COMMISSION DECISION

of 7 January 2004

declaring a concentration compatible with the common market and the functioning of the EEA Agreement

(Case No COMP/M.2978 — Lagardère/Natexis/VUP) ([1])

(notified under document number C(2003) 5277)

(Only the French text is authentic)

(Text with EEA relevance)

(2004/422/EC)

On 7 January 2004 the Commission adopted a Decision in a merger case under Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ([2]) and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case and in the working languages of the Commission on the website of the Directorate-General for Competition, at the following address: http://europa.eu.int/comm/competition/index_en.html.

(1) The case concerns the acquisition by the French company Lagardère of control of certain assets of Vivendi Universal Publishing ('VUP'), a French company controlled by Investima 10 ([3]) itself controlled by Natexis Banques Populaires; the transaction was notified to the Commission under Article 4 of the Merger Regulation, Regulation No 4064/89, on 14 April 2003.

(2) The buyer, Lagardère, is a group doing business worldwide in three main areas: communications/media/publishing; the motor industry; and high technology. The notification is concerned solely with the communications, media and publishing side, where Lagardère's main activities are grouped in its wholly owned subsidiary Hachette SA, which operates in publishing, the press, distribution, book retailing, and broadcasting and multimedia.

(3) Investima 10 was formed to hold the shares in VUP, which is active in various sectors of creative publishing and in logistics and distribution.

(4) In September 2002 Lagardère declared its interest in acquiring VUP's publishing assets in Europe and Latin America (except Brazil), which Vivendi Universal had just put up for sale ([4]). At the end of October, Vivendi Universal announced that it had accepted Lagardère's offer.

(5) Lagardère's procedure for acquiring these assets had to meet one of the seller's desiderata, which was for a quick sale and quick payment. It was in order to meet this concern for speed that, at Lagardère's request, Natexis Banques Populaires became involved in the process of acquiring the relevant VUP assets.

(6) On 3 December 2002, the Natexis Banques Populaires Group concluded a firm sale contract with Lagardère, enabling Lagardère (via Ecrinvest 4), subject to authorisation from the Commission, to acquire full ownership of the capital in Investima 10, the company owning VUP's assets. The acquisition price was paid immediately by Lagardère to Segex (a company owning all the shares constituting the capital in Ecrinvest 4) on the same date.

([1]) Opinion of the Advisory Committee and final report of the Hearing Officer (OJ C 102, 28.4.2004).
([2]) OJ L 395, 30.12.1989, p. 1; last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).
([3]) Since the date of the notification Investima 10 has become Editis SA.
([4]) Vivendi Universal also divested itself of its publishing assets in the United States (Houghton Mifflin), acquired by a third party.

(7) On 14 May 2003, the French authorities asked for part of the case to be referred to them under Article 9 of the Regulation. This request concerned a number of publishing markets: general literature, the acquisition of copyright for editions in pocket format, the sale of school textbooks and educational supporting materials, dictionaries, encyclopaedias, and marketing and distribution services provided to publishers. By decision of 23 July 2003 the Commission rejected the French authorities' request, taking the view that the condition that there must be a distinct geographic market was not satisfied in any of these markets with the exception of that in school textbooks, which the Commission agreed was a national one, and the market for educational supporting materials, where the Commission, at the time when it took its decision under Article 9, was not able to determine whether the geographic dimension was national or supranational. For these two markets the Commission decided, in accordance with the first subparagraph of Article 9(3)(a) of the Regulation, to analyse the effects of the merger itself, in view of the close links between them and the remainder of the book business.

(8) The Advisory Committee on Concentrations, at its 122nd meeting, on 22 December 2003, delivered a favourable opinion on a draft Decision granting conditional authorisation submitted to it by the Commission.

(9) The Hearing Officer, in a report dated 4 November 2003, took the view that the right of the parties to be heard had been respected.

PUBLISHING

(10) Books follow a circuit from author to reader, the 'book chain', with different people involved at different stages — the publisher, the distributor, the marketer, the wholesaler and the retailer.

(11) Publishers compete with one another at several points in the book chain, especially in the acquisition of publishing rights (access to resources) and in access to shelf space at the various sales outlets (access to the market). An important feature of French-language publishing is that small publishers subcontract the marketing and distribution of their products to competing publishers of larger size who have their own integrated marketing and distribution operations.

(12) Thus there are three different categories of players in the market:

— two major groups (Hachette Livre and VUP), capable of seeing to their development fully autonomously since, apart from their core business of publishing, they combine the full range of marketing and distribution activities and also have popular pocket-format series that enable the works they publish to enjoy a second life;

— four medium-sized groups, three of which (Gallimard, Flammarion and Seuil) are vertically integrated (marketing/distribution and pocket-format series) but are partly dependent on Hachette Livre, VUP or both, for marketing to the smaller outlets; the fourth group (Albin Michel) handles only a part of its own marketing, as a significant proportion of its books are marketed by Hachette Livre, all of them are distributed by Hachette Livre, and its pocket-format books are generally published by LGF, an Hachette Livre subsidiary;

— an assortment of small firms, heavily and sometimes totally dependent on the larger publishers for the marketing of their products and the publication of their pocket-format books.

(13) As initially notified to the Commission the transaction would have combined the business of the two market leaders on their markets and created very significant horizontal overlaps in many areas of publishing and in marketing and distribution. It would also have reinforced the vertical integration of the two companies in the book chain, as one company would now control a great many publishing houses along with substantial marketing and distribution activities, and this was likely to give it dominant positions on several levels of the book chain. The horizontal, conglomerate and vertical effects of the transaction were therefore indissociable.

A. **Relevant markets**

1) *Product markets*

(14) The Commission's investigation showed that the relevant product markets were the following.

(15) Markets for the acquisition of content: Reproduction rights for images and maps; primary markets for French-language publishing rights for original works in French; primary markets for French-language publishing rights for original works in a foreign language; secondary markets for pocket-format rights; and secondary markets for club rights.

(16) The main criteria used to define the markets for rights were the nature of the rights, the type of contract under which they were transferred, the identity of the person transferring the rights, the nature, scope and duration of the rights acquired, the amount of any advances paid [1], and the amount of royalties.

(17) Markets for marketing and distribution services provided to outsiders: Marketers market books to dealers for their own account and on behalf of outside publishers. Outside publishers of this kind are usually small publishers who have not got the means to handle their own marketing to all or some dealers; marketing for outsiders is therefore a market, and in view of the structural differences between dealers it can be subdivided by category of dealer. Thus there are separate markets for marketing to bookshops, hypermarkets and wholesalers. Small 'class 3' customers — supermarkets and small newsagent — are served by wholesalers and not directly by marketers or distributors. 'Distribution' covers all the logistical operations involved in supplying books to dealers; it is not segmented by type of dealer.

(18) The main criteria used to define these markets were the organisation of the trade and the structural differences between dealers (bookshops, hypermarkets and wholesalers), the nature of the service provided, the preferences of publishers, differences in costs, and the barriers to entry at the different levels. It was found that while the relevant markets were markets for the provision of marketing and distribution services to outside publishers, the competitive analysis also had to take account of the overall position of the service providers, i.e. including in-house sales.

(19) Markets for the sale of books to dealers: These are the markets for the sale of general literature titles in large format (to bookshops, hypermarkets and wholesalers); the sale of general literature titles in pocket format (to bookshops, hypermarkets and wholesalers); the sale of children's books (to bookshops, hypermarkets and wholesalers); the sale of art books (to bookshops, hypermarkets and wholesalers); the sale of guides and manuals (to bookshops, hypermarkets and wholesalers); the sale of strip cartoon albums (to bookshops, hypermarkets and wholesalers); the sale of school textbooks; the sale of educational supporting materials; the sale of academic and professional books; the sale of law books; the sale of science books; the sale of books on economics; the sale of books on the social sciences; the sale of dictionaries; the sale of smaller specialist encyclopaedias; the sale of larger reference works in multimedia form; the sale of books published in instalments; and the sale of books by wholesalers to class 3 dealers.

[1] An advance is a firm and final payment by the publisher to the author before a manuscript is delivered. Once the book is published the author receives only the royalties that exceed the amount of the advance.

(20) The main criteria used to define these markets were the commercial link and the nature of the commercial risk; supply-side substitutability (in terms of capacity to produce a book of a particular kind); the physical and graphical characteristics of the books; the prices of the books; and differences in general terms of business and the characteristics of the classes of customer. Within the markets for the sale of general literature titles a distinction has also to be drawn between books in large format, which are usually first editions, and books in pocket format, which are usually second editions, sold at a lower price, and appear in a series with a uniform brand image.

(21) Markets for sales to final consumers: These are markets for the sale of larger reference works, such as multivolume encyclopaedias, by sales agents, and markets for the sale of books by retailers to final consumers.

2) *Relevant geographic markets*

(22) The investigation carried out showed that the relevant geographic markets were as follows.

(23) The geographic dimension of the markets for the acquisition of content for French-language publications is worldwide, in view in particular of the fact that contracts are concluded for the whole world.

(24) The geographic dimension of the markets for marketing and distribution on behalf of outside publishers is the French-speaking area of the European Union, in view in particular of substitutability on the demand side (single contracts) and substitutability on the supply side (same services and same players throughout the area).

(25) The geographic dimension of the markets for the sale of books by publishers to dealers — notably the markets for the sale of general literature, guides and manuals, children's books, works of reference and educational supporting materials — is supranational: it covers at least the French-speaking area of the European Union, and may possibly include French-speaking Switzerland, in view in particular of the uniform conditions of competition, the levels of discount and supply-side substitutability.

School textbooks are strongly influenced by educational syllabuses, and here the geographic dimension is national. In the case of other categories of book, such as law books, the precise definition can remain open. For products of these kinds the relevant geographic markets for purposes of this transaction are France, Luxembourg, Belgium and Spain.

(26) The geographic dimension of the markets for sales to final consumers are national in the case of sales through sales agents, and perhaps even local in the case of sales by dealers, but the precise definition can be left open.

B. **Analysis of the markets affected**

(27) The notified transaction would create or strengthen a dominant position on several markets in the book trade in French-speaking Europe, most notably in publishing rights, marketing, distribution, and the sale of pocket-format books, school textbooks and educational supporting materials.

(28) These anticompetitive effects are essentially the result of the disappearance of the rivalry between Hachette Livre and VUP, the two leaders, who are of similar size and are both active throughout the French-language book chain, including the marketing and distribution stage, where thanks to their integrated wholesale structures they provide privileged access to hypermarkets and small sales outlets.

(29) In particular, the new entity might well be able to act independently of its competitors and customers both as regards access to the 'raw material', i.e. to the established authors that provide the bulk of a publisher's profitable business, and as regards access to the market, i.e. to sales outlets, which can absorb only a small proportion of the books that appear each year, and can give prominent display to even fewer.

a) *Markets for publishing rights*

(30) On the primary market for the rights in books originally in French the notified transaction would confer a dominant position on the merged entity, which would have a market share of [50-55] % calculated on the basis of advances to authors.

(31) On the primary market for the rights in books originally in foreign languages no dominant position would be created: the new entity would not be the market leader, as Albin Michel has a market share of [50-55] %.

(32) The merged entity would dominate the market for secondary rights for pocket-format editions, where it would have a market share of [55-60] %.

(33) The creation of dominant positions on these markets would be reinforced especially by the merged entity's attractiveness to authors, given its strong positions in marketing, distribution, pocket-format sales and sales to small class 3 outlets, and its presence in the media.

b) *The markets for marketing and distribution on behalf of outside publishers*

(34) The merged entity would have a dominant position on each of the markets for marketing services provided to outside publishers. It would be especially strong in marketing to wholesalers and hypermarkets: it would have a share of [55-65] % of each of these markets. In marketing to bookshops its share would be lower, at [25-35] %. Publishers who do not handle their own marketing usually entrust it to the same service provider for all classes of dealer. Access to the different classes of dealer, including hypermarkets and the small outlets and supermarkets served by wholesalers, is of great importance to any publisher, especially for the sale of best sellers. The merged entity's position in marketing to hypermarkets and wholesalers would make it an essential channel, and this combined with its dominance of the market for the sale of books to small class 3 outlets, through its wholesale operations LDS and La Dil, would also lead to the creation of a dominant position on the market for marketing to bookshops, especially as the service of marketing to the different classes is sold in one and the same contract.

(35) The merged entity would also be dominant in the market for distribution services provided to outside publishers, where it would have a market share of [35-45] %, and would own the two biggest distribution centres, in a market where there are barriers to entry and to expansion.

(36) For all the markets for marketing and distribution services provided to outside publishers account has also to be taken of the merged entity's overall power to negotiate and to impose choices, given that it would be distributing and consequently invoicing one French-language book out of every two published in Europe.

c) *Markets for the sale of books to dealers*

(37) The merged entity would dominate the markets for the sale of general literature in pocket format, where it would have a market share of [50-75] % depending on the class of dealer.

(38) In the markets for the sale of general literature in large format, the merged entity would have market shares of [30-40] %. It would hold a dominant position as a result of (i) its strong positions in the acquisition of copyrights, (ii) its importance in marketing and distribution, where it would account for between 40 % and 70 % of large-format general literature bought by dealers of the various classes, and (iii) its dominance of the market for the sale of pocket-format books. But the Commission does not consider that the merged entity's presence in the markets for retail book sales (Relay, Virgin) and in the broadcasting media are decisive factors that would contribute to the creation of a dominant position.

(39) For the same reasons the Decision finds that the merged entity would have dominant positions in the markets for the sale of children's books to hypermarkets and wholesalers and in the market for the sale of guides and manuals to wholesalers, markets in which it would have shares of about 40 %.

(40) In the French market for the sale of school textbooks, where there are very high barriers to entry, the new entity would become dominant, with a market share of [70-80] % and ownership of four of the best-known brands. The situation in the neighbouring markets for the sale of educational supporting materials to dealers is similar.

(41) The merged entity would have a near-monopoly in the markets for the sale of dictionaries, with shares of [90-100] %, and a clearly dominant position in the markets for the sale of smaller general encyclopaedias, with shares of [50-60] %.

(42) In the market for the sale of books by wholesalers to class 3 sales outlets, the merged entity would hold a dominant position, with a share of [50-60] %, and would become the only supplier of books to a substantial number of such outlets. Other wholesalers, who are comparatively small, would also be dependent on the new entity for a substantial proportion of their supplies.

d) *Conclusion*

(43) The Decision concludes that — in the absence of remedies — the transaction would create or strengthen dominant positions as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it, in the markets for: the primary acquisition of the rights to works originally in French, worldwide; the secondary acquisition of pocket-format rights, worldwide; marketing services for sales to bookshops, hypermarkets and wholesalers, in French-speaking countries; distribution services, in French-speaking countries; the sale of general literature in pocket format and large format, in French-speaking countries; the sale of children's books to hypermarkets and wholesalers, in French-speaking countries; the sale of guides and manuals to hypermarkets and wholesalers, in French-speaking countries; the sale of school textbooks, in France; the sale of educational supporting materials, in French-speaking countries; the sale of dictionaries, in French-speaking countries; the sale of smaller general encyclopaedias, in French-speaking countries; and the sale of books by wholesalers to class 3 dealers, in French-speaking countries.

C. **Remedies**

1) *Commitments offered by the notifying party*

(44) In order to overcome the competition problems identified, the notifying party submitted the following commitments.

(45) The notifying party undertakes to sell all the assets of Editis, with the exception of the following:

— the Larousse publishing house and all of its business and its publisher's list;

— the Anaya group and all of its business and its publisher's list;

— the Dalloz publishing house and all of its business and its publisher's list;

— the Dunod publishing house and all of its business and its publisher's list;

— the academic lists made up of the publisher's lists of Armand Colin, Sedes and Nathan Université and the academic journals; and

— the Ivry distribution centre.

(46) The notifying party undertakes to use its best efforts to sell of the assets to a single buyer.

(47) A trustee will ensure that the assets to be sold are held and managed in a structure separate from the Lagardère group, under the responsibility of a hold-separate manager, and that their viability and competitiveness is preserved.

2) *Assessment of the commitments proposed*

(48) The commitments offered by the notifying party would eliminate almost all the horizontal overlaps between the parties' businesses in all of the relevant French-language markets where the transaction might create or strengthen a dominant position, which are listed in paragraph 43 (with the exception of the market for works of reference, but here the assets to be sold are greater than Hachette Livre's initial market share).

(49) If the sale is to a single buyer, the commitments offered would eliminate the bulk of the vertical and conglomerate effects analysed in the Decision which result from the overall size of the merged entity in the French-language book trade, and which contribute to the creation or strengthening of dominant positions in the relevant markets. If the sale is to be to different buyers, a number of requirements will have to be met in full in order to ensure that the commitments do resolve the vertical and conglomerate problems caused by the transaction.

(50) The Decision concludes that provided the commitments offered by the notifying party are met the transaction will not create or strengthen a dominant position held by the merged entity in the common market.

CONCLUSION

(51) On these grounds the Commission decides not to oppose the notified transaction and to declare it compatible with the common market and with the EEA Agreement provided the commitments offered are met. The Decision is adopted under Article 8(2) of Council Regulation (EEC) No 4064/89 and Article 57 of the Agreement on the European Economic Area.