within a period of three months from the notification of this decision in order to restore effective competition in the market for TV advertising and independent Dutch TV production in the Netherlands.

Article 2

This Decision is addressed to:

1. Compagnie Luxembourgeoise
de Télédiffusion SA (CLT)
45 Boulevard Pierre Frieden
L-Luxembourg
2. NV Verenigd Bezit VNU (VNU)
Ceylonpoort 5-25
NL-2036 AA Haarlem
3. RTL 4 SA
Villa Louvigny
Allée Marconi
L-2850 Luxembourg
PO box 1122,
L-1011 Luxembourg
4. Veronica Omroeporganisatie (VOO) BV
Laapersveld 75
NL-1213 VB Hilversum
5. Endemol Entertainment Holding
Zevenend 45
NL-1251 RL Laren

Done at Brussels, 20 September 1995.

For the Commission
Karel VAN MIERT
Member of the Commission