

SUMMARY OF THE REPORT AND PROPOSED RESOLUTION IN THE SECOND PHASE CASE C/0119/08 DISTRIRUTAS / GELESA / SIGLO XXI /LOGINTEGRAL

I. NATURE OF THE OPERATION AND COMPANIES INVOLVED

On 27 November 2008 the CNC received notification of an operation involving the creation of a joint venture company (NEWCO) to carry out the periodical publications wholesale distribution carried out in the region of Madrid (Community of Madrid) by SIGLO XXI, DISTRIRUTAS; GELESA; and LOGINTEGRAL. These companies belong to major publishing groups (Prisa, Vocento, Unidad Editorial, Godó and Editorial Planeta) that control and/or have non-controlling stakes in a large number of wholesale distributors of periodicals in Spain. In nearly all cases they share holdings in the same distributors.

The CNC Council resolved to initiate the second phase of the proceeding and the notifying parties proposed commitments, later modified, to resolve the obstacles to effective competition that could arise from the operation.

II. RELEVANT MARKETS AND THEIR ANALYSIS

II.1. Product and geographic markets

The relevant **product markets** are the wholesale distribution of daily newspapers, wholesale distribution of magazines and serial publications, publishing of daily papers and publishing of magazines and serial publications.

The distribution system is organised around four economic agents: publishing companies, national distributors, local distributors and points of sale.

As for the **geographic markets**, although the precedents have considered wholesale distribution markets to be national in scope, the characteristics of the operation and of the markets considered, and the fact that NEWCO will in principle only carry on operations in the region of Madrid, has led the CNC to consider the relevant geographic market as regional, specifically, the Community of Madrid.

As per the relevant precedents, the vertically related markets of publication of daily press and publication of magazines and serial publications are considered national in scope.

II.2. Structure of supply

To assess the market power of the resulting entity and its members, we must consider the companies in which the groups that own the notifying parties invest, even where they do not control those investees, insofar as they can scarcely be considered a

competitive alternative to the merged entity. In addition, PRISA, VOCENTO, GODÓ and UNIDAD EDITORIAL are in many cases present in the same distributors and jointly hold a majority of their capital.

The resulting undertaking, together with its parent companies and the group subsidiaries and affiliates, have market shares of close to [80-90]% in *wholesale distribution of daily papers in Spain* and of [20-30]% in 2007 in the *wholesale distribution of magazines and serial publications in Spain*.

In *wholesale distribution of daily press in the Community of Madrid*, the merged entity controls nearly the entire market, with a share of [90-100]%, while the competitors mainly distribute foreign press.

In *wholesale distribution of magazines and serial publications in the region of Madrid*, the change in the structure of supply is less significant, as only SIGLO XXI has an important presence. The market share of the resulting entity was [30-40]% in 2007. Its main competitors are SGEL and ATHENEUM, with shares of [50-60]% and [0-10]%.

In the *publishing market* in Spain, the groups that own the participants in the operation carry great weight in the *daily press subsector*, with aggregate sales accounting for [50-60]% of the print press publishing market and [20-30]% of the *publication of magazines and serial publications*. The magazine publishing market is less concentrated and has a larger number of operators.

In the *press publishing market in the Community of Madrid*, the combined share is [80-90]% of all daily newspapers published.

II.3. Structure of demand

The customers of the periodical publications wholesale distributors are the publishing groups to which they provide their services.

The four companies being merged mainly distribute publications from the groups to which the NEWCO members belong.

The newspapers published by the groups with a smaller presence in the market (*Público, El Economista, Gaceta de los Negocios*, etc.) are distributed in Spain by companies outside their groups.

The publishing groups provide material to distributors in the form of deposits and the latter deliver it to the points of sale in the same conditions, so that unsold copies can be returned with stipulated time frames.

The publishing groups set the retail sale prices and the payment to the distributors, which normally consists of two parts: a fixed cost called “forfait” that reflects the costs incurred by the distributor and is calculated per daily routes, and a commission calculated as a percentage of the retail sale price for the number of units actually sold. This margin is distributed amongst the agents that participate in the process (distributor, point of sale).

The payment to the point of sale is obtained by assigning part of the commission received by the distributors and that percentage is established by the distributor.

In relation to *setting prices with publishers*, there are large price divergences that are not always justified, leading the CNC to conclude that it has not been shown that the participating distributors have to date determined the fixed service cost applied to the

different customers or the commission percentages charged according to objective, transparent and non-discriminatory criteria, and the notifying parties themselves acknowledge this circumstance.

Unequal treatment is also observed in the *setting of prices with points of sale*. The amounts of the discounts passed on and other expenses charged through to the points of sale (transport, guarantees) are based not just on objective criteria (volume of copies sold, return percentages, geographic location, etc.), but also on factors such as whether the point of sale belongs to a given association, seniority, etc.

III. ASSESSMENT OF THE OPERATION

The most direct effects of the operation arise in the wholesale distribution of daily newspapers in the Community of Madrid, where the top four supplierside operators will be merged into one.

The existing or potential alternative competitors do not represent very significant competitive pressure given the high barriers to entry deriving from the economies of scale needed to operate in the market, which will be heightened as a result of the no-competition and exclusive distribution covenants signed by the NEWCO shareholders and which bind the new entity.

It is to be expected that the merged entity will have a significant effect on its customers and suppliers. Also, to the extent that the shareholders of the resulting entity are vertically integrated with the publication of daily papers, the operation could have a negative impact on effective competition in that market. The main risk is the possibility of exclusion or discriminatory treatment by NEWCO of newspapers from publishers not vertically integrated with wholesale distribution.

Furthermore, it having been established that the commercial terms applied by the notifying companies to the points sale do not conform to transparent, objective and non-discriminatory criteria, this Investigations Division believes that in the absence of commitments or conditions, NEWCO would have the capacity and incentives to reduce the margins of the points of sale and subject them to non-objective and discriminatory conditions, which could impair effective competition by leading to a smaller variety of points of sale for consumers.

Also, given the present structure of the markets considered, there is no assurance, in the absence of conditions or commitments, that the economic efficiencies reaped from the concentration operation will be passed on to the points of sale and consumers, because there is not sufficient competitive pressure on the new entity in the distribution markets analysed, especially in the distribution of daily press.

IV. COMMITMENTS AND ASSESSMENT

In relation to the daily newspaper publishing market, the commitments presented are considered sufficient to counteract the unilateral anti-competitive effects of the concentration operation in this market, inasmuch as they establish a series of mechanisms to avoid:

- The exclusion of third party publishers that do not belong to NEWCO who wish to distribute their publications in the Community of Madrid.
- The application of discriminatory conditions to non-NEWCO third party publishers.
- Access by the NEWCO-shareholder publishers to sensitive information of other publishers.

Also, during a period of [...] years the publishers will be given the option of maintaining the previous distribution conditions, enough time so that the publisher can adapt and negotiate transparent, objective and non-discriminatory conditions with NEWCO, all subject to supervision by the independent auditor.

With respect to the points of sale, the commitment to distribute publications on transparent, objective and non-discriminatory terms, and the setting of the criteria for fixing those conditions (type of point of sale, location, sales, opening hours and days) and supervision by the independent auditor will serve to minimise the risks of exploitation or discrimination of the points of sale.

The commitment to give points of sale the option of maintaining the current commercial and economic conditions, during a reasonably lengthy period of [...] years, also serves to give points of sale time to adapt and negotiate and determine the transparent, objective and non-discriminatory distribution conditions to be offered by NEWCO.

The commitments proposed for passing on efficiencies to the points of sale are adequate, because the latter will see a reduction of their costs, and are proportionate to the efficiencies estimated in the current scenario of a worsening economy.

The commitment to waive the no-competition covenants included in the Shareholders Agreement also serve to eliminate an arrangement between competitors that was potentially contrary to article 1 of Act 15/2007, as it involved a restriction that was not accessory to the concentration and which in principle cannot be justified as a necessary mechanism for restructuring the NEWCO distribution routes.

Similarly, the commitments will make it possible to minimise the harm to publishers and points of sale by establishing a lengthy transition period in which the previous distribution conditions can be maintained, and they will give rise to a distribution system in transparent, objective and non-discriminatory conditions supervised by an independent auditor. This minimises the risk of NEWCO engaging in abusive or exploitative conducts after the concentration operation is carried out.

VI. PROPOSAL

Having regard to all of the foregoing, it is proposed that authorisation of the concentration be made conditional on fulfilment of the commitments set out below:

ANNEX 1. Commitments proposed on 28 May 2009

Comercial de Prensa Siglo XXI, S.A. (“SIGLO XXI”), Distribución de Prensa por Rutas, S.L. (“DISTRIRUTAS”), Gelesa Gestión Logística, S.L.U. (“GELESA”) and Logintegral 2000, S.A.U. (“LOGINTEGRAL”) (collectively referred to as “the Parties”) submit the

commitments that are set out below (“**Commitments**”) under article 59 of the Spanish Competition Act 15/2007 of 3 July 2007 (“**LDC**”) and article 69 of the Competition Regulation approved by Royal Decree 261/2008 of 22 February 2008, solely for the purpose of obtaining a Resolution from the CNC Council for second-phase authorisation of the integration of the periodical publications distribution activities carried on by the Parties in the Community of Madrid through the transfer of their respective businesses to a newly created company (“**NEWCO**”) (“the Proposed Operation”).

The commitments set out below will take effect as from the date the CNC Council adopts the Resolution authorising the Proposed Operation subject to compliance with those commitments.

1. Provision of press distribution services by NEWCO to non-related publishing groups

- (i) *NEWCO will offer distribution services for daily periodical publications in the territory where it conducts its activities (initially the Community of Madrid) to any third party publishing group that does not belong to its shareholder base (“Non-related Publisher Group”) that requests press distribution services in the same commercial and economic conditions as those applied to the shareholder publisher group that has the best distribution conditions in NEWCO (“Minimum Conditions”).*
- (ii) *Without prejudice to the above, NEWCO will give the Non-related Publisher Groups that at the date of the CNC Council Resolution authorising the Proposed Operation are already customers of any of the Distributors the option to, if they wish, maintain the commercial and economic conditions of the distribution agreement currently in force during a period of [CONFIDENTIAL] years, with the relevant revisions according to the transport reference index published by the Ministry of Public Works and Infrastructure¹ instead of applying the Minimum Conditions.*
- (iii) *When calculating the Minimum Conditions the following factors will be taken into account:*
 - a. *number of points of sale requested;*
 - b. *number of copies to be distributed; and*
 - c. *percentage of returns of the publications distributed by each publishing group.*
- (iv) *In the event the distribution demand of a Non-related Publisher Group requires expanding the current distribution structure, the applicable forfait will be calculated on a transparent and objective basis, and in no event may its amount exceed that of the necessary network expansion.*

¹ General Secretariat of Transport — Observatory of over-the-road cargo transport costs, composed of a mix of 70% CPI and 30% TPI (transport price index).

- (v) *The Parties will submit to the CNC, within 15 business days after the date the CNC Council approves the Resolution authorising the Proposed Operation, a standard contract/offer to be signed with new publisher groups that wish to contract NEWCO to distribute press and with those publisher groups that are already customers of one of the Parties that decide to switch to the conditions that apply to new customers. The standard contract/offer will set out the terms and conditions of the service, as well as the equivalent commercial and economic conditions in accordance with the parameters described in the preceding paragraphs.*
- (vi) *NEWCO will offer the Non-related Publisher Groups the same complementary services as offered to the Shareholder Publisher Groups.*

2. Access to NEWCO information by the customer publisher groups

- (vii) *NEWCO will provide each one of the customer publisher groups, irrespective of whether they are shareholders in NEWCO, only information regarding their products, and no other publisher groups (non-related and/or shareholders) may have access to the information on other publisher groups.*
- (viii) *For the purposes of the preceding paragraph, NEWCO will wall off the systems used to manage the information so that no customer can have access to information on another customer. Information that can be accessed by the publisher groups through public sources or that is already known in the market by any other means will not be considered confidential data.*
- (ix) *NEWCO will abide by the principles and systems described in **Annex 1.A**.*

3. Relationship between NEWCO and points of sale of periodical publications

- (x) *NEWCO will offer distribution services in the territory where it conducts its activity (initially, the Community of Madrid) to all points of sale that so request on objective, transparent and non-discriminatory conditions.*
- (xi) *NEWCO will offer the same services to all points of sale.*

4. Access to the market for new points of sale

- (xii) *NEWCO undertakes to apply objective, transparent and non-discriminatory commercial and economic conditions to all new points of sale that wish to contract NEWCO as from the time authorisation is obtained for the Proposed Operation.*
- (xiii) *In setting the commercial and economic conditions referred to in the preceding paragraph, there will be applied criteria such as the type of point of sale, estimated sales, location (distance), opening hours and days.*

5. Respect for historical conditions

- (xiv) *NEWCO undertakes not to discontinue commercial relations with any point of sale that at the date the CNC Council Resolution is adopted is a customer of any of the Parties, except in the event of breach by the points of sale on the obligations governing the commercial relations with the Parties.*
- (xv) *In relation to the points of sale existing at the date of adoption of the CNC Council Resolution authorising the Proposed Operation, NEWCO undertakes to offer the following alternatives at the discretion of said points of sale:*
- a. *To maintain for press distribution the existing commercial and economic conditions during a period of [CONFIDENTIAL], without prejudice to application of the relevant revisions in respect of transport costs, where such exist, in accordance with the transport reference index published by the Ministry of Public Works and Infrastructure;¹ or*
 - b. *Substitution of the current commercial and economic conditions under the contracts with the ones applied for press distribution to the equivalent new points of sale that wish to contract with NEWCO as from the time authorisation of the Proposed Operation is obtained.*

6. Improvement of conditions for current points of sale

- (xvi) *Without prejudice to the relevant yearly revisions regarding transport costs, where such exist, in accordance with the transport reference index published by the Ministry of Public Works and Infrastructure,² NEWCO undertakes to apply a proportionate reduction of [CONFIDENTIAL] in the transport costs applied to distribution of press distributed in [CONFIDENTIAL] if the following circumstances arise cumulatively: [CONFIDENTIAL]. This reduction will be applied in the two years following the one in which the said circumstances exist.*
- (xvii) *NEWCO undertakes to review the amount of the guarantee and/or deposit that must be posted by points of sale to secure collection on the publications by the distributor so that it does not exceed, for both the current and future points of sale, the equivalent of [CONFIDENTIAL] of the average sales of the outlet, and proceed to reduce the guarantee and/or deposit of those points of sale that exceed said amount. To calculate this figure a provisional guarantee or deposit will be set for the new points of sale of [CONFIDENTIAL] euros, which will be reviewed after the first year of sales of the point of sale to bring it into line with the aforesaid limit of [CONFIDENTIAL] of average sales. In no event may*

¹ General Secretariat of Transport — Observatory of over-the-road cargo transport costs, composed of a mix of 70% CPI and 30% TPI (transport price index).

² General Secretariat of Transport — Observatory of over-the-road cargo transport costs, composed of a mix of 70% CPI and 30% TPI (transport price index).

application of this provision imply an increase in the guarantees and/or deposits of those points of sale that have opted to maintain their existing commercial and economic conditions.

- (xviii) *NEWCO will reduce the opening charges for new points of sale by **[CONFIDENTIAL]** euros, lowering the amount payable from **[CONFIDENTIAL]** euros to **[CONFIDENTIAL]** euros. This sum will be reviewed yearly in line with the CPI.*

7. No-competition covenant

- (xix) *The Parties and their respective publisher groups waive the no-competition covenants contained in the Shareholders' Agreement, specifically: **[CONFIDENTIAL]***

8. General provisions

- (xx) *These Commitments will be maintained **[CONFIDENTIAL]** unless otherwise specified. In particular, the commitments set out in paragraphs (ii) and (xv.a) will have the duration indicated therein.*
- (xxi) *In order to evidence compliance with the commitments described above, NEWCO undertakes to commission an annual audit by a previously designated auditor (“**Auditor**”), who will prepare a report certifying compliance with the commitments and submit it simultaneously to the CNC and NEWCO. Also, both the non-related publishing groups and the points of sale may request the involvement of the Auditor to certify compliance with the commitments in accordance with what is specified in **Annex 1.B**, which sets out the principles, rules and functions for the Auditor. The Auditor will likewise certify compliance with the provisions of paragraph (xvi) above.*
- (xxii) *The CNC may, on an exceptional basis if there is evidence of a change of circumstances and a reasoned prior request from NEWCO, grant an exemption, modification or substitution of one or more of the obligations established in these Commitments.*

ANNEX 1.A

PROTOCOL ON THE TREATMENT OF NEWCO INFORMATION

This Annex provides a Protocol under section 2 of the Commitments to be applied by NEWCO to regulate the access that NEWCO customer publisher groups will have to the information on their publishing products.

1. Objectives

- 1.1. NEWCO undertakes to provide each of the customer publisher groups (non-related and/or shareholders) information only on their own products, such that none of the other publisher groups (non-related and/or shareholders) can have access to that information.*
- 1.2. NEWCO undertakes to protect the privacy of the information regarding the products it distributes and to provide, either directly or through third parties, effective and secure electronic services that allow the publisher groups that it services to be informed on the sales, returns, stocks, lapse and turnover of their publications.*

2. Access to the information

- 2.1. Each publisher group customer of NEWCO will receive daily reports on the previous day's sales of their products. The information on intangible and tangible returns will be recorded on delivery notes that are forwarded weekly to each of the publisher groups with information only on their products.*
- 2.2. NEWCO staff will be responsible for coordinating with each publisher group the information flows that are required, to take a census of the information sent and keep a control record of the information.*
- 2.3. The NEWCO website will include a specific application so that each of the publisher groups that distribute their publications through NEWCO can have access to the data on their own products exclusively.*
- 2.4. When a publisher group wishes to obtain information on its publications, it will use the application set up for that purpose on the NEWCO website. To view the information on the distribution of its products, the user will be prompted to enter a name and secret and confidential password that will allow it to register and access the said data.*
- 2.5. The NEWCO Board of Directors will not have access to individualised confidential information on each of the customer publisher groups, and in the discharge of its functions will only be able to see aggregate figures for the publisher groups.*

3. Treatment of the information by NEWCO

- 3.1 The data on the publishing productions will be handled and managed by the staff designated by NEWCO for these purposes.*

- 3.2 All employees with access to the confidential data will only have access to the data needed to perform their functions as employee of NEWCO.*
- 3.3 All NEWCO personnel with access to publication data considered confidential will sign a confidentiality and non-disclosure agreement. Under that agreement, staff that have access to the data on the publications distributed will use that information only for the purposes of their functions as employees of NEWCO, and the latter reserves the right to adopt the measures it deems appropriate in the event of breach of this obligation by its personnel.*
- 3.4 Within fifteen business days after the date the CNC Council adopts the Resolution authorising the Proposed Operation, the Parties will submit to the CNC a standard form for the confidentiality agreement referred to in paragraph 3.3 above for its approval.*
- 3.5 NEWCO will endeavour to enforce absolute impartiality and independence of all of its personnel who have access to confidential data on the publisher's products. In this regard, no employee with access to that information may belong or have ties of any kind to any NEWCO shareholder publisher group or other publisher group.*
- 3.6 NEWCO undertakes to ensure that the provider of its IT services has adequate security measures for storing the data on the publications.*

ANNEX 1.B

PRINCIPLES AND RULES APPLICABLE TO THE AUDITOR

This Annex provides the principles and rules applicable to the Auditor appointed to certify compliance with the Commitments made by the Parties and seeks to establish transparent rules on the Auditor's appointment, functions, obligations, replacement, release and new appointment.

1. Procedure for appointing the Auditor

1.1 NEWCO will name, with the timing and procedure stipulated in paragraphs 1.4 to 1.8 below, an Auditor to perform the functions attributed thereto in this document.

1.2 The Auditor:

- (a) will be independent of NEWCO;*
- (b) must have the necessary qualifications to discharge his mandate;*
- (c) must not be exposed to any conflict of interest.*

1.3 The compensation payable to the Auditor must be sufficient to ensure effective and independent discharge of his mandate.

1.4 Within fifteen business days following the date the Commitments come into force, the Parties will submit for approval by the CNC a list of person or persons that they propose to appoint as Auditor, which will include audit firms of recognised prestige in the market. The proposal must contain sufficient information to allow the CNC to verify that the auditors nominated meet the requirements laid down in clause 1.2. The proposal will include a draft of the Auditor's terms of reference, specifying his functions, rights and obligations, for approval by the CNC.

1.5 The CNC will have discretion to approve or reject the auditors nominated by the Parties. If more than one candidate is approved, the Parties may appoint any one of them. The Auditor will be appointed within one week after the CNC gives its approval.

1.6 If all candidates proposed by the Parties are rejected, the Parties must submit at least two new nominees within one week of being informed of the rejection.

1.7 If all additional nominations presented by the Parties are rejected by the CNC, the Parties must appoint as Auditor the candidate proposed by the CNC.

1.8 The Auditor must undertake the obligations identified in this document to ensure compliance with the Commitments.

2. Obligations of the Auditor

2.1 The Auditor must:

- (a) propose a detailed plan of action to the CNC identifying the manner in which he proposes to perform his function of monitoring compliance with the Commitments, in accordance with the functions attributed in the terms of reference previously approved by the CNC;*
- (b) issue a yearly report certifying that NEWCO complies with the terms of the Commitments, for simultaneous submission to the CNC and to NEWCO;*
- (c) propose to NEWCO, upon prior approval by the CNC, of all such measures as the Auditor deems necessary to ensure compliance with the Commitments;*
- (d) certify compliance of the provisions of paragraph (xvi) of the Commitments; specifically: **[CONFIDENTIAL]**.*

3. Obligations of NEWCO

3.1 NEWCO will provide the Auditor with full cooperation and the information reasonably needed for performance of the Auditor's functions. The Auditor will have full access to all documents and any other information of NEWCO that is needed for performance of their respective functions.

3.2 NEWCO will provide the Auditor with all of the administrative and managerial support reasonably required by the Auditor.

3.3 NEWCO will release the Auditor and its employees and agents from any and all liability to NEWCO deriving from their functions Auditor in accordance with this document, unless such liability arises from negligence or bad faith by the Auditor or his employees, agent or advisors.

3.4 NEWCO will bear the costs of the Auditor.

4. Replacement, release and new appointment of the Auditor

4.1 If the Auditor fails to perform the functions stipulated in this document or there arises any other legitimate grounds, including the existence of a conflict of interest:

- (a) The CNC may, after hearing the Auditor, instruct NEWCO to replace him; or*
- (b) NEWCO may, upon prior approval from the CNC, replace the Auditor.*

4.2 If the Auditor is replaced under the preceding paragraph, he may be required to continue performing his functions until he has provided the new Auditor with all

pertinent information for the performance of his obligations. The new Auditor will be appointed according to the procedure established in clauses 1.4 to 1.7 above.

4.3 Except in the event provided for in clause 4.1, the Auditor will discontinue his functions every three (3) years after the date of adoption of the CNC Council Resolution, whereupon he will either be renewed or replaced in accordance with clauses 1.4 to 1.7.