ACQUISITIONS (PUBLISHING): THE VIVENDI CASE

Subjects: Acquisitions
National law

Industry: Publishing

Parties: Vivendi Universal Publishing
Lagardere
Hachette Livres
Natexis Banques Populaires

Source: Commission Statement IP/03/808, dated 5 June 2003

(Note. On the face of it, the Commission is right to question the possible effects of the proposed acquisition of Vivendi, for the reasons given in the fourth paragraph of its statement below. The French government's request, somewhat similar to the British government's request in the Arla case, will be considered at a later stage in the Commission's "in-depth" or "second stage" investigation.)

The Commission has initiated a detailed inquiry into the planned acquisition of Vivendi Universal Publishing (VUP) by the French group Lagardère; the two groups are the two largest publishers of French-language books. At this stage the Commission has serious doubts about the impact of the transaction on several markets, including the markets in publishing rights and the distribution and sale of books. As it has opened a detailed inquiry, the Commission takes the view that under the Merger Regulation there is no need at this stage to decide on the request made by the French Government that the case be referred to the French authorities.

VUP is the biggest publisher, marketer and distributor of French-language books. Lagardère, through its subsidiary Hachette Livre, is second, just behind VUP. Lagardère also does business in the retail sale of books, television and radio, and the publication and distribution of newspapers; by this transaction it would acquire control of VUP's entire publishing assets in Europe, which are currently held in trusteeship on its behalf by Natexis Banques Populaires.

From author to reader a book follows a chain in which various intermediate players have a role: the publisher, the distributor, the wholesaler and the retailer. The Commission's preliminary enquiry has shown that, through their many publishing houses and their distribution and logistics systems, Lagardère and VUP both perform all these functions in the French-speaking countries of the European Union.

At this preliminary stage the results of the Commission's inquiry show that there may be anti-competitive effects in three major clusters of markets all the way along the book chain: the purchase and sale of publishing rights, the distribution

and sale of books by publishers to retailers (notably fiction in hard covers and paperback, books for young people, practical guides, school books and other textbooks, dictionaries and general encyclopaedias). The Commission has decided that a detailed investigation is needed in order to assess the danger that dominant positions might be created or strengthened on these markets.

The Commission will therefore make a detailed analysis of the threat of a reduction of supply or an increase in prices as a result of the strong positions the merged company may hold on several of these markets. The Commission will in particular consider whether the consolidation of VUP's and Lagardère's positions might marginalise competitors to a point where consumers, booksellers and readers would ultimately be deprived of the advantages in terms of quality, variety and prices which are conferred on them by competition.

On 14 May 2003 the French competition authorities lodged an application asking that the case be referred to them under Article 9 of the Merger Regulation; the Regulation otherwise confers exclusive jurisdiction on the Commission once a merger is of a certain size, a principle known as the "one stop shop". According to the application, the transaction threatens to create or strengthen dominant positions on the markets in the publication of hard-cover fiction, the publication of paperback fiction, the acquisition of authors' rights for paperback publication, the publication of school books and other textbooks, the publication of single-language dictionaries, the publication of single-volume general encyclopaedias, and distribution to publishers. The French authorities consider that all of these markets have a domestic rather than an international dimension. ■

State Aids: Belgian Tax Scheme

Following an in-depth investigation initiated in April 2002, the Commission has concluded that the special tax regime available to the activities of the so-called "US-Foreign Sales Corporations" (FSCs) located in Belgium does not meet the requirements of the Eueropean Community's State aid rules. Because at the time of the implementation of the scheme the Belgian authorities as well as the beneficiaries had legitimate reasons to believe that the scheme was not a state aid, the Commission has decided not to seek the reimbursement of the fiscal advantages that might have been received. The use of a flat-rate method to determine taxable profits is not in itself challenged by the Commission. However, the Commission considers that the Belgian FSC scheme reduces the normal tax burden that FSCs or the multinational groups to which they belong would face. The benefits derive from the use of a fixed 8% profit margin and from excluding the most relevant activities undertaken by an FSC in Belgium - advertising, sales promotion, carriage of goods and credit - from the base for calculating the taxable income by derogation from the Belgian Tax Code.

Source: Commission Statement IP/03/887, dated 24 June 2003