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Competition - Switzerland

Competition Commission Approves Merger of Tamedia and Edipresse

October 15 2009

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On September 17 2009 the Competition Commission approved the proposed concentration between Tamedia and Edipresse after a second-stage assessment. The concentration was cleared without conditions and commitments under the failing firm doctrine.

Case

Tamedia is Switzerland's fourth-largest media firm and publishes more than 20 regional and local newspapers, including Zurich's *Tages-Anzeiger* and the free daily newspaper *20 Minutes*. It also runs radio and television stations and online services. Edipresse Switzerland is based in Lausanne. It publishes the newspapers *Le Temps* and *Le Matin Bleu*, a scaled-down version of the daily *Le Matin*.

On June 2 2009 Edipresse and Tamedia announced that they were planning to merge their Swiss business by 2013. In early 2010 Tamedia will acquire a 49.9% shareholding in PPSR, which represents most of Edipresse's activities in Switzerland. During a second stage, Tamedia will acquire an additional 0.2% of PPSR at the beginning of 2011, followed by the remaining 49.9% in early 2013. The price for acquiring the first two shareholdings is Sfr226 million, whereas the balance for the third transaction will depend on the development of Edipresse's Swiss business. Part of the price for the final tranche will be paid in shares, thereby making Edipresse one of Tamedia's major shareholders. In French-speaking Switzerland, the two companies also envisage merging the free daily newspapers *20 Minutes* and *Le Matin Bleu* as soon as possible. Edipresse's international operations, its magazine *Bilan* and its luxury marketing division will not be affected by the deal.

Under Swiss competition law, qualifying concentrations must be notified to the commission, which then has one month in which to decide whether to initiate an investigation. During this initial stage the concentration is suspended unless, upon receipt of the application, the commission decides otherwise. If the commission decides to investigate a concentration, it initiates a four-month second-stage assessment at the end of which it decides whether or not the concentration can be consummated. The substantive test for clearance is the test of market dominance.

In the decision to refer the *Tamedia/Edipresse* concentration to a second-stage assessment, the commission indicated its concern that the concentration might create or strengthen a dominant position in the free newspaper market in French-speaking Switzerland, considering the intent of the parties to merge the free French-language dailies *Le Matin Bleu* and *20 Minutes*. The commission was also concerned that the merged entity could dominate the market for early newspaper distribution in French-speaking Switzerland.

Competition Commission Findings

The commission found, in substance, that the merger did not pose a threat to the relevant markets. It held in particular that there was no room in the long term for two free daily newspapers to operate in the market for advertising in French-speaking Switzerland. Tamedia and Edipresse had both incurred significant losses since the launch of their free French-language dailies. The investigation showed that in the absence of the merger, *Le Matin Bleu* would inevitably have left the market and, as a result, Edipresse's market share would have accrued to Tamedia in any case. The investigation also showed that there was no alternative, less anti-competitive transaction that could be undertaken. This position was supported by the fact that no other publisher had expressed interest in acquiring *Le Matin Bleu*.

Comment

Under Swiss merger regulations, the concept of a concentration is defined in such a manner as to cover operations only if they bring about a lasting change in the control of the undertakings concerned. Therefore, one line of enquiry is to ascertain whether a transaction which leads to joint control of an entity by shareholders for an initial period but, according to legally binding agreements, is intended to be converted to give one shareholder sole control subsequently, may be considered to be an acquisition of sole control only. In the past, based on EU decisional practice, the commission has accepted that such a start-up period could last up to three years.

In its decision to refer the *Tamedia/Edipresse* concentration to a second-stage assessment, the secretariat indicated that such a period seemed to be too long to exclude the possibility that the joint control might have an impact on the structure of the market. According to the secretariat, such a period should not exceed one year.

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