

Commission Decision of 10 December 2008 on Aid Measure C 11/08 (ex N 908/06) planned by Poland in favour of BVG Medien Beteiligungs GmbH (notified under document C(2008) 7813) (Only the Polish text is authentic) (Text with EEA relevance) (2009/837/EC)

COMMISSION DECISION

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on Aid Measure C 11/08 (ex N 908/06) planned by Poland in favour of BVG Medien Beteiligungs GmbH

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(2009/837/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1) (a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions⁽¹⁾,

Whereas:

1. **PROCEDURE**

- (1) By electronic notification dated 27 December 2006, registered at the Commission on the same day⁽²⁾, the Polish authorities gave notice pursuant to Article 88(3) of the EC Treaty and under the Multisectoral Framework on regional aid for large investment projects⁽³⁾ ('the MSF') that they intended to grant regional aid for a large investment project in favour of BVG Medien Beteiligungs GmbH.
- (2) The Commission requested supplementary information by letters of 2 March 2007 (D/50921), 15 June 2007 (D/52553) and 21 December 2007 (D/55146). The Polish authorities replied by letters of 13 April 2007 (A/33156), 23 October 2007 (A/38722) and 23 January 2008 (A/1392).
- (3) By letter of 11 March 2008 the Commission informed Poland that it had decided to initiate the proceedings laid down in Article 88(2) EC Treaty in respect of the aid.

- (4) The Commission decision to initiate the procedure ('the Opening Decision') was published in the *Official Journal of the European Union*⁽⁴⁾. The Commission called on interested parties to submit their comments.
- (5) The Commission received no comments from interested parties. The Polish authorities replied by letters of 9 May 2008 (A/8753) and 13 May 2008 (A/8829), both registered at the Commission on 13 May 2008.

2. DETAILED DESCRIPTION OF THE AID

2.1. Objective

- (6) The measure supports the setting-up of a new rotogravure printing works, thereby promoting regional development and employment in Lower Silesia Province in south-west Poland, an assisted area pursuant to Article 87(3)(a) of the EC Treaty with a regional aid ceiling of 50 % net grant equivalent (NGE) in accordance with the regional aid map of Poland applicable from 1 May 2004 to 31 December 2006⁽⁵⁾.

2.2. The beneficiary

- (7) The Polish authorities stated that the investment project was to be implemented and managed by BDN Sp. z. o.o. Sp. k., a limited partnership ('the Partnership').
- (8) The Partnership consists of: the general partner, BDN Sp. z o.o. ('BDN'), a limited liability company established in Poland, and the limited partner, BVG Medien Beteiligungs GmbH ('BVG'), a limited liability company established in Germany.
- (9) The Polish authorities also indicated that, under the Commercial Code, a limited partnership did not have legal personality. Therefore the corporate income tax on the Partnership's economic activity was paid by its partners. Since the aid was granted in the form of exemption from corporate income tax, the actual beneficiaries are the partners, i.e. BDN and BVG.
- (10) According to the Polish authorities, the partners share any profits (and thus any reduction in taxes levied on those profits) pro-rata to their contribution to the Partnership, i.e. more than 99 % for BVG and less than 1 % for BDN.
- (11) Moreover, since BDN itself is a wholly-owned subsidiary of BVG, the Commission considers, in line with the view of the Polish authorities, that the beneficiary of the aid measure is BVG. However, taking the total amount of aid into account (i.e. the part accruing to BVG as well as the part accruing to BDN), the Commission considers the BVG group as the final beneficiary of the aid.
- (12) When calculating the beneficiary's market share⁽⁶⁾, the Commission also took account of the fact that BVG is a large enterprise wholly owned by BVG

Medien KG, a limited partnership in the hands of private investors. To be more precise, [...] ⁽⁷⁾ % of the shares are owned by Heinz H. Bauer and his family. Mr Bauer is also the owner of 96 % of the shares of another capital group, Heinrich Bauer Verlag, a publishing house with a number of subsidiaries worldwide.

2.3. **Investment project**

2.3.1. *Products and technology*

- (13) The Partnership is setting up a new rotogravure printing works in Nowogrodzic, in the Special Economic Zone of Kamienna Góra.
- (14) With rotogravure technology, the printing ink is transferred onto a surface (e.g. paper) by a steel printing cylinder which is engraved electromechanically or by laser.
- (15) The new printing works will have [...] rotogravure printing lines carrying out the three main stages of production. Production starts with the preparation of printing forms (cylinders) from digital data supplied by the customer. The next operation is rotogravure printing — the paper is printed in four basic colours, slit, folded and stitched to make the end product. As a last step, the end product is packed and sent to its destination.
- (16) The new plant will essentially be involved in printing magazines, commercial catalogues and inserts (advertising material added to magazines and newspapers).

2.3.2. *Project implementation*

- (17) The investment project started in 2004 and consists in setting up [...] production lines. [...] rotogravure lines together with their auxiliary facilities have already been set up. An order for a [...] line has also been placed and it is expected to be commissioned in the [...] quarter of 2008. It is estimated that this will be followed by the installation of a [...] line. According to the estimates provided by the Polish authorities, the whole project will be completed in 2009.
- (18) The printing works started production in July 2006. Full capacity of all [...] lines amounting to 152 thousand tonnes annually is expected to be achieved in 2010.

2.4. **Eligible expenditures**

- (19) Eligible investment costs are calculated on the basis of the initial investment costs. The eligible expenditure amounts to PLN 857,998 million (EUR 184,6 million approx⁽⁸⁾ in nominal value, which is PLN 734,031 million (EUR 157,95 million approx.) (discounted value). Table 1 provides a breakdown of the eligible expenditure associated with the investment project (expressed in nominal value).

TABLE I

Breakdown of project costs relating to initial investment

(PLN million, nominal value)	
Land	[...]
Buildings, premises, civil engineering	[...]
Machinery, installations and equipment	[...]
Total eligible costs	858,0

2.5. Financing of the project

- (20) The Polish authorities confirmed that the beneficiary's own contribution exceeded 25 % of the eligible costs and was free of any public support.

2.6. Legal basis

- (21) The following legal basis has been indicated:
- Special Economic Zones Act of 20 October 1994;
 - Cabinet Decree of 14 September 2004 on the Kamienna Góra Special Economic Zone.

2.7. The aid measure**2.7.1. Form and amount of the aid**

- (22) The aid was granted under the authorised scheme PL 39/2004⁽⁹⁾. The aid consists of full exemption from corporate income tax (currently 19 % in Poland) until the end of the period for which the Special Economic Zone was established. (i.e. until 1 December 2017) or until the applicable regional aid ceiling is reached.
- (23) While the actual amount of tax relief is contingent on the beneficiary's pre-tax income and may turn out to be less than the maximum allowable, the cap for which the beneficiary is eligible should be taken into account when calculating aid intensity.
- (24) This cap corresponds to the amount resulting from the scaled-down regional aid ceiling and amounts to PLN 220,057 million (EUR 47,35 million) (discounted value). The Polish authorities have confirmed that in the event of the eligible costs being lower than estimated the cap will be reduced proportionally.
- (25) In order to benefit from the tax exemption, the beneficiary had to apply for a licence to operate in the Special Economic Zone. This was granted on 21

June 2004 which, according to the Polish authorities, can be considered as the date on which the aid was granted.

- (26) Notification did not take place until 2006, when, following the various stages of the investment and the resulting increase in the eligible costs, it became clear to the Polish authorities that the aid measure required individual notification in accordance with paragraph 24 of the MSF.
- (27) The Polish authorities have explained that the aid scheme in question (PL 39/2004) requires only a minimum amount of investment expenditure and grants the right to corporate income tax exemption up to the allowable regional aid ceiling. When the licence, and hence the aid, were awarded, neither the exact amount of the eligible costs nor the amount of the aid were known to the authorities.
- (28) In the light of the above, and in order to comply with the standstill clause, the Polish authorities undertook to limit the amount of aid currently available to the beneficiary to the maximum which does not require individual notification under paragraph 24 of the MSF (i.e. EUR 37,5 million (discounted value)). Aid in excess of this amount will not be implemented until the Commission has given its approval.
- (29) The awarding authority responsible is the Ministry of the Economy.

2.7.2. *Cumulation*

- (30) The tax exemption granted under scheme PL 39/2004 can be cumulated with aid received from other sources to cover the same eligible costs. However, Poland has confirmed that the total amount of regional aid in this case will not exceed the amount resulting from the scaled-down regional aid ceiling.

2.8. **Maintenance of the assisted activity**

- (31) The Polish authorities have confirmed that the investment project must be maintained for a period of five years from the day of its completion.

2.9. **Incentive effect**

- (32) As for the incentive effect of the aid, it has been confirmed that the beneficiary applied for the licence entitling it to the aid and the licence was granted before the start of work on the project. As mentioned above, the licence entitled the beneficiary to aid in the form of tax exemption up to the applicable regional aid ceiling calculated with reference to the total eligible costs of the project.

2.10. **Contribution to regional development**

- (33) Lower Silesia is a region with serious socioeconomic problems in which per capita GDP was only 51,7 % of the EU-27 average in 2004⁽¹⁰⁾ and the unemployment rate stood at 24,9 %, equivalent to 268 % of the EU-27 average and 131 % of the Polish average.

(34) The investment into the [...] production lines is expected to create around 500 direct jobs as well as additional jobs for paper and printing ink suppliers and other support service providers. Furthermore, due to its use of leading-edge technology (laser engraving of printing forms and computer-aided manufacture), the project will create demand for personnel with higher education and will ensure the transfer of know-how.

2.11. **General obligations**

(35) The Polish authorities have undertaken to submit to the Commission:

- on a five-yearly basis, starting from the day on which the Commission approves the aid, an intermediary report (including information on the aid amounts paid, execution of the aid contract and any other investment projects started at the same establishment/plant);
- within six months of payment of the last aid instalment on the basis of the notified payment schedule, a detailed final report.

3. **REASONS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE**

3.1. **Doubts concerning the definition of the relevant geographic market**

(36) For the purpose of the market analysis to be carried out in accordance with paragraph 24 of the MSF, Poland considers that the geographic market is EEA-wide on the basis that the Nowogrodzic plant and other printing works located in Poland already supply markets as distant as the United Kingdom (the aided printing works is already printing the British magazine ‘Take a Break’)⁽¹¹⁾. This would show that transport and logistics costs within the EEA are not a real obstacle to rotogravure printing.

(37) The Polish authorities also specified that only [0-10] % of the sales of the aided printing works will supply the Polish market, while the remaining [90-100] % will go to other EEA countries. In 2007 the breakdown in value terms of foreign printing orders performed by the beneficiary was the following: Germany — [75-85] %; United Kingdom — [10-15] %; Austria — less than [0-3] %. In addition, negotiations were ongoing with companies in France, Denmark and Sweden.

(38) The Polish authorities also referred in general to the trend of rapid globalisation of the printing market, with printing operations being expanded into third countries and printing services being commissioned by publishers in distant locations.

(39) At this stage of the assessment the Commission doubted whether transport and logistics costs could really be discounted as a real obstacle to supplying rotogravure printing services even to more distant markets in the EEA. Internet searches indicate that ‘Take a Break’ is in fact published by H. Bauer Publishing Ltd, which is a UK subsidiary of the Bauer Verlag Group.

Treatment of the publishing and printing of magazines within a single group may offer advantages in terms of integration, prioritisation and flexibility of the overall process which counterbalance the transport and logistical difficulties involved.

- (40) Moreover, the number of foreign markets currently supplied by the aided printing works appears to be limited, with Germany representing by far the most important destination.
- (41) Therefore, when analysing the market share and capacity increase at EEA level as proposed by the Polish authorities, the Commission also invited interested parties to comment on whether the relevant market was indeed EEA-wide.

3.2. **Doubts concerning capacity created by the project**

- (42) The Polish authorities have explained that it is difficult to provide a definitive breakdown of the capacity created by the project between magazine printing and catalogue/insert printing, given that magazines and catalogues/inserts are printed on the same production lines. The beneficiary's production capacity for inserts and catalogues will be highly dependent on the printing house's magazine workload (non-periodical items are printed as machines become available). However, as indicated by the Polish authorities, one possible solution is to estimate capacity breakdown on the basis of the expected share of magazines and catalogues/inserts in the sales of the aided facility.
- (43) The planned breakdown as indicated by Poland was approx. [90-100] % for magazines and [0-10] % for other products. The Polish authorities explained that this state of affairs reflected the fact that the printing works already had a stable order book for magazines, inter alia, from in-house publishers belonging to the same group as the beneficiary. Increasing the share of the catalogue market, however, is expected to be a gradual process.
- (44) On the basis of the above breakdown, capacity increase in relation to the size of the EEA-wide market for the rotogravure printing of magazines was [5-10] %, thus exceeding the 5 % threshold laid down in paragraph 24(b) of the MSF.

4. **COMMENTS FROM POLAND**

- (45) The Commission received no comments from interested parties. The observations of Poland can be summarised as follows.

4.1. **Rotogravure and offset technologies belong to the same relevant market**

- (46) Poland argued that as a result of the latest technological developments in offset printing, both technologies could be used interchangeably without any significant difference for the customer and at a comparable cost, even in cases of higher print volumes for magazines and catalogues.
- (47) In particular, Poland referred to the following innovations in offset printing:

- the introduction of machines with a wider printing cylinder which allow the printing of sections similar to the dimensions of those printed with rotogravure (72, 80, and even 96 pages); offset printing has thus become a viable alternative for publications up to 96 pages, which form the bulk of BVG's target market;
 - an increase in print productivity (speed of printing) which is comparable to rotogravure printing speeds (speed of web sheetfeed reaching 15m/sec);
 - an increase in productivity calculated per hour, a reduction in losses and reduction in time when changing forms;
 - the implementation of rotogravure crushing apparatus (greater flexibility in dividing sections);
 - the preparation of forms from digital data (computer-to-plate or CTP). CTP allows forms to be produced much more quickly and cheaply compared to the previous technology;
 - the use of a web sheetfeed equipped with automatic register and control systems that adjust the relevant colour layer much more quickly and generate much less waste paper.
- (48) As evidence that customers no longer differentiate between products on the basis of the printing technology used, Poland cited examples of customers contracting catalogue printing which had switched from offset to rotogravure printing.
- (49) Accordingly, Poland considers that the convergence of printing technologies has created a uniform printing market where any differences identified previously by the Commission play a marginal role or no longer exist. According to Poland, this has been confirmed by a recent merger decision⁽¹²⁾.
- (50) Poland presented data for the combined offset and rotogravure market to show that its compound annual growth rate ('CAGR') in volume terms was 2,54 % in the reference period 2001-06, thus exceeding the CAGR for GDP within the EEA (2 %)⁽¹³⁾. The data provided by the Polish authorities originate from CEPIPRINT A.S.B.L., an independent association of paper manufacturers, and they refer to the apparent consumption in Europe (West and East) of two general types of paper used for printing magazines and catalogues, independently of the technology used by printing works. The data do not enable differentiation between the magazine and catalogue markets.
- (51) Poland also provided data on the capacity created by the project relative to the size of the combined offset and rotogravure publication market (again without differentiation between the magazine and catalogue markets) which amounts to [0-5] % in volume terms. The beneficiary's market share in this combined market also remains well below the 25 % threshold⁽¹⁴⁾.

4.2. **Rotogravure market is not underperforming**

- (52) The Polish authorities also stated that, even if the relevant market were restricted to rotogravure printing alone, its CAGR for the period 2001-06 would exceed the CAGR for GDP within the EEA.
- (53) In that connection Poland provided new data presented by the European Rotogravure Association to the 'Premedia Conference' held in Naples on 14-16 January 2008. The data cover the period 2002-06 and refer to consumption of paper used for rotogravure printing. Data for 2001 were not available from that source and were estimated by Poland on the basis of the CEPIPRINT data referred to above.
- (54) The CEPIPRINT data cover paper consumption used for both offset and rotogravure printing of magazines and catalogues. These data indicate 1 % growth in 2002 compared with 2001, and Poland assumed the same 1 % growth for rotogravure printing in order to add the missing data for 2001 to the 2002-06 dataset.
- (55) On the basis of these assumptions, the CAGR for rotogravure printing of magazines from 2001 to 2006 is 2,03 %, i.e. slightly above the CAGR for GDP within the EEA⁽¹⁵⁾ in the same period (2 %).
- 4.3. **Capacity increase does not exceed 5 % in any of the plausible relevant markets**
- (56) Poland also provided revised data demonstrating that the capacity created by the project did not exceed 5 % of the size of the rotogravure printing markets identified as relevant in the opening decision.
- (57) As indicated above, it is difficult to provide a definitive breakdown of the capacity created by the project between magazine printing and catalogue/insert printing, given that magazines and catalogues/inserts are printed on the same production lines. The opening decision is therefore based on a capacity breakdown between the forecast shares in the new printing works' total production of magazine printing ([90-100] %) and catalogue/insert printing ([0-10] %) respectively. On that basis, the capacity increase slightly exceeded the 5 % threshold for magazine printing.
- (58) The Polish authorities referred to this breakdown again in their observations, indicating the latest available information on the printing works' current and expected sales.
- (59) Poland indicated that the [90-100] % — [0-10] % division had been intended purely as a short-term forecast based on initial estimates at the time of submission. Catalogue printing orders were still being negotiated at that time. Poland also referred to information submitted during the initial investigation phase which indicated that acquiring a share in the catalogue market was a gradual process, whereas the beneficiary already had a good, stable order

book for magazines. As BVG is a new printing works, it can be assumed that catalogue orders will grow slowly but constantly.

- (60) Poland noted that there were no printing works in the EEA specialising solely in magazine printing or catalogue printing. Printing works cannot specialise in magazine printing alone as this would not allow efficient use to be made of all their available production capacity. In order to avoid productivity falling as a result of breaks/downtime between the printing of various magazines, catalogue orders are also needed.
- (61) As substantiation, Poland referred to an earlier merger decision⁽¹⁶⁾ which indicated that in order to use the installed capacity as fully as possible printers will normally try to achieve a mix of different print products, as these have different characteristics (periodicity, printing time and volume). In view of the need to retain some flexibility, it was stated that the three rotogravure printers referred to in the merger decision would aim to ensure that magazine printing accounted for no more than 70-85 % of their product mix.
- (62) Poland confirmed that BVG also aimed to achieve a more balanced product mix over time. This will be achieved gradually as new production lines are launched, production capacity is increased and customer confidence grows.
- (63) More recent data submitted by Poland indicate a gradual increase in the BVG printing works' share of the catalogue market. In the printing year July 2007–June 2008⁽¹⁷⁾ (data based on historical values until March 2008 and confirmed customer orders between April-June 2008), magazine printing accounted for [90-95] % and catalogue/insert printing for [5-10] %.
- (64) A cautious estimate for 2008-09 which only takes account of orders already confirmed by customers and two orders⁽¹⁸⁾ at a very advanced stage of negotiations results in a share of [85-90] % for magazines and [10-15] % for catalogues/inserts. A second variant for 2008/2009 was based on the assumption that orders for the second half of this period would reach the same levels as for the first half (targeted approach). In this scenario, the share of magazine printing will fall to [80-85] % in this period, as opposed to [15-20] % for catalogues/inserts.
- (65) Table 2 below shows how different breakdowns between magazine printing on the one hand and catalogue/insert printing on the other influence capacity increase on the relevant markets⁽¹⁹⁾.

TABLE 2

Capacity increase in relation to the size of the rotogravure printing market

	Capacity created (in tonnes)	Size of the market in 2003 (in tonnes)	Capacity increase (in %)

Status: This is the original version (as it was originally adopted).

Rotogravure publication printing (magazines, catalogues and inserts)	152 000	4 600 000	3,3
Magazine printing in 2007/08 (actual data)	[136 800-152 000] ([90-100] %)	2 760 000	[5-10]
Catalogue and insert printing in 2007/08 (actual data)	[0-15 200] ([0-10] %)	1 840 000	[0-5]
Magazine printing — estimate for 2008/2009 (cautious approach)	[121 600 — 136 800] ([80-90] %)	2 760 000	[0-5]
Catalogue and insert printing — estimate for 2008/2009 (cautious approach)	[15 200-30 400] ([10-20] %)	1 840 000	[0-5]
Magazine printing — estimate for 2008/2009 (targeted approach)	[121 600 — 136 800] ([80-90] %)	2 760 000	[0-5]
Catalogue and insert printing — estimate for 2008/2009 (targeted approach)	[15 200-30 400] ([10-20] %)	1 840 000	[0-5]

- (66) In Poland's view, since even cautious forecasts for the 2008-09 season indicate such a significant share of catalogue printing that projected production capacity for magazine printing would fall below the 5 % threshold, paragraph 24(b) of the MSF would be complied with even if the relevant market were restricted to rotogravure printing alone.

4.4. **Geographic market for rotogravure printing is EEA-wide**

- (67) Poland first noted that transport costs did not constitute a significant amount of the total costs as, by the beneficiary's own calculations, they constituted only [4 to 15] % of the total service costs. Transport costs to individual countries are as follows:
- BVG (beneficiary's printing house) to France (external customer): [4-10] %;
 - BVG to Austria (external customer): [4-10] %;
 - BVG to Switzerland (external customer): [4-10] %;
 - BVG to the UK (associated customer): [10-15] %;
 - BDC (Bauer Verlag Publishing in Ciechanów) to the UK (associated customer): [10-15] %;
 - BDC to Russia (associated customer): [10-15] %.
- (68) In Poland's view, the fact that these orders can be carried out means that transport costs do not represent a significant obstacle. As such, they do not justify accepting a more restrictive definition of the geographical market than the EEA.
- (69) The Polish authorities have also pointed out that most magazine and catalogue printing works have customers from all over Europe (inside and outside the EU). These printing works⁽²⁰⁾ have sales offices specialising in customer services abroad which offer up-to-the-minute advice and support for specific agreements and orders.
- (70) One of the largest printing works in Poland, Winkowski (an independent printing works with three production units in Radzymin, Piła and Wyszaków), uses a central office for orders from abroad which employs 15 persons whose task is to win orders from abroad and provide customer service to individual foreign markets. Other employees provide services to the domestic market. The printing works also owns sales offices in Germany, Sweden, Austria and the UK. It also has its own international transport facility. Winkowski supplies the whole of Europe. Its most important markets are France, Scandinavia, Germany and the UK. The company also supplies the Ukraine, Russia, Slovenia, Romania and other countries.
- (71) A similar strategy and sales method is used by RR Donnelley, another large printing works, which has four branches in Poland (two in Cracow, one in Starachowice and one in Kielce). The company supplies the most important markets in Europe from its base in Poland. RR Donnelley also owns sales offices in the Benelux countries, Germany, Switzerland, the UK, Hungary, Scandinavia and Russia. Its printing works in Poland produce magazines and catalogues for export to all these countries. RR Donnelley also owns a specialist international transport and logistics unit.

- (72) An example of a Western European printing works which proves that long-distance transport need not constitute an obstacle to trade on the printing market if appropriate distribution systems are in place is Prinovis of Germany. According to freely available information⁽²¹⁾, some French magazine titles are printed for Prisma Presse in Germany and supplied to Paris for further finishing or distribution, i.e.:
- the women's weekly 'Femme Actuelle' in Dresden (the Polish authorities have pointed out that the distance between Dresden and Paris is 1 035 km approx. The distance from BDN would be another 120 km);
 - the women's monthly 'Prima' in two formats (magazine and pocket) in Itzehoe (the distance between Itzehoe and Paris is 942 km);
 - the special interest monthlies 'Ça m'intéresse', 'Guide Cuisine' and 'Cuisine Actuelle' in Itzehoe;
 - special edition for 'Cuisine Actuelle' in Dresden;
 - the pocket edition of the women's monthly 'Bien dans ma vie' in Itzehoe;
 - in addition, Prisma Presse signed an agreement recently with Prinovis to print a French magazine tied in with the TV programme 'Télé Loisirs' which is published once a week with a print run of 1,6 million issues; each issue has 140 pages on average.
- (73) In Poland's view, this shows that an appropriate distribution network guarantees supplies on time for those magazines where this is particularly important, notwithstanding the fact that Prinovis' French customer is not an external entity. The success of this operation is due in particular to the creation of appropriate long-distance distribution networks and supply monitoring systems. These are being introduced by all publishers and printers which work together over long distances.
- (74) In the light of these examples of entities serving customers in various countries all over the EEA and Eastern Europe, the Polish authorities take the view that time, costs and distribution issues do not represent significant obstacles for cooperation with publishers over long distances. The common practice of printing magazines and catalogues in the EEA for the Russian market would justify an even wider definition of the market to embrace the EEA and Russia.
- (75) The Polish authorities also stressed that publishers with headquarters outside those countries where most printing capacity is located and where market supply is better than in other parts of Europe usually choose printing works from a wide range of companies, and the fact that they may belong to the same group is not a deciding factor. Since geographical location is not an issue, publishers usually choose printing works on the basis of competitive offers and the benefits of permanent cooperation. In view of technological developments in offset presses and the possibility of using press technologies interchangeably irrespective of the size of the order, the

number of potential competitors able to participate in the same tender has now increased significantly.

5. ASSESSMENT OF THE AID

5.1. Existence of State aid within the meaning of Article 87(1) of the EC Treaty

(76) The aid is provided in the form of exemption from corporate income tax, which represents a loss of revenue for the Polish authorities. It constitutes state resources within the meaning of Article 87(1) of the EC Treaty. As the aid is granted to a single company, the measure is selective. The aid relieves the beneficiary of costs which it would have to bear under normal market conditions, therefore the company benefits from an economic advantage over its competitors which threatens to distort competition. In so far as the products concerned by the project are traded, there is a risk that the aid could affect trade between Member States.

(77) Therefore the Commission finds that the restructuring plan constitutes aid within the meaning of Article 87(1) of the EC Treaty.

5.2. Notification requirement, legality of the aid, and applicable law

(78) By notifying the aid measure, the Polish authorities complied with the individual notification requirement of paragraph 24 of the MSF. Any aid in excess of the individual notification threshold will not be put into effect until such time as the Commission has given its approval.

(79) Pursuant to paragraph 63 and footnote 58 of the Guidelines on national regional aid for 2007-13⁽²²⁾, the Commission assessed the aid measure under the provisions of the 1998 Guidelines on national regional aid⁽²³⁾ ('the RAG') and the MSF.

5.3. Compatibility of the aid with the RAG

(80) As indicated in the decision to initiate the formal investigation procedure, the aid has been granted in accordance with authorised scheme PL 39/2004 and as such the standard compatibility criteria laid down in the RAG (e.g. initial investment in regions eligible for regional aid, eligible costs, own contribution, incentive effect, maintenance of the investment, cumulation) have been complied with.

5.4. Compatibility with the MSF

5.4.1. Aid intensity

(81) With eligible expenditure of PLN 734,031 million (approx. EUR 157,95 million) (discounted value) and an applicable standard regional aid ceiling of 50 % in net grant equivalent (NGE), the adjusted maximum aid intensity permitted under paragraph 21 of the MSF is 29,98 % NGE.

- (82) The envisaged aid amount of PLN 220,057 million (EUR 47,35 million) (discounted value), which represents an aid intensity of 29,98 % NGE⁽²⁴⁾, complies with this ceiling. Therefore the proposed aid intensity is in line with the scaling-down mechanism provided for in paragraph 21 of the MSF.

5.4.2. *Compatibility with the rules under paragraph 24(a) and (b) of the MSF*

- (83) Since the proposed total aid amount of approximately EUR 47,35 million exceeds the notification threshold of EUR 37,5 million, compliance of the proposed aid with paragraph 24(a) and (b) of the MSF has to be assessed.
- (84) The Commission's decision to allow regional aid to large investment projects covered by paragraph 24 of the MSF is contingent on the beneficiary's market share before and after the investment and on the capacity created by the investment. To carry out the relevant tests under paragraph 24(a) and (b) of the MSF, the Commission has first to identify the products concerned by the investment, and to define the relevant product and geographic markets.

Relevant product market

- (85) According to paragraph 52 of the MSF, 'product concerned' means the product envisaged by the investment project and, where appropriate, its substitutes considered to be such, either by the consumer (by reason of the product's characteristics, prices and intended use) or by the producer (in terms of the flexibility of the production installations). When a project concerns an intermediate product and a significant part of the output is not sold on the market, the product concerned may be deemed to include the downstream products.

Downstream products

- (86) The investment project under scrutiny concerns the printing of magazines, commercial catalogues and inserts using rotogravure technology. The beneficiary is linked to Heinrich Bauer Verlag, a major publishing house, by virtue of its ownership structure. The Heinrich Bauer Verlag Group will be the new printing works' most important customer, accounting for an estimated [...] % of the new plant's sales. Therefore it should first be established whether sales of the print products concerned by the investment to Heinrich Bauer Verlag are taking place under market conditions.
- (87) The Polish authorities have confirmed that transactions between the Partnership operating the new printing works and Heinrich Bauer Verlag will take place on an arm's length basis (Bauer Verlag takes at least 3 offers from leading European rotogravure printing works and the price charged by the Partnership is set as the average of these). The tax authorities are entitled to verify this calculation and to demand additional supporting documentation.
- (88) Furthermore, the share of sales to the Heinrich Bauer Verlag Group is expected to decrease as production capacity increases. The reason for this is that with more production lines installed, the consequences of malfunction are less

severe, and this in turn enables the acquisition of new external customers in a market where timely delivery and reliability are essential.

- (89) In the light of the above, the Commission takes the view that BVG's products will be sold under market conditions and that therefore the relevant product market in this case should be defined as the market for printing activities and not the downstream product market (publishing).

Printing technology

- (90) The investment project concerns rotogravure printing technology whereby a steel printing cylinder engraved by laser transfers the printing ink onto a surface (e.g. paper). As opposed to rotogravure, offset printing is a technique in which both the printing and non-printing areas are on the same plane as the image carrier. The non-printing areas are kept free of ink by being ink-repellent while, on the other hand, the printing areas are ink-receptive. This is achieved by the offset ink being oil-based and the non-printing areas being kept clean with water or water-based solutions, as water and oil repel each other.
- (91) There are significant differences between the two technologies. First, the investment costs for a rotogravure press are twice as much as for comparable offset presses. This is counterbalanced by the capacity of rotogravure to ensure uniform quality even in long print runs, whereas offset printing quality is quite variable because of the difficulty in maintaining a balance between water and ink during the printing process. Also, rotogravure presses are more efficient (a large number of copies can be completed in a shorter period of time on a rotogravure press than on an offset press) and their lifespan is longer.
- (92) Consequently, above a certain print volume rotogravure has lower production costs. The higher the print volume, the lower the production costs compared with other processes. However, for smaller print runs rotogravure's cost efficiency is reduced by the relatively high cost of preparing cylinders compared with preparing a printing form in offset.
- (93) Therefore rotogravure is particularly suited for large print volumes⁽²⁵⁾, while the offset method is largely restricted to smaller volumes. Because of the higher and more stable quality of rotogravure printing, there is also a difference for the demand side.
- (94) As regards the arguments submitted by Poland concerning convergence of rotogravure and offset technologies, it should be noted that the market investigation carried out in a previous merger case⁽²⁶⁾ confirmed that the capacity of offset printing machines was constantly increasing. However, at present they represent a credible substitute in magazine printing only for those magazines currently printed in rotogravure with the lowest number of copies and pages.

- (95) The aforementioned merger decision does not define the exact thresholds, in terms of either volume or number of pages, above or below which the use of offset or rotogravure is preferred. The exact definition of the market was thus left open and the market was analysed at the narrowest possible level (i.e. as being restricted to rotogravure printing).
- (96) An equally cautious approach is also justified in the present case. It should also be noted that, according to the information available on the website of the European Rotogravure Association⁽²⁷⁾, rotogravure still maintains its edge as regards quality: ‘As gravure, unlike any other print process, guarantees constant high quality throughout long print runs it continues to play a leading role as key print process for magazines, catalogues and brand articles in a more and more internationalised market place.’
- (97) Thus, despite the apparent competition in some segments of the publication printing market between the offset and rotogravure technologies, the Commission considers that in this case market analysis should be restricted to rotogravure printing in line with a worst-case scenario approach.

Rotogravure printing

- (98) Rotogravure is used for printing two major graphic products: publications and flexible packaging. Since presses designed for the printing of magazines and catalogues cannot be used to print packaging material and the aided printing works will only be involved in publication printing, the relevant market in this case is limited to publication rotogravure.
- (99) Publication rotogravure supplies the magazine and catalogue market. A merger decision⁽²⁸⁾ concluded that there is a distinct product market for the rotogravure printing of magazines on account of the time constraints associated with printing these products and special requirements with regard to finishing and distribution. Separate treatment of the magazine market is also warranted as the bulk of the sales of the printing works in Nowogrodziec will consist of magazines, which means that the project primarily targets this submarket.
- (100) In light of these considerations, market investigations will be performed on three plausible relevant markets in this case:
- publication rotogravure printing (broad market definition);
 - rotogravure printing of magazines;
 - rotogravure printing of catalogues and inserts.

Relevant geographic market

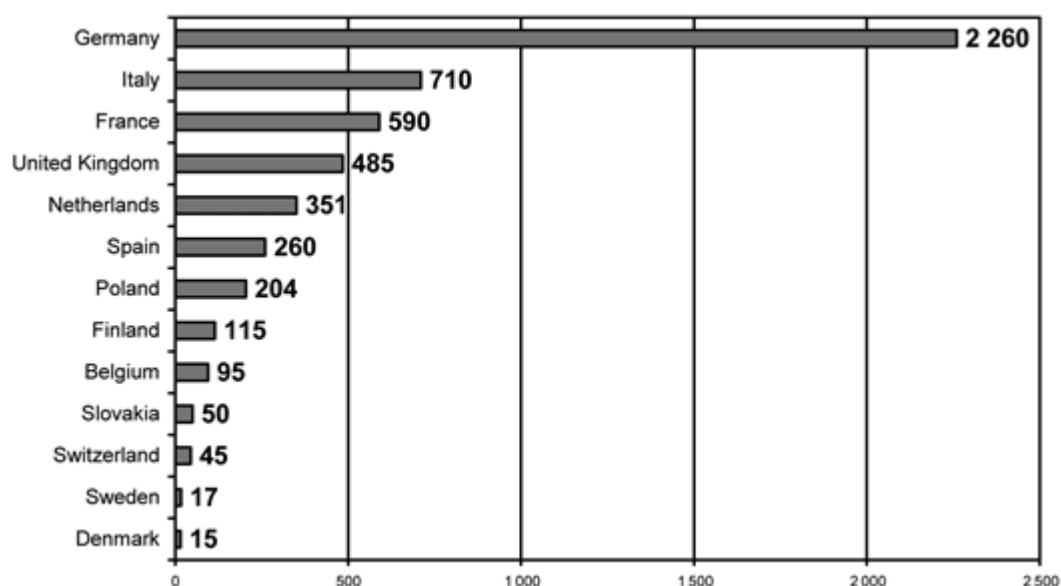
- (101) Although the market investigation in a previous merger case⁽²⁹⁾ did not enable a precise threshold to be defined below which all rotogravure presses would be competitive, it was confirmed that the market is larger than national because of cross-border trade flows and competition. This is all the more evident given that there are no rotogravure presses in some countries (e.g. Sweden,

where several customers have indicated that Polish presses could also be competitive).

- (102) Therefore the merger decision concluded that, in case of Belgium and Sweden (i.e. the countries where the merger leads to significant overlaps), the geographic market definition of rotogravure printing of magazines should include all rotogravure printing facilities located in neighbouring countries⁽³⁰⁾. It was concluded that the scope of the market for rotogravure printing of catalogues could be even larger because time constraints were not particularly significant and there were no specific distribution difficulties.
- (103) In this case the Polish authorities have provided examples showing that the long-distance supply of magazine printing services is feasible provided that appropriate distribution systems are put in place. Such long-distance distribution networks and supply monitoring systems seem to be more conducive to supplying magazines in a timely manner than the benefits resulting from the integrated organisational structure of the companies concerned.
- (104) Moreover, Poland has provided examples of the transport costs incurred by the beneficiary when supplying magazines. These costs can be regarded as relatively low even when longer distances have to be covered. The beneficiary currently has customers even beyond the neighbouring countries (in Austria, Switzerland, the UK and France). This also indicates that the beneficiary is able to compete across a substantial proportion of the EEA.
- (105) Examples of Polish presses (other than the beneficiary's) providing services to distant customers constitute further proof that it is possible to offer magazine printing services on distant markets without prohibitive distribution costs. Polish printing works are able to compete in non-EEA markets as well (e.g. Ukraine or Russia).
- (106) Data compiled by MillwardBrown SMG/KRC⁽³¹⁾ and submitted by the Polish authorities indicate that there are rotogravure printing houses in only 14 of the EEA countries. Chart 1 shows the breakdown of capacity per country.

Chart 1 **Rotogravure capacity in Europe, 1 000 tonnes/year (estimates for 2006)**

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- (107) As can be seen from Chart 1, Germany accounts for 43 % of all rotogravure capacity in the EEA, whereas its population (and hence its estimated share of magazine/catalogue consumption) is only about 17 % of the EEA total. The shared capacity of the four biggest producers (Germany, Italy, France and the UK) is 78 %, whereas their population represents 53 % of the EEA total. This also suggests that production is concentrated and that there is a significant cross-border trade in rotogravure printing services within the EEA.
- (108) Therefore, on the basis of the information currently available to it and in view of the lack of a recognised alternative geographic segmentation and the absence of comments from third parties, the Commission considers that in this case the relevant geographic market is the EEA. It should also be noted that under the MSF apparent consumption is determined at EEA level for the purposes of applying paragraph 24(b) of the MSF.

Market Share

- (109) To examine whether the project is compatible with paragraph 24(a) of the MSF, the Commission has to analyse the beneficiary's market share at group level before and after the investment. As the investment started in 2004 and should be completed in 2009, the Commission will examine BVG's market share in 2003 and 2010.
- (110) To establish BVG's market share at group level, the Commission compared its sales in volume terms at EEA level against the total amount of rotogravure paper consumed in the EEA.
- (111) No data in value terms are available, but Poland has confirmed that prices are set by the beneficiary at, or very close to, average market prices. This means that market shares (and the capacity increase) in value terms are very similar

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to shares in volume terms, and therefore it is justified to base the analysis on data in volume terms alone.

- (112) The figures for overall EEA consumption in volume terms (i.e. the amount of paper printed using rotogravure technology) are based on data from the European Rotogravure Association⁽³²⁾ (ERA) submitted by the Polish authorities. ERA has also confirmed the capacity of the [...] production lines to be installed by the beneficiary. The breakdown of overall consumption/sales into the sub-segments for magazines and catalogues/inserts has been provided by MillwardBrown SMG/KRC. This percentage breakdown (60,2 % for magazines and 39,8 % for other publications) concerned 2006 and was expected to remain stable.
- (113) The Polish authorities submitted ERA data covering 2002-06. Detailed overall forecasts for 2010 are not available, but ERA expects modest growth of around 1 % to continue over the coming years. However, in the worst-case scenario, the market is assumed to be stagnant and therefore the 2006 data have been used to estimate total consumption in 2010.
- (114) BVG's market share has been assessed at EEA level on the basis of the three plausible relevant product markets defined in paragraph 101. Market shares at group level (i.e. including Heinrich Bauer Verlag's printing works) the year before and after the investment are provided in Table 3 below.

TABLE 3

Market shares in volume terms in the EEA

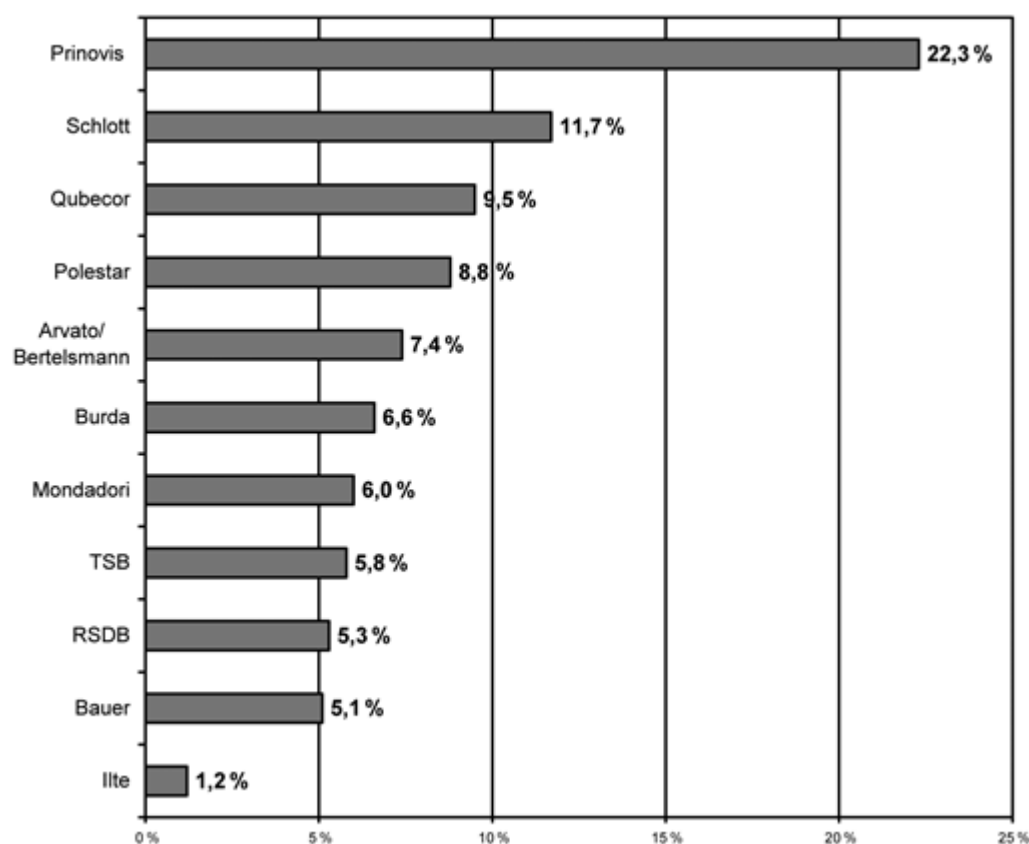
(in %)

	2003	2010
Market share in publication rotogravure printing (broad market definition)	[0-5]	[5-10]
Market share in rotogravure printing of magazines	[5-10]	[10-15]
Market share in rotogravure printing of catalogues and inserts	[0-5]	[0-5]

- (115) Data compiled by MillwardBrown SMG/KRC on rotogravure print capacity also indicate that the Bauer group has a modest share in the EEA market and that it faces strong competitors.

Chart 2 **Print capacity of rotogravure companies in Europe — % of total rotogravure capacity (estimates for 2006)**

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- (116) As Table 3 shows, for all market definitions, BVG's market share at group level remains substantially below the 25 % threshold indicated in paragraph 24(a) of the MSF. The Commission therefore considers that, even allowing for the margin of error inherent in the estimates presented above, the aid measure is compatible with paragraph 24(a) of the MSF.

Capacity increase

- (117) Pursuant to paragraph 24(b) of the MSF, a project is not eligible for investment aid if the capacity created exceeds 5 % of the size of an underperforming market (i.e. where sectoral growth is below EEA growth). The full capacity to be created by the project will be achieved in 2010.
- (118) As the CAGR of the market in 2001-06 (2,03 %), calculated on the basis of the figures Poland submitted, exceeds the CAGR for GDP within the EEA (2,00 %), there is no need to examine whether the capacity created is more than 5 % of the market.
- (119) However, data for 2001, i.e. the most important year for the calculation of the CAGR in 2001-06, was not directly available but was estimated by Poland on the basis of the growth recorded by the magazine market as a whole in 2001-02. This might not be representative of growth in rotogravure printing of magazines, and therefore some caution should be exercised. For that reason

the Commission has also checked whether the capacity created by the project constitutes more than 5 % of the market.

- (120) Total capacity created by the project (including all [...] new production lines) amounts to 152 000 tonnes per annum, on the assumption that one production line accounts for [...] thousand tonnes per annum.
- (121) This estimate refers to actual capacity, taking account of factors such as downtime for repairs and maintenance (the maximum working time for production machines was estimated at 61 % of the total theoretical time) and of factors specific to rotogravure printing technology.
- (122) In particular, printing machines using this technology have a specified maximum cylinder length, i.e. the width of the paper ribbon used, which corresponds to a given quantity of standard printed pages (in the case of the machines used by the beneficiary, the widest cylinder which can be used enables a maximum of [...] standard pages to be printed). A cylinder of a given length enables a few clearly defined magazines/catalogues volumes to be printed (i.e. for the cylinder with a circumference of [...] used in the aided facility, this is [...] pages).
- (123) Theoretical capacity is based on the maximum capacity obtainable from the cylinder with the largest circumference — in case of the beneficiary this would correspond to printing capacity for magazines with exactly [...] pages only. In reality, magazines of different volumes are printed, and machine capacity varies accordingly. Therefore, the estimate also took account of the fact that production takes place at various press widths and various cylinder circumferences, i.e. not always at maximum capacity. The estimate was made with reference to planned printing capacity on the basis of contractual orders.
- (124) According to the Polish authorities, since magazines and catalogues/inserts are printed on the same production lines it is difficult to provide an unambiguous breakdown of the capacity created by the project between magazine printing and catalogue/insert printing. However, as indicated by the Polish authorities, one possible solution is to estimate capacity breakdown on the basis of the expected share of magazines and catalogues/inserts respectively in the aided facility's sales.
- (125) In that connection Poland has provided the latest production figures which support the claim that the beneficiary is attempting to achieve a more balanced product mix than was indicated during the initial investigation phase. The initially specified [90-100] % share of magazine printing at the new printing works was based on the orders existing at that time. However, since then new customers have been acquired, leading to a gradual increase in the share of catalogue/insert printing.
- (126) As shown in Table 2, on the basis of the expected breakdown for 2008/2009 between magazine and catalogue printing, the capacity increase amounts to

less than 5 % on all plausible relevant markets. In addition, the analysis was based on the worst-case scenario that the relevant market consists of rotogravure printing alone.

- (127) As the two conditions set out in paragraph 24(b) of the MSF have been met (the market is not underperforming and the capacity increase amounts to less than 5 %), the Commission takes the view that the aid measure is compatible with paragraph 24(b) of the MSF.

6. CONCLUSION

- (128) On the basis of the foregoing considerations, the Commission considers that its doubts as to whether the project exceeds the thresholds laid down in paragraphs 24(a) and (b) of the MSF have been allayed and therefore concludes that the aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Poland is planning to implement in favour of BVG Medien Beteiligungs GmbH is compatible with the common market within the meaning of Article 87(3)(a) of the EC Treaty.

The award of aid not exceeding PLN 220,057 million in discounted value (representing an aid intensity of 29,98 % NGE of eligible costs amounting to PLN 734,031 million in discounted value) is, accordingly, authorised. In the event that eligible costs are lower, aid intensity must not exceed 29,98 % NGE of these costs.

Article 2

The Polish authorities shall submit a detailed final report within six months of payment of the last aid instalment on the basis of the notified payment schedule.

Article 3

This Decision is addressed to the Republic of Poland.

Done at Brussels, 10 December 2008.

For the Commission

Neelie KROES

Member of the Commission

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- (1) OJ C 159, 24.6.2008, p. 18.
- (2) The initial two-month period within which the assessment must be completed started to run on 3 January 2007.
- (3) OJ C 70, 19.3.2002, p. 8.
- (4) See footnote 1.
- (5) PL 1/2004 — Commission letter of 13 August 2004 (C(2004) 3230/5).
- (6) See Section 5.4.2.
- (7) Business secret
- (8) On the basis of the PLN/EUR exchange rate when the aid was granted, i.e. 4,6474.
- (9) Regional aid scheme for enterprises conducting business activity in special economic zones. Commission letter of 9 March 2005 (C(2005) 735).
- (10) Measured in purchasing power standard.
- (11) ‘Take a Break’ is the best-selling women’s weekly in the UK with a circulation of over 1 million copies.
- (12) COMP/M.4893 — Quebecor World/RSDB.
- (13) EU-27 data used as a proxy.
- (14) The data provided by Poland indicate market shares of [0-5] % in 2003 and [0-5] % in 2010 on the combined market. These figures do not appear to take sales by the offset printing works belonging to Bauer Verlag into account. Since, however, Poland specified during the initial assessment phase that the Bauer Verlag group has only two offset printing houses with low production capacity (total capacity of approximately 50 000 tonnes per year), the correct market shares on the combined offset and rotogravure market are marginally higher than those indicated by the Polish authorities.
- (15) EU-27 data used as a proxy, GDP in EUR million at 1995 prices.
- (16) COMP/M.3178 — Bertelsmann Springer/JV.
- (17) The season for the majority of catalogue orders runs from July to June of the following year.
- (18) The first of these concerns WeltBild, and price negotiations are still ongoing. However, the fact that this customer has already cooperated with BVG in the past makes it very likely that the order will be confirmed. The second concerns materials for Carrefour for which a price has already been agreed and a sample print run has been prepared, but no formal contract has been signed to date. In both cases, printing was to begin in July 2008.
- (19) The figures for overall EEA consumption in volume terms are based on data from the European Rotogravure Association (ERA), as submitted by the Polish authorities. The breakdown of overall consumption/sales into the sub-segments for magazines and catalogues/inserts has been provided by MillwardBrown SMG/KRC.
- (20) The examples presented concerning distribution and servicing of geographical markets also include offset printing works. However, the Polish authorities believe that the production method for the finished product (magazines) is not relevant from the supply perspective, as the production technology has no bearing on distribution channels.
- (21) http://www.prinovis.de/en/unternehmen/aktuelle_nachrichten/2008/03/neuer-frankreich-auftrag-fuer-prinovis.php
- (22) OJ C 54, 4.3.2006, p. 13.
- (23) OJ L 74, 10.3.1998, p. 9.
- (24) As the aid is provided in the form of tax exemption, the net grant equivalent of the aid is equal to its gross grant equivalent.
- (25) Except for the printing of newspapers where the poor quality of the newsprint has an adverse effect on the technical condition of machinery intended for use with high quality materials (e.g. magazines). Therefore newspapers are printed in cold set web offset or in flexography.
- (26) Cf. footnote 11 above.

- (27) [http://www.era.eu.org/upload/File/press_releases/PressReleaseDrupa08_eng\(2\).doc](http://www.era.eu.org/upload/File/press_releases/PressReleaseDrupa08_eng(2).doc)
- (28) Decision of 3 May 2005 in Case No COMP/M.3178 – Bertelsmann/Springer/JV.
- (29) Cf. footnote 11 above.
- (30) In the case of Belgium this was defined as the Netherlands, Eastern Germany and Northern France and in the case of Sweden at least all rotogravure facilities in Finland, Northern Germany, Denmark and the Netherlands.
- (31) The Polish office of Millward Brown International, one of the largest independent market research companies.
- (32) The European Rotogravure Association (ERA) is the leading international organisation of the rotogravure industry. It is a not-for-profit organisation which supports users of rotogravure technology.