



EUROPEAN COMMISSION  
DG Competition

*Case M.8785 - The Walt  
Disney Company /  
Twenty-First Century Fox*

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Decision on the implementation of the commitments -  
Purchaser approval  
Date: 28.01.2019



## EUROPEAN COMMISSION

Brussels, 28.01.2019  
C(2019) 762

### **PUBLIC VERSION**

<p>In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.</p>
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### **To the notifying party**

Dear Sir/Madam,

**Subject: Case M.8785 - The Walt Disney Company / Twenty-First Century Fox Approval of Hearst Communications, Inc. as purchaser of certain legal entities held by A&E Television Networks, LLC following your letter of 17.01.2019 and the Trustee's opinion of 18.01.2019**

### **I. FACTS AND PROCEDURE**

1. By decision of 6 November 2018 (“the Decision”) based on Article 6(1)(b) in connection with Article 6(2), the Commission declared the operation by which The Walt Disney Company (“TWDC”, USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of parts of Twenty-First Century Fox, Inc. (“Fox”, USA) (“the Transaction”) compatible with the internal market following modification by TWDC, subject to conditions and obligations (the “Commitments”).
2. In particular, the Commitments provide for the divestment of TWDC’s ownership interests in the legal entities that hold the “factual” channels currently operated by A&E Television Networks, LLC (“A&E LLC”) (including its subsidiaries and joint ventures) in the EEA, which include the History, H2 and Crime + Investigation channels operated by A&E LLC (including its subsidiaries and joint ventures) in the EEA (“the Divestment Business”).
3. Specifically, the Divestment Business consists of TWDC’s ownership interests in the following legal entities:
  - a. A&E Television Networks Italy S.r.l. (“AETN Italy”),

- b. The History Channel (Germany) GmbH & Co. KG (“THCG”),
  - c. [Details of the legal ownership structure of the Divestment Business], The History Channel, Iberia S.L. (Spain) (“THCI”),
  - d. AETN UK (“AETN UK”).
4. The legal and functional structure of the Divestment Business is described in the Schedule of the Commitments.
  5. Moreover, the Divestment Business includes all assets and staff that are primarily dedicated to and constitute the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as detailed in the Schedule of the Commitments.
  6. By letter of [date], TWDC proposed Hearst Communications Inc. (“Hearst”) for approval by the Commission as purchaser of the Divestment Business and submitted the [...] Agreement of [date], (“the [...]”) and related agreements, including the [...] Agreement (“the [...] Agreement”) and the [...] Agreement (“the [...]”) (together, the “Proposed Agreements”). On [date], the Monitoring Trustee Advolis S.A. (the “Trustee”) has submitted an assessment of Hearst’s suitability as a purchaser and, in particular, has indicated that it fulfils the criteria of the purchaser requirements in section D, paragraph 17, of the Commitments attached to the Decision. In this assessment, the Trustee also indicated that, based on the Proposed Agreements, the Divestment Business would be sold in a manner consistent with the Commitments.

## **II. ASSESSMENT OF THE PROPOSAL**

### **a) Legal framework**

7. In its assessment of the Proposed Agreements and in accordance with paragraph 48 of the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004, OJ C 267, 22 October 2008 (the “Remedies Notice”), the Commission has to ensure the suitability and independence of the proposed purchaser, the viability of the divestment business after the sale, and that the divestment business is sold in a manner consistent with the conditions and obligations attached to the decision. According to paragraph 17 of the Commitments, the Commission should verify that the purchaser fulfils the following criteria:
  - i. the purchaser is independent of the Notifying Party and its affiliated undertakings;
  - ii. the purchaser has the financial capabilities, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
  - iii. The acquisition of the Divestment Business by the purchaser is neither likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

## **b) Description of the Proposed Purchaser**

8. Hearst is a global and diversified conglomerate primarily active in media and information services. The company is headquartered in New York and is active in more than 150 countries. It was created in 1887 with a single newspaper and is now active in more than 360 companies. Hearst's activities are divided into the following nine divisions: Entertainment and Syndications, Financial information services, Broadcasting, Hearst Health, Magazines, Newspapers, Ventures, Real Estate, Other Assets.
9. In the EEA, Hearst is mostly active through its Financial information services and Magazines divisions.
10. Hearst's cable television network operations as well as digital & content operations are part of the group's Entertainment and Syndications division.
11. Hearst's cable television network includes the following ownership and interests:
  - a. A&E LLC (50%-owned by Hearst): Hearst is the 50/50 joint venture partner in A&E LLC together with TWDC. A&E LLC is more generally a global media content company providing a large range of products and services such as television networks, websites, digital media, home videos/DVDs, gaming and educational software. A&E LLC channels and branded products reach more than 300 million households in over 150 countries;
  - b. VICE Media via A&E LLC which holds a [...]%-stake in VICE;
  - c. VICELAND via A&E LLC which holds a [...]%-stake in VICELAND;
  - d. Canal Cosmopolitan Iberia, S.L. and Cosmopolitan Television Canada Company (46% owned by Hearst): the channel is broadcast in Spain and Canada via satellite and cable TV and offers movies, series and lifestyle programming for young women.
  - e. ESPN, Inc. (20%-owned by Hearst): the company provides multimedia sports entertainment worldwide and employs more than 7 000 employees. The company is 80% owned by ABC Inc., a TWDC subsidiary.
12. Hearst is a privately-owned company. [...]

## **c) Independence from the Notifying Party**

13. Hearst and TWDC have no common shareholders. Hearst has no direct or indirect ownership interests in TWDC. [...]. Hearst is not an "affiliated undertaking" of TWDC for the purposes of the EU Merger Regulation, nor is it economically dependent on TWDC.
14. The Trustee's review of relationships between TWDC and Hearst has shown that TWDC and Hearst participate in two joint ventures together, namely (i) A&E LLC, which is a 50/50 joint venture between TWDC and Hearst; and (ii) ESPN Inc. ("ESPN") which is 20% owned by Hearst and 80% owned by ABC Inc, a TWDC subsidiary.
15. Those links have no bearing on Hearst's independence and its ability to manage the Divestment Business independently from TWDC. ESPN has no operations on the

market for the wholesale supply of factual channels in the EEA, and, following the divestment of the Divestment Business, A&E LLC will not retain any activities in that market.

16. In view of the above, the Commission considers that Hearst is independent of TWDC and its Affiliated Undertakings.

**d) Financial resources, proven expertise and incentive to maintain and develop the Divested Business as a viable and active competitor**

17. First, the Trustee's financial analysis of Hearst's annual report and its business plan suggests that it displays a good level of structural profitability and sound financing structures. The Trustee further indicates that Hearst has sufficient financial resources to support the Divestment Business.
18. The Trustee analysed Hearst's business plan for the Divestment Business and key financial indicators such as revenue, operating expenses and EBIT. The Trustee concluded that the revenues and profits of the operating companies will be growing going forward. The Commission checked that the methodology and the analysis provided by the Trustee on financials and business plan were consistent and reliable.
19. Second, the Trustee further indicates that Hearst has the necessary expertise in the media industry. In particular, with its interests in A&E LLC, ESPN and Cosmopolitan Spain & Canada, Hearst has already extensive experience with and knowledge of the pay-TV industry. More generally, Hearst is a global media company active in a large range of content-related sectors including digital content, music streaming, US local television and radio stations broadcasting.
20. Finally, Hearst's business plan on the Divestment Business shows Hearst's incentive to maintain and develop the Divested Business as a viable and active competitor in the market for the wholesale supply of pay-TV factual channels.
21. In view of the above, the Commission considers that Hearst has the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors.

**e) Absence of *prima facie* competition problems or risk of delay**

22. With its 50% stake in A&E, Hearst already jointly controls the Divestment Business. Hearst therefore already has the power to influence the direction of the Divestment Business. The purchase by Hearst of the Divestment Business consists of a change from joint to sole control and is unlikely to have a material impact on the structure of the market. Furthermore, Hearst's European pay-TV operations are limited to Cosmopolitan Spain and ESPN and the transaction will therefore have no impact in Spain or the EEA.
23. There are no third party consent rights or administrative approvals that would delay the timely transfer of the Divestment Business to Hearst. [...].
24. According to the Trustee, the only third-party consent required to effect the sale has been secured. [...]. TWDC identified no other third party consent rights.
25. In view of the above, the Commission considers that the acquisition of the Divestment Business by Hearst is neither likely to create, in the light of the information available

to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. Hearst is also expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

26. This *prima facie* assessment is based on the information available for the purpose of this buyer approval and does not prejudice the competition assessment of the acquisition of the Divestment Business by Hearst by a competent competition authority under applicable merger control rules.

### III. ASSESSMENT OF THE PROPOSED AGREEMENTS

27. The Trustee has carried out a detailed review of the Proposed Agreements, including the terms of the Sale and Purchase Agreement and other agreements related to the transaction, and concluded that the terms of the Proposed Agreements<sup>1</sup> are consistent with the Commitments.
28. In its review of the Proposed Agreements, the Commission did not identify any clause that would not comply with the Commitments or find any indication that the Divestment Business is sold in a manner that is not consistent with the Commitments.

### IV. CONCLUSION

29. Based on the above assessment, the Commission approves Hearst as a suitable purchaser for the above-mentioned reasons.
30. Based on the Proposed Agreements, the Commission further concludes that the Divestment Business is being sold in a manner consistent with the Commitments.
31. This decision only constitutes approval of the proposed purchaser identified herein and of the Proposed Agreements. This decision does not constitute a confirmation that TWDC has complied with its Commitments.
32. This decision is based on paragraphs 17 and 18 of the Commitments attached to the Commission Decision of 6 November 2018.

*For the Commission*

*(signed)*  
*Johannes LAITENBERGER*  
*Director-General*

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<sup>1</sup> In particular, according to the Trustee, through the [Agreement], the interests of A&E LLC in six legal entities, which cover AETN's direct and indirect interests in the four legal entities which are active in the wholesale supply of pay-TV channels in the EEA, are transferred to Hearst. With regard to the [...] Agreement, the Trustee noted that it meets and exceeds the requirements set out in paragraphs 7 and 8 of the Schedule to the Commitments. Finally, according to the Trustee, the [Agreement] includes the requirements set out in para. 9 and 10 of the Schedule to the Commitments.