

***Case No COMP/M.5721 -
OTTO/ PRIMONDO
ASSETS***

Only the English text is available and authentic.

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

Article 6(1)(b) in conjunction with Art 6(2)
Date: 16/02/2010

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EUROPEAN COMMISSION

Brussels, 16.02.2010

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION IN
CONJUNCTION WITH
ARTICLE 6(2)

To the notifying parties:

Dear Sir/Madam,

**Subject: Case No COMP/M.5721 – Otto/ Primondo Assets
Notification of 18 December 2009 pursuant to Article 4 of Council
Regulation No 139/2004¹**

1. On 18 December 2009, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking Otto GmbH & Co KG ("Otto", Germany) and its subsidiaries PROVISTA Siebenhundertdreiundsiebzigste Verwaltungsgesellschaft (Germany), Otto Finance Cyprus Limited (Cyprus) und BIC Retail Enterprises, Inc (Cyprus) acquire within the meaning of Article 3(1)(b) of the Regulation (EC) No 139/2004 control of various assets (trademarks and trademark applications, a patent, domain names, copyrights and rights of use of client data) of the undertakings Primondo GmbH i.L. (*in liquidation*) (Germany), Quelle GmbH i.L. (Germany), Quelle.Contact Holding GmbH i.L. (Germany) and SB-Großhandels GmbH C+C Großhandel Objektausstattung i.L. (Germany), as well as - by way of purchase of shares – control over SAO Mail Order Service (Russia).

I. THE PARTIES

2. Otto is the holding company of the Otto Group. The Otto Group is a trading and service company, which is internationally active through its subsidiaries in various retail channels (including home-shopping), financial services and the services sector.

¹ OJ L 24, 29.1.2004 p. 1.

3. Primondo GmbH i.L., Quelle GmbH i.L., Quelle.Contact Holding GmbH i.L. and SB-Großhandels GmbH C+C Großhandel Objektausstattung i.L. were active with the assets to be transferred in particular in the area of home-shopping in various EU Member States.
4. SAO Mail Order Service is active in the area of home-shopping in Russia.

II. THE TRANSACTION AND THE CONCENTRATION

Transaction 1

5. On 4 November 2009, the German insolvency administrator agreed with Otto and its subsidiaries PROVISTA Siebenhundertdreiundsiebzigste Verwaltungsgesellschaft (Germany), Otto Finance Cyprus Limited (Cyprus) und BIC Retail Enterprises, Inc (Cyprus) on the sale of individual assets of Quelle and Primondo (hereinafter "Transaction 1").
6. These assets are trademarks (such as "Quelle", "Privileg" etc.) and trademark applications, a patent, domain names, copyrights and customer data which are acquired from Primondo GmbH i.L., Quelle GmbH i.L., Quelle.Contact Holding GmbH i.L. and SB-Großhandels GmbH C+C Großhandel Objektausstattung i.L.² These assets were used by these companies in particular in the area of home-shopping in various EU Member States.
7. It should be noted at the outset that trademarks such as "Quelle", "Privileg" etc. as well as copyrights are transferred for all Member States where the transaction leads to affected markets. However, the situation varies from Member State to Member State as far as all other assets are concerned. In the case of Germany, also the "Quelle" internet domain is transferred and Otto will have the right to use Quelle's customer data.³ In contrast, Otto is very unlikely to acquire customer data in Poland, the Czech Republic and the Slovak Republic as the relevant Quelle subsidiaries in these Member States have recently been acquired by a third party. As far as all other Member States are concerned where the transaction leads to affected markets, it cannot at the current stage be excluded that Otto will acquire further Quelle assets than the trademarks and copyrights mentioned above. More in particular with regard to the "Quelle" internet domain in Member States other than Germany, these domain rights have not yet been transferred to Otto but Otto plans to acquire these domains either by way of contractual negotiation with the Quelle subsidiaries in the relevant Member States or by way of priority of its "Quelle" trademark rights.
8. Transaction 1 does thus not relate to the acquisition of Primondo subsidiaries by way of share deal but to the acquisition of some of their main assets. According to Article 3(1)(b) of the Merger Regulation, also the acquisition of certain assets of an undertaking may constitute the object of control for the purposes of the Merger

² Furthermore, Otto will acquire Quelle's [...] % shareholding in the German company SCHUFA Holding AG which provides information about debtors and credit applicants.

³ For reasons of data protection, Otto will not itself receive these customer data but intends to use these data via a third party (so-called "letter-shop"). This letter-shop would send Otto's catalogues to former Quelle customers selected on the basis of criteria determined by Otto. Only if - following such use of the customer data - a customer places an order with Otto, Otto will be able to include that customer in its own customer data base.

Regulation. Paragraph 24 of the Commission's Consolidated Jurisdictional Notice further specifies that such assets need to be a business with a market presence, to which a market turnover can be clearly attributed.

9. The parties argue that no precise turnover can be allocated to the use of trademark rights but that a retail company such as Quelle achieves a "very significant" part of its turnover on the basis of its trademarks which already triggers the Commission's jurisdiction in the present case. This applies even more where Otto also acquires a right to use Quelle's customer data and other assets.
10. The assets at issue in the present case primarily concern the home-shopping business, and constituted an important supporting basis for the business of the respective Primondo subsidiaries. Indeed, home-shopping companies do by their very nature not have their own production facilities or shops at their disposal. Therefore, assets like trademarks, domain names, and client data constitute a main basis for such home-shopping business and the turnover generated by trading with consumer goods; the same conclusion applies to those Member States where customer data are very unlikely to be transferred, as already the trademarks and domain names at issue constitute significant assets in the home-shopping business which are vital for the acquisition of customers and turnover. Accordingly, these assets constitute a business to which a market turnover can be attributed, and their transfer amounts to an acquisition of control within the meaning of Article 3(1) (b) of the Merger Regulation.⁴

Transaction 2

11. On 4 November 2009, it was also agreed that Otto Finance Cyprus Limited (Cyprus) und BIC Retail Enterprises, Inc (Cyprus) acquire all shares in SAO Mail Order Service ("Quelle Russia") from Primondo's subsidiary Quelle International Limited (hereinafter "Transaction 2"). Quelle Russia is active in the area of home-shopping in the territory of Russia.
12. This acquisition of sole control constitutes a concentration according to Article 3(1)(b) of the Merger Regulation.
13. Transactions 1 and 2 are carried out between the same undertakings and undertakings belonging to the same respective groups simultaneously, i.e. within a two year time frame. All undertakings involved in the two transactions on the seller side are part of the Primondo group and all undertakings involved on the purchaser side are part of the Otto group. The two transactions therefore constitute one concentration in the sense of Article 5 (2) subparagraph 2 of the Merger Regulation.

⁴ See also paragraph 24 of the Commission Consolidated Jurisdictional Notice according to which a transaction confined to intangible assets such as brands, patents or copyrights may also be considered to be a concentration if those assets constitute a business with a market turnover.

III. COMMUNITY DIMENSION

14. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion (Otto EUR 10.11 billion, Primondo assets to be acquired EUR [...] billion) and each of them has a Community-wide turnover in excess of EUR 250 million (Otto EUR [...] billion, Primondo assets to be acquired EUR [...] billion).⁵ Otto does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same Member State. The proposed transaction therefore has a Community dimension within the meaning of Article 1(2) of the EC Merger Regulation.

IV. RELEVANT MARKETS

15. The proposed transaction primarily concerns home-shopping of a wide range of consumer goods.⁶

Relevant product market

16. The parties submit that the relevant product market is the broad non-food retail market, which includes retail through home-shopping as well as high street shops (so-called "brick and mortar"). The parties refer in this regard to the decision practice of several national competition authorities.⁷
17. In its previous decisions in distance retail selling, the Commission's starting point was the distinction between food and non-food items in the retail sector.⁸ For the non-food retail segment, the Commission further considered three alternative product market definitions – non-food retail, home-shopping, and agency mail order (i.e. sales by agents of consumer goods displayed in home-shopping catalogues), but the definition was left open in that case.⁹ A distinction was further indicated between product categories (ladies wear, menswear, home textiles, sports goods, furniture).¹⁰

⁵ Even if not the entire Quelle turnover were to be allocated to the Primondo assets, the turnover in the EU would exceed EUR 250 million.

⁶ The transaction does not appear to have an appreciable impact in other areas as is also confirmed by the market investigation. As regards the travel agency business, the parties' combined market share is below 5% both in the overall retail market (comprising "brick and mortar" travel agencies and online travel agencies) and in a narrower market for online travel agency business. As regards the sale of office goods to professional customers, the Commission's investigation showed that Otto supplies specific office goods to customers, while the activity carried out under the relevant Quelle assets did not relate to specific office goods but to other products and complete office solutions.

⁷ More specifically with regard to the product categories at issue in the present case, the parties refer to the decision of the UK Office of Fair Trading of 20 June 2005 in GUS / Index Business of Littlewoods Ltd. which concerned two multi-channel retailers of consumer goods; the OFT applied a broad market definition encompassing "brick and mortar" and home-shopping on the basis of findings reached by the UK Competition Commission in an earlier investigation (March/GUS Report of 2004) and by the OFT's market investigation. Furthermore, in a decision of the German Federal Cartel Office of 19 September 2001 in B 9 – 15/01 ABRD / Löwengrund Immobilien / Möbel Engelhardt, neither was a distinction made between the different channels for the sale of furniture nor was such a distinction discussed in detail.

⁸ COMP/M.070 – *Otto/Grattan*, para. 10; COMP/M.080 – *La Redoute/Empire*, para. 10.

⁹ COMP/M.1527 – *OTTO Versand/Freemans*, paras. 14 and 24. See also case M.1916 – *RTL Newmedia/Primus-Online* where it was left open if separate markets need to be defined for "brick and mortar" retail and home-shopping.

¹⁰ COMP/M.070 – *Otto/Grattan*, para. 17.

18. In further Commission decisions, distinctions were considered between different sales channels and product categories.¹¹
19. The market investigation¹² has confirmed that the non-food retail segment should be sub-divided according to product categories.¹³ In particular, the following product categories were identified: (i) clothing and footwear, (ii) furniture and furnishing, (iii) electronics and appliance, (iv) DIY, home improvement and garden centres, (v) health and beauty, (vi) toys and games, (vii) sport goods and camping. Furthermore, the market investigation revealed that some of the above mentioned product categories could be sub-divided even further according to sub-categories, e.g. clothing could be distinguished from footwear and possibly further discerned into women's, men's and children's apparel, underwear or furniture could be distinguished from home textiles. On the basis of classifications and market data by the market research company GfK¹⁴, the following product categories are discussed in this decision: "Women's apparel", "Men's apparel", "Children's apparel", "Underwear", "Shoes", "Leather goods", "Sports textiles", "Sport shoes", "Electronics", "Large electronic appliances", "Small electronic appliances", "Home improvement / Gardens", "Furniture", "Home textiles", "Lighting" and "Toys". The products belonging to one of the above-mentioned category cannot be considered as substitutes to products from any other category. Moreover, the competitive conditions in these segments differ significantly given that there are a large number of market players that are specialised in one or some of the various product categories.
20. As regards the question whether there should be a distinction between the various sales channels involved (home-shopping by internet, home-shopping by catalogue, home shopping by other means and "brick and mortar" sales), the market investigation has provided evidence that all home-shopping channels, in particular home-shopping by internet and home-shopping by catalogue, form part of the same relevant market. First, a large number of respondents to the Commission's market investigation considered that these channels are interchangeable from the customer's point of view¹⁵. Furthermore, due to harmonisation at EU level all types of distance selling are subject to a similar regulatory framework which leads to similar conditions at which customers purchase goods, e.g. concerning the right to return purchased goods.¹⁶

¹¹ See e.g. COMP/M.4226 – *DSGI/Fotovista*, paras. 9-14; COMP/M.4392 – *DSGI/FR-Invest/F-Group JV*, paras. 9-13.

¹² Questionnaires to the parties' competitors and customer organisations, such as the German Verbraucherzentrale.

¹³ Responses to question number 17 of the Commission's questionnaire to competitors dated 06/01/2010 and question number 10 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

¹⁴ GfK: Gesellschaft für Konsumforschung.

¹⁵ Responses to question number 8 of the Commission's questionnaire to competitors dated 06/01/2010 and question number 4 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

¹⁶ Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144, 4.6.1997, page 19–27.

21. This is confirmed by a study submitted by the parties which concludes that all home-shopping channels are very similar to each other from the customer's point of view and strongly inter-related, and thus suppliers are "capable of harmonising them easily".¹⁷ Even though there are customers who still have a preference for home-shopping by catalogue or do not have access to internet, the density of internet coverage in Europe is growing fast. Consequently, home-shopping companies offering goods in a catalogue have lost a significant part of their customers for the benefit of internet home-shopping providers. According to a study submitted by the parties such a cannibalisation effect is strongest for apparel and furniture (approximately 70% and more of turnover generated in online retailing has been achieved at the expense of turnover that would have otherwise been generated through home-shopping by catalogue).¹⁸ As regards for instance electric appliances (including large electric appliances), a large majority of respondents to the above-mentioned study indicated that they informed themselves on-line first before ordering goods by catalogue.¹⁹
22. This trend is according to the respondents to the Commission's market investigation²⁰ forecast to continue in the years to come.²¹ In light of these developments, the prospective analysis should take into account the ongoing integration between different distance selling retail distribution channels, in particular home-shopping by internet and home-shopping by catalogue.
23. As regards the distinction between distance selling channels on the one hand and "brick and mortar" shops on the other hand, the parties have submitted a number of studies and internal documents in support of their view that an overall (non-food) retail market exists (for all product categories mentioned above). In essence, the parties consider that there is a strong interrelation between all retail non-food distribution channels which leads to substitutability of these channels from the customer's as well as supplier's point of view. This would be evidenced by the growing importance of multi-channel retailing and the fact that all players (including Otto) constantly monitor all channels. Switching of customers between the channels would be easy and would not incur costs, therefore no price discrimination would be possible. Easy switching of customers would be also due to high transparency of prices and conditions in internet and increasing convenience of online shopping. Furthermore, both retail channels would have identical characteristics: prices, conditions and the range of products offered by multi-channel retailers would be equal in all channels. In addition, the distance selling directive²² would guarantee comparability between shopping at high street shops and home-shopping.

¹⁷ E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, pages 68, 89, 91 et seq.

¹⁸ E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, page 102.

¹⁹ E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, page 102.

²⁰ Responses to question number 40 of the Commission's questionnaire to competitors dated 06/01/2010 and question number 27 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

²¹ See also OC&C Strategy Consultants, OC&C perspective on multi-channel trends, Overview of recent studies and publications, January 2010 (draft version), page 5.

²² Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ L 144, 4.6.1997, page 19–27.

24. The Commission's investigation in the present case has not provided sufficient evidence to conclude that indeed all retail distribution channels belong to the same product market. A large number of respondents did not consider them interchangeable from the customer's point of view.²³ They indicated that in response to a price increase of 5-10% in mail order/home shopping an insufficient number of customers would switch to "brick and mortar" retailers and therefore such a price increase would be profitable for mail order/home-shopping companies. Generally, the market investigation has revealed that the more standardised products within a product category are (e.g. electronics, where features of a given home-shopping product are clearly described), the more likely it is that brick and mortar and distance selling could belong to the same relevant product market.
25. In general terms, it must be noted that there are quite significant differences in the way retailers communicate with and acquire customers. Shopping at high street shops and "home-shopping" each have their specific advantages that may be appealing to the public. An important advantage of "brick and mortar" shopping from the customer's perspective is that goods can be inspected and specialist advice is available if necessary. Moreover, goods are often available immediately. On the other hand, an important advantage of home shopping vis-à-vis "brick and mortar" is that shopping is possible on a 24h/7 days per week basis and there is no limitation as regards the spectrum and quantity of products on offer. Moreover, distance selling is subject to consumer-friendly regulation granting consumers the right to revoke the purchase agreement and send back the goods after having received and tested them within a specified period of time.
26. While it is clear from the studies presented by the parties that indeed a proportion of customers do compare prices and conditions offered in various channels and do not necessarily purchase goods in the channel that they consulted first, the intensity of such an inter-relation depends on the product category. Notably, such an inter-relation appears strongest for electrical appliances. Generally, the higher the price the more likely it is that a consumer will search for information across all channels. The documents presented furthermore evidence that a harmonisation of appearance across the channels enhances customer's loyalty and therefore stimulates revenues in long-term. One study forecasts that "The online channel will increasingly be used in conjunction with offline channels (stores)" and hence recommends that "This mix of channel usage (in different phases of the buying process, for different moments, in different situations, etc.) should provide a consistent consumer experience; look for the right level of online/off-line synergies – but also leverage the different characteristics of each channel".²⁴
27. However, the home-shopping channels on the one hand and the "brick and mortar" retailing on the other hand are clearly less interrelated than the home-shopping channels (i.e. in particular home-shopping by internet and home-shopping by catalogue). This is evidenced, for instance, by the fact that customers' switching during the purchase decision making process (i.e. purchase of goods in a different channel than the one that have been originally consulted by a customer) within the

²³ Responses to question number 6 of the Commission's questionnaire to competitors dated 06/01/2010 and question number 2 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

²⁴ Capgemini, Future Consumer, How Shopper Needs and Behaviour Will Impact Tomorrow's Value Chain", page 17.

home-shopping channel is much more frequent than between the home-shopping and the "brick and mortar" channel.²⁵ Furthermore, there is a considerably lower cannibalisation of revenues between the "home-shopping" retailing on the one hand and the "brick and mortar" retailing on the other hand than between the online and the catalogue-segment of the home-shopping market. Indeed, the cannibalisation rate between the online and the catalogue-segment of the same provider (approx. 55-65%) is approximately twice as high as the cannibalisation rate between stationary shops and both home-shopping channels (23-32% as regards online shops and 25%-40% as regards catalogues).²⁶

28. Furthermore, several studies submitted by the parties confirm the finding of the market investigation in the sense that they recognise that both channels serve different customers' needs and thus have different advantages and disadvantages from customer's point of view. Therefore they complement each other rather than being substitutes to each other. One study discusses different roles of stationary and online retailing and concludes that these segments complement each other as regards the non-food sector.²⁷ Another study shows that differences between the competitive conditions in both channels are still very strong.²⁸ A different study states that all distant-selling channels have similar advantages and disadvantages as opposed to the features of stationary retailing against the background that stationary shopping serves different customers' requirements in terms of convenience and service.²⁹
29. In addition, the prices and conditions of goods offered by a multi-channel retailer are not necessarily identical across the channels. Indeed, it is clear from one study that there are at least four different ways to shape a multi-channel appearance and several retailers (such as L'Oréal, Sony, Tchibo) have opted for more or less intensive independence of each of their retail channels.³⁰ This is also the result of two other studies which acknowledge that not all the channels of a multi-channel retailer are/need to be fully integrated and harmonised.³¹
30. It follows from the above that in terms of the product market definition the non-food retail segment should be sub-divided according to different product and could be sub-divided even further according to sub-categories (as mentioned above). The question whether all retail sales channels form one product market (for each of the individual product categories mentioned above) can be left open given that serious doubts that would arise in case of a narrow market definition are in any event resolved by the Commitments submitted by Otto.

²⁵ E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, page 14, 101 et seq.

²⁶ E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, page 73.

²⁷ Price Waterhouse Coopers, Multichannel Management, Erfolgreich in der (neuen) Vielfalt, 05/11/2009, page 27.

²⁸ OC&C Strategy Consultants, Entwicklungen und Herausforderungen im Multi-Channel Retailing, June 2007, page 2.

²⁹ E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, pages 68, 62 and 64.

³⁰ Price Waterhouse Coopers, Multichannel Management, Erfolgreich in der (neuen) Vielfalt, 05/11/2009, page 12.

³¹ Atkearney, Multi-Channel Retailing – Jeder redet darüber aber (fast) keener macht's richtig, Internationale Studienergebnisse (Auswahl), 2008, page 7; E-Commerce Center Handel, van Baal/Hudetz, Wechselwirkungen, im Multi-Channel-Vertrieb, 2006, page 16.

Relevant geographic market

31. With respect to the geographic market definition, the parties submit that the relevant markets are national in scope, in particular in the light of elements such as language differences and costs and delays associated with placing international orders and the international distribution of individual packages. This is in line with previous Commission decisions in the home-shopping area.³²
32. As far as the home-shopping market is concerned, the market investigation showed that the relevant product markets should indeed be regarded as national in scope and confirmed the existence of the elements mentioned by the parties.
33. As regards a possible market comprising both home-shopping and "brick and mortar" which cannot be excluded in the present case, the question arises whether the geographic scope of such an overall market would be confined to regional or even local areas.³³ It should be noted that in addition to home-shopping, Otto also operates "brick and mortar" retail shops, in particular in Germany but also in Poland and Italy. These retail shops sell fashion, sports goods and toys. Against this background, the Commission analysed detailed data relating to the parties' market position on a local/regional basis for all Member States where Otto operates stationary retail shops. In any event, the geographic market definition can be left open given that the proposed transaction, as modified by the Commitments, does not lead to serious doubts under any alternative geographic market definition.

V. COMPETITIVE ASSESSMENT

34. As discussed in section II above, Otto acquires only specific assets out of the insolvent Primondo group (and not the entire previous operations of Quelle). It therefore does not appear justified to take the entire previous Quelle turnover into account in the competitive assessment. The notifying party claims that only 10% of previous turnover could realistically be achieved by Otto with the Quelle assets.³⁴
35. It should be noted in this regard that Quelle has gone through difficult economic times and filed for insolvency in June 2009. However, an analysis of the Quelle turnover in the first half of 2009 in Germany as compared to the first half of 2008 showed that Quelle's turnover was only reduced by 7.7%.
36. As regards the correct churn rate to be applied, the answers of a considerable number of participants to the market investigation suggest that Otto would be likely to achieve a considerably higher share of Quelle's previous turnover than the 10% that were suggested by the notifying party, in particular due to the high brand loyalty of German customers to Quelle. While the views of respondents to the market investigation were

³² COMP/M.070 – *Otto/Grattan*, para. 11; COMP/M.080 – *La Redoute/Empire*, para. 12; COMP/M.1527 – *Otto Versand/Freemans*, para. 25.

³³ See e.g. COMP/M.4686 – *Louis Delhaize Magyar/Magyar Hipermarket KFT* where the Commission defined local markets (20-30 minute drive time) as far as the activities of supermarkets in Hungary were concerned.

³⁴ Regarding customer data, Otto submitted examples of past experience in relation to the use of customer data which indicate that the response rate in these cases did not exceed 10%. In addition, Otto argues that [significant share] of all Quelle customers in Germany would already be customer of Otto and thus covered in the Otto database. However, it is likely that the use of the customer data and the trademark to be acquired will lead to additional benefits for Otto.

varying between 15% and 80% as regards the precise churn rate to be applied in a hypothetical situation that similar assets were to be acquired under normal circumstances (i.e. no insolvency), several competitors indicated that they expect that in the case at hand Otto would be able to achieve 50% or more of Quelle's previous turnover.³⁵

37. On this basis, the Commission applied a churn rate of 50% as an approximation of the rate Otto will be able to take over from the previous Quelle turnover in those Member States where Otto is in a position to acquire the brand and the customer data. In contrast, a higher churn rate of 75% is assumed for Poland, the Czech Republic and the Slovak Republic as in these Member States a third party has already acquired the respective Quelle subsidiary and it is thus very unlikely that Otto will use the customer data in these Member States, i.e. Otto will in these Member States only acquire trademarks and likely the relevant internet domains. The Commission, based on responses from the market investigation and the market test, considers for the case at hand that access to customer data is decisive to successfully take over previous turnover. It appears therefore justified to take into account a higher churn rate, which can be 75% or even higher, if only trademarks without customer data are acquired.

Analysis by Member State – home-shopping market

Germany

38. As mentioned in section II above, the assets to be acquired by Otto in Germany (where insolvency proceedings were opened) include not only trademark rights and the "Quelle" internet domain but also the right of Otto to use Quelle's customer data in Germany.

Market structure

39. As follows from table 1 below³⁶, taking into account 50% Quelle turnover, the combined market share of the parties in Germany would be above 40% in the product categories "Fashion total"³⁷, "Women's apparel", "Underwear", "Sports textiles", "Sport shoes", "Furnishing total", "Furniture" and "Home textiles". As is illustrated in the column "50% of Quelle turnover", the market share increment in those markets is between 3.5% and 12.6%.

³⁵ Responses to questions number 34-36 of the Commission's questionnaire to competitors dated 06/01/2010; however, it needs to be taken into account that also lower estimates were given. The German consumer organisation Verbraucherzentrale opined that a high churn rate would be unlikely, see response to questions number 23 and 24 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

³⁶ All market data for Germany is based on figures from GfK.

³⁷ The category "Fashion total" (or hereinafter also referred to as "Clothing and Footwear") is the sum of the product categories "Women's apparel", "Men's apparel", "Children's apparel", "Underwear", "Shoes" and "Leather goods".

Germany	Market size Million EUR	Market shares in %				
		Otto	100% of Quelle turnover		50% of Quelle turnover	
			Quelle	Combined	Quelle	Combined
Fashion total	[...]	[30-40]	[10-20]	[40-50]	[5-10]	[40-50]
Women's apparel	[...]	[40-50]	[5-10]	[50-60]	[0-5]	[50-60]
Underwear	[...]	[40-50]	[10-20]	[60-70]	[5-10]	[50-60]
Sports						
Sport textiles	[...]	[30-40]	[5-10]	[40-50]	[0-5]	[40-50]
Sport shoes	[...]	[40-50]	[10-20]	[60-70]	[5-10]	[50-60]
Furnishing total	[...]	[30-40]	[10-20]	[40-50]	[5-10]	[40-50]
Furniture	[...]	[40-50]	[20-30]	[60-70]	[10-20]	[50-60]
Home textiles	[...]	[40-50]	[20-30]	[60-70]	[10-20]	[50-60]

Table 1³⁸

40. As regards all product categories in table 1, i.e. where the parties' combined market share exceeds 40%, the competitive landscape is generally widely dispersed and even on the basis of the 50% scenario the parties are for some markets much larger than their next biggest competitor.³⁹ More in particular, for the different product categories, the parties' main competitors and their market shares compared to the parties' market shares (taking account of 50% of Quelle's turnover) are:⁴⁰

- a) "Fashion total": Neckermann ([5-10]%), ebay ([0-5]%)⁴¹, Klingel ([0-5]%), Bader ([0-5]%), and QVC ([0-5]%). On this market, the parties have a combined market share of [40-50]% ([30-40]% plus [5-10]%) and are thus more than eight times larger than their biggest competitor;
- b) "Women's apparel": Klingel ([0-5]%), Neckermann ([0-5]%), ebay ([0-5]%), Esprit ([0-5]%), and Bader ([0-5]%). On this market, the parties have a combined market share of [50-60]% ([40-50]% plus [0-5]%) and are thus ten times larger than their biggest competitor;
- c) "Underwear": Neckermann ([5-10]%), Bader ([5-10]%), Klingel ([0-5]%), QVC ([0-5]%), and Tchibo ([0-5]%). On this market, the parties have a combined market share of [50-60]% ([40-50]% plus [5-10]%) and are thus nine times larger than their biggest competitor;

³⁸ Unless indicated otherwise, all market data in the following analysis by Member State refers to the home-shopping market (comprising sales by catalogue, internet, TV, etc.) in 2008. All data on the total market size in Germany as shown in table 1 and the following table 2 were corrected by the Commission since the notifying party made a calculation error in deducting VAT from the original GfK data.

³⁹ The analysis of the competitive landscape does not take into account the effect that Quelle turnover, which Otto is not able to achieve with the assets to be transferred, would need to be allocated to competitors of the merged entity. Indeed, due to the high market shares of the parties and under the assumption that remaining customers in the market would turn to both Otto and its competitors, the outcome of the analysis of the competitive landscape is unlikely to decisively change through this effect. No adaptation has therefore been made for the market shares of competitors.

⁴⁰ The information on competitors' market shares are based on GfK market research data. For their own turnover, the parties provided their own data.

⁴¹ Regarding turnover generated by ebay, the notifying party argues that the entire ebay turnover needs to be included in the relevant total market sizes in home-shopping. It should be noted that ebay is not a uniform market player but rather acts as a platform/aggregator for the offerings of individuals and small professional retailers. The market investigation showed that ebay in total (i.e. comprising both private persons and professional sellers) cannot be considered as a single competitor. Some respondents see ebay seller rather as customers while other indicate that on ebay often not the "latest" product are sold. In any event, respondents indicated that only professional ebay sellers should be considered as competitors. In line with these results of the market investigation, the market data provided in this decision only take ebay turnover into account insofar it was generated by professional sellers.

- d) "Sport textiles": ebay ([5-10]%), Neckermann ([5-10]%), Tchibo ([5-10]%), Klingel ([0-5]%), and Esprit ([0-5]%). On this market, the parties have a combined market share of [40-50]% ([30-40]% plus [0-5]%) and are thus almost five times larger than their biggest competitor;
- e) "Sport shoes": ebay ([10-20]%), Neckermann ([5-10]%), Amazon ([0-5]%), Bader ([0-5]%), and Klingel ([0-5]%). On this market, the parties have a combined market share of [50-60]% ([40-50]% plus [5-10]%) and are thus more than four times larger than their biggest competitor.
- f) "Furnishing total"⁴²: ebay ([10-20]%), Neckermann ([5-10]%), QVC ([0-5]%), Tchibo ([0-5]%), Bader ([0-5]%). On this market, the parties have a combined market share of [40-50]% ([30-40]% plus [5-10]%) and are thus more than three times larger than their biggest competitor.
- g) "Furniture": ebay (20-30)%, Neckermann ([5-10]%), Bader ([0-5]%), Ikea ([0-5]%), and Tchibo ([0-5]%). On this market, the parties have a combined market share of [50-60]% ([40-50]% plus [10-20]%) and are thus two and a half times larger than their biggest competitor;
- h) "Home textiles": QVC ([5-10]%), ebay ([5-10]%), Neckermann ([0-5]%), Tchibo ([0-5]%), and Bader ([0-5]%). On this market, the parties have a combined market share of [50-60]% ([40-50]% plus [10-20]%) and are thus five and a half times larger than their biggest competitor;

41. Table 2 below shows all further affected product categories, i.e. where the parties' combined market share is between 15%-40% if 50% of Quelle's turnover were taken into account.⁴³

Germany		Market size Million EUR	Market shares in %				
			Otto	100% of Quelle turnover		50% of Quelle turnover	
				Quelle	Combined	Quelle	Combined
Fashion	Men's apparel	[...]	[20-30]	[10-20]	[40-50]	[5-10]	[30-40]
	Children's apparel	[...]	[30-40]	[5-10]	[40-50]	[0-5]	[30-40]
	Shoes	[...]	[20-30]	[5-10]	[30-40]	[0-5]	[30-40]
Sports total		[...]	[20-30]	[5-10]	[30-40]	[0-5]	[30-40]
Technics	Electronics	[...]	[10-20]	[5-10]	[20-30]	[0-5]	[10-20]
	Large electric appl.	[...]	[10-20]	[30-40]	[40-50]	[10-20]	[30-40]
	Small electric appl.	[...]	[10-20]	[5-10]	[10-20]	[0-5]	[10-20]
Furnishing	Homeware	[...]	[10-20]	[5-10]	[20-30]	[0-5]	[10-20]
	Lighting	[...]	[10-20]	[10-20]	[20-30]	[5-10]	[10-20]
Toys	Toys	[...]	[10-20]	[10-20]	[20-30]	[5-10]	[10-20]

Table 2

42. For several out of these ten product categories the parties are still the most important market player, however, in each of these categories they are faced with strong competitors. For all other product categories the parties are either smaller or only slightly larger compared to their main competitors. More in particular, for the different product categories, the parties' main competitors and their market shares

⁴² The category "Furnishing total"(or hereinafter also referred to as "Furniture and Furnishing") is the sum of the product categories "Furniture", "Kitchen", "Lighting", "Home textiles" and "Homeware".

⁴³ On the overall home-shopping market in Germany (not differentiated between product categories) the parties reach a combined market share of [20-30]%.

compared to the parties' market shares (taking account of 50% of Quelle's turnover) are:

- a) "Men's apparel": Neckermann ([5-10]%), ebay ([0-5]%), Esprit ([0-5]%), Klingel ([0-5]%), Tchibo ([0-5]%). On this market, the parties have a combined market share of [30-40]% ([20-30]% plus [5-10]%).
- b) "Children's apparel": ebay ([20-30]%), Neckermann ([5-10]%), H&M ([5-10]%), Tchibo ([0-5]%), Esprit ([0-5]%). On this market, the parties have a combined market share of [30-40]% ([30-40]% plus [0-5]%) and are faced with strong competitors. It is also important to note that throughout the Commission's assessment only ebay turnover generated by professional sellers is taken into account. In particular for the category "children's apparel" it is to be expected that also private sellers exercise to a certain extent competitive pressure on the parties.
- c) "Shoes": ebay ([5-10]%), Klingel ([0-5]%), Neckermann ([0-5]%), QVC ([0-5]%), Bader ([0-5]%). On this market, the parties have a combined market share of [30-40]% ([20-30]% plus [0-5]%). While the parties are significantly larger than the biggest competitor, with Klingel, Neckermann and Bader the three main competitors of the parties are active in this market. Furthermore, the increment of [0-5]%, which is added through the transaction, is smaller than the market shares of the three largest competitors.
- d) "Sports total"⁴⁴: ebay ([10-20]%), Neckermann ([0-5]%), Tchibo ([0-5]%), Amazon ([0-5]%), and Klingel ([0-5]%). On this market, the parties have a combined market share of [30-40]% ([20-30]% plus [0-5]%) and are thus only less than two times larger than their biggest competitor.
- e) "Electronics": Conrad Electronics ([30-40]%), Amazon ([10-20]%), ebay ([10-20]%), Neckermann ([0-5]%), and Weltbild ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [0-5]%). The parties do not reach half the size of Conrad Electronics and are thus much smaller than their biggest competitor.
- f) "Large electrical appliances": ebay ([0-5]%), Neckermann ([0-5]%), Karstadt ([0-5]%) and amazon ([0-5]%). On this market, the parties have a combined market share of [30-40]% ([10-20]% plus [10-20]%). While the parties are larger than their biggest competitor, especially for the product category "large electric appliances", sizeable competitive pressure from "brick and mortar" suppliers exist (e.g. Media Markt/Saturn), also, since service levels between home-shopping and "brick and mortar" are similar as products due to their size and weight are usually delivered to the customers' home.
- g) "Small electrical appliances": Amazon ([10-20]%), ebay ([10-20]%), Conrad Electronics ([5-10]%), Neckermann ([0-5]%) and Tchibo ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [0-5]%) and are thus roughly of the same size as their biggest competitor.

⁴⁴ The category "Sports total" is the sum of the product categories "Sports equipment", "Sports textiles", and "Sport shoes".

- h) "Homeware": ebay ([10-20]%), QVC ([5-10]%), Weltbild ([0-5]%), Tchibo ([0-5]%) and Amazon ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [5-10]%).
 - i) "Lighting": ebay ([5-10]%), Neckermann ([0-5]%), Tchibo ([0-5]%), QVC ([0-5]%) and HSE ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [5-10]%).
 - j) "Toys": ebay ([10-20]%), Amazon ([5-10]%), QVC ([0-5]%), Weltbild ([0-5]%) and HSE ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [5-10]%) and are thus smaller than their biggest competitor.
43. As regards the parties' position with respect to local markets in Germany in a possible overall market comprising "brick and mortar" retailing and home-shopping, it should be noted that Otto's retail shops only sell fashion, sport goods and toys. As regards fashion (in total and in any specific sub-categories) and toys, the parties' combined market share is at most 20% and 10% respectively in any local area. The parties' combined market shares with regard to sport goods are in all local areas below 30% for all sub-categories apart from sport textiles. The parties' market share for sports textiles are between 30 and 40% or below in all local areas, except for Dresden and Magdeburg where the parties' combined market share is [40-50]% and [40-50]% respectively. In all local areas the increment brought about by the proposed transaction (i.e. the acquisition of the Quelle assets) is very low, namely [0-5]%. In addition, there are several competitors active in each local area in Germany, for instance Sportsarena, Runners Point, Foot Locker and Karstadt Sporthaus in Dresden as well as Sport2000, InterSport and Wöhrle in Magdeburg.

Closeness of competition

44. Regarding closeness of competition, a majority of respondents to the market investigation indicated that Otto and Quelle were each other's closest competitors followed by Neckermann.⁴⁵ This result is also underlined by figures provided by the notifying party, indicating that [significant share] of Quelle's customer bought also at Otto and [significant share] of Otto's customer bought at Quelle. However, it needs to be noted in this context that the responses to the market investigation mainly refer to Otto's and Quelle's catalogue business and it is not fully evident if the same conclusion can be drawn for the entire home-shopping market in Germany. For the online segment of the home-shopping market also competitors as Amazon or ebay were named in the market investigation as close competitors. Furthermore, it appears that Otto and Quelle at least to a certain extent were focussed on different customer groups, with Otto on average targeting younger customers compared to Quelle.⁴⁶ In addition, closeness of competition between Otto and Quelle has likely decreased with Quelle's insolvency.

Competitive pressure from "brick and mortar" retailing

45. The parties argue that, if "brick and mortar" and home-shopping are not considered as the same market, the "brick and mortar" sector at least exerts considerable competitive pressure upon the home-shopping market. According to the parties (i) 52% of all households in Germany use home-shopping by internet and catalogue; (ii) no typical home-shopping or catalogue customer exists and the number of customers dependent on home-shopping would be negligible; and (iii) all significant retailers use different channels for the sale of consumer goods ("multi-channel approach") with similar product assortments and conditions in these different channels. The parties further argue that no price discrimination is possible between "brick and mortar" and home-shopping due to a significant cross price elasticity and price transparency between these channels and consequently in case of a price increase of 5-10% in home-shopping a sufficient number of customers would switch to "brick and mortar" retailers so as to render such a price increase unprofitable for home-shopping companies. According to the parties, the similarities between "brick and mortar" and home-shopping would be even more obvious in the case of the product category "furniture" and large electric appliances where also "brick and mortar" shops are often delivering the products purchased to the customer's home.

46. Furthermore, the parties consider that there is also a high competitive pressure within the home-shopping channel which stems from very low barriers to entry into online-shopping and a high growth potential of the online-shopping segment. Lastly, the parties believe that they are exposed to strong actual and potential competition within the home-shopping market in view of the presence of strong multi-channel players (e.g. Tchibo, Conrad) and recent or planned expansion of traditionally stationary retailers into the home-shopping market (e.g. C&A and Lidl for apparel & accessoires; Karstadt for apparel, home & living; Adidas, Nike for sport goods; Görtz

⁴⁵ Responses to questions number 32 and 33 of the Commission's questionnaire to competitors dated 06/01/2010 and questions number 21 and 22 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

⁴⁶ Responses to questions number 29-31 of the Commission's questionnaire to competitors dated 06/01/2010 and questions number 18-19 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

for shoes; Baby-Walz for children apparel; Bolia/Habitat for furniture; Mediamarkt launching its web shop in 2010).

47. The Commission's market investigation has not confirmed the parties' argument that in case of a price increase in home-shopping a sufficient number of customers would switch to "brick and mortar" retailers and would thus render such a price increase unprofitable for home-shopping companies.
48. On the other hand, the market investigation has indicated that there is indeed some degree of competitive pressure exercised by home-shopping and by "brick and mortar" shops on each other as regards the non-food retail sector.
49. In general terms, it must be noted that all sales channels compete among each other in order to attract the largest possible number of retail customers. As indicated above, an important advantage of home-shopping vis-à-vis "brick and mortar" is that shopping is possible on a 24h/7 days per week basis and there is no limitation as regards the spectrum and quantity of products on offer; there is a high degree of transparency as regards prices and features of goods, which allows for a relatively easy comparison between different sellers. This appears to be appealing to consumers particularly strongly as regards electronics but less strong when they purchase furniture or clothing.⁴⁷ Moreover, distance selling is subject to consumer-friendly regulation granting consumers the right to revoke the purchase agreement and send back the goods after having received and tested them within a specified period of time.
50. However, an important advantage of brick and mortar is that goods can be inspected and specialist advice is available if necessary. It should be noted that this feature of shopping at high street shops may be considered by customers more important for certain product categories than for other. For instance, according to a study submitted the parties, the majority of customers in Germany (52%) consider that they need to see furniture "in the flesh" before they buy, whereas this proportion is much lower for electronics (31%) and clothing (39%).⁴⁸ Moreover, goods are often available immediately at high street shops, which according to the aforementioned study appeals to 70% of German consumers when they purchase furniture and to 64% of German consumers when they purchase clothing.⁴⁹
51. The market investigation has shown that even though the price structure is different in these two retail channels (due to different cost items), the prices and conditions of comparable goods at these channels have been converging and in some instances they might be identical. This results from the fact that retailers observe that an increasing number of customers use various channels simultaneously in order to make a purchase decision. One respondent to the Commission's market investigation underlined in this context that "brick and mortar" companies moving into the home-shopping business "have a strong advantage in the retail market given their ability to leverage their "brick and mortar" presence".

⁴⁷ McKinsey survey, Where it's @-E-tailing from a multichannel perspective, August 2008, page 14.

⁴⁸ McKinsey survey, Where it's @-E-tailing from a multichannel perspective, August 2008, page 12.

⁴⁹ McKinsey survey, Where it's @-E-tailing from a multichannel perspective, August 2008, page 12.

52. It is also clear from the market investigation that a large number of home shopping providers regularly monitor "brick and mortar" competitors and vice-versa⁵⁰. Besides, some home-shopping providers indicated that they align their discount periods with the so-called "sales" period at "brick and mortar" stores. Consequently, some respondents to the Commission's market investigation forecast that competition between distance selling and brick and mortar will intensify even further over the coming years.
53. In addition, it should be noted that the home-shopping segment is relatively small compared to the overall retail market. For instance in the case of Germany, the categories "Clothing and Footwear", "Furniture and Furnishing" and "Sports Goods" only account for a relatively small part of the overall retail market (i.e. approximately 20%, 10% and 10% respectively). The bigger "brick and mortar" segment is thus by the very nature of its size likely to exert relatively strong competitive pressure on the home-shopping segment. This has also been underlined by a respondent to the market investigation who stated that "because brick & mortar companies maintain the dominant share of retail sales, home-shopping companies have less of a competitive influence".
54. The fact that the "brick and mortar" segment exerts a certain degree of competitive pressure upon the home-shopping segment is further evidenced by several market studies submitted by the notifying party. According to a study issued by the Forrester research institute in November 2009, merely 17% of consumers in several European countries (including Germany) relied solely on the web from the start of their research for a product to its purchase, while all other consumers went "offline" at least at some stage of the research and purchasing process. Furthermore, a study of the German E-Commerce and Distance Selling Trade Association ("bvh") of July 2009 shows that - although the share of the home-shopping segment in the overall retail market has increased continuously over the past years - multi-channel players remain the predominant segment in the home-shopping market.
55. On the other hand, however, it is clear that in terms of closeness of competition between different retail channels online retailers and universal distant sellers (such as Otto, Quelle and Neckermann) are each other's closer competitors than they are in relation to "brick and mortar" retailers. Indeed, a study submitted by the parties deals with the competitive relationship between various retailers and concludes that internet specialists are closer competitors to universal distant sellers than stationary retailers.⁵¹

Conclusion

56. It follows from the above that in view of the parties' strong absolute and relative market position (even in case only 50% of Quelle's turnover is considered) and their closeness of competition, the proposed transaction raises serious doubts as to its compatibility with the Common Market with regard to the possible home-shopping market in Germany in the following product categories: (i) Fashion total, (ii)

⁵⁰ Responses to question number 21 of the Commission's questionnaire to competitors dated 06/01/2010.

⁵¹ Price Waterhouse Coopers, Multichannel Management, Erfolgreich in der (neuen) Vielfalt, 05/11/2009, page 17.

Women's apparel, (iii) Underwear, (iv) Sport textiles, (v) Sport shoes, (vi) Furnishing total, (vii) Furniture, and (viii) Home textiles.

57. A certain degree of competitive pressure from "brick and mortar" upon the home-shopping market does exist in all relevant product categories. However, as regards the product categories (i) – (viii) mentioned above, it is unclear at this stage of the procedure whether this pressure is sufficient to out-weight the serious doubts stemming from the combination between Otto and Quelle. In any event, the question whether the competitive pressure stemming from "brick and mortar" retailing would be sufficient to out-weight the serious doubts can be left open in view of the modifications to the proposed transaction through the Commitments submitted by Otto.

Austria

58. As mentioned in section II above, the assets to be acquired by Otto in Austria (where insolvency proceedings were opened) include so far only trademark rights. In addition, Otto plans to acquire the "Quelle" internet domain in Austria either by way of contractual negotiation with the Austrian subsidiary of Quelle or by way of priority of its "Quelle" trademark rights. It is further not excluded that Otto will also acquire the right to use Quelle's customer data in Austria (although this is unlikely at the present stage as on the basis of the currently available information as submitted by the parties, negotiations currently only appear to take place between the Austrian insolvency administrator and two third parties). On the basis of the views expressed in the market investigation⁵², the following assessment is based on a churn rate of 50%. However, the parties' combined market share mentioned in the competitive assessment below – due to the fact that Otto is unlikely to acquire the customer data - probably overstate the actual competitive strength of the Quelle assets to be eventually acquired.

Market structure

59. For Austria, it appeared that GfK data for home-shopping underestimates the total market size. [...]. Therefore, the market data for Austria is based on substantiated estimates by the notifying party of its competitors' market shares.
60. As follows from table 3 below, taking into account 50% Quelle turnover, the combined market share of the parties in Austria would be between [10-20]% and [30-40]% in all affected product categories, i.e. where the parties' combined market share is above 15%. The following product categories are affected: "Women's apparel", "Men's apparel", "Children's apparel", "Underwear", "Shoes", "Leather goods", "Sports textiles", "Sport shoes", "Large electric appliances", "Small electric appliances" "Home improvement / Gardens", "Furniture" and "Home textiles". The market share increment in those markets is between [0-5]% and [10-20]%.

⁵² Responses to questions number 34-36 of the Commission's questionnaire to competitors dated 06/01/2010.

Austria		Market size Million EUR Estimates	Market shares in %				
			Otto	100% of Quelle turnover		50% of Quelle turnover	
				Quelle	Combined	Quelle	Combined
Fashion	Women's apparel	[...]	[20-30]	[5-10]	[30-40]	[0-5]	[20-30]
	Men's apparel	[...]	[20-30]	[10-20]	[30-40]	[5-10]	[20-30]
	Children's apparel	[...]	[10-20]	[10-20]	[20-30]	[5-10]	[10-20]
	Underwear	[...]	[20-30]	[10-20]	[30-40]	[5-10]	[20-30]
	Shoes	[...]	[10-20]	[5-10]	[20-30]	[0-5]	[10-20]
	Leather goods	[...]	[20-30]	[5-10]	[20-30]	[0-5]	[20-30]
Sports	Sport textiles	[...]	[20-30]	[5-10]	[20-30]	[0-5]	[20-30]
	Sport shoes	[...]	[20-30]	[10-20]	[30-40]	[5-10]	[20-30]
Technics	Large electric appl.	[...]	[5-10]	[30-40]	[30-40]	[10-20]	[20-30]
	Small electric appl.	[...]	[10-20]	[10-20]	[20-30]	[5-10]	[10-20]
Home improvement / Gardens		[...]	[5-10]	[10-20]	[20-30]	[5-10]	[10-20]
Furnishing	Furniture	[...]	[10-20]	[10-20]	[20-30]	[5-10]	[10-20]
	Home textiles	[...]	[20-30]	[20-30]	[40-50]	[10-20]	[30-40]

Table 3

61. As regards all product categories in table 3, i.e. where the parties' combined market share in Austria (taking account of 50% of Quelle's turnover) exceeds 15%, the parties are faced with strong competitors in each product category. More in particular, for the different product categories, the parties' main competitors and their market shares compared to the parties' market shares are:

- a) "Women's apparel": H&M ([5-10]%), Esprit ([5-10]%), Klingel ([5-10]%), Neckermann ([0-5]%) and La Redoute ([0-5]%). On this market, the parties have a combined market share of [20-30]% ([20-30]% plus [0-5]%).
- b) "Men's apparel": Neckermann ([5-10]%), Esprit ([5-10]%), Klingel ([5-10]%), La Redoute ([0-5]%) and H&M ([0-5]%). On this market, the parties have a combined market share of [20-30]% ([20-30]% plus [5-10]%).
- c) "Children's apparel": H&M ([10-20]%), ebay ([5-10]%), Jako-o ([5-10]%), and Tchibo ([5-10]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [5-10]%).
- d) "Underwear": Palmers ([10-20]%), Neckermann ([5-10]%), H&M ([5-10]%), Tchibo ([5-10]%) and Klingel ([5-10]%). On this market, the parties have a combined market share of [20-30]% ([20-30]% plus [5-10]%).
- e) "Shoes": Humanic ([10-20]%), Deichmann ([10-20]%), Gebrüder Götz ([5-10]%), Neckermann ([0-5]%) and QVC ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [0-5]%).
- f) "Leather goods": Neckermann ([5-10]%), Klingel ([5-10]%), Weltbild ([5-10]%), Tchibo ([5-10]%) and QVC ([5-10]%). On this market, the parties have a combined market share of [20-30]% ([20-30]% plus [0-5]%).
- g) "Sport textiles": ebay ([5-10]%), Neckermann ([5-10]%), Tchibo ([5-10]%), La Redoute ([0-5]%), and Klingel ([0-5]%). On this market, the parties have a combined market share of [20-30]% ([20-30]% plus [0-5]%).
- h) "Sport shoes": Neckermann ([5-10]%), Tchibo ([0-5]%), La Redoute ([0-5]%), ebay ([0-5]%), and Amazon ([0-5]%). On this market, the parties have a combined market share of [20-30]% ([20-30]% plus [5-10]%).

- k) "Large electrical appliances": Neckermann ([5-10]%), Conrad ([0-5]%), Redcoon.at ([0-5]%), Amazon ([0-5]%) and ebay ([0-5]%). On this market, the parties have a combined market share of [20-30]% ([10-20]% plus [5-10]%).
 - l) "Small electrical appliances": Amazon ([10-20]%), QVC ([10-20]%), Conrad ([5-10]%), Neckermann ([5-10]%) and ebay ([5-10]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [5-10]%).
 - i) "Home improvement / Gardens": ebay ([10-20]%), Tchibo ([10-20]%), Westfalia ([5-10]%), QVC ([0-5]%), and Neckermann ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([5-10]% plus [5-10]%).
 - j) "Furniture": Ikea ([10-20]%), ebay ([10-20]%), Neckermann ([5-10]%), Möbelix ([5-10]%), and Amazon ([0-5]%). On this market, the parties have a combined market share of [10-20]% ([10-20]% plus [5-10]%).
 - k) "Home textiles": Neckermann ([10-20]%), Ikea ([5-10]%), QVC ([5-10]%), HSE ([0-5]%), and ebay ([0-5]%). On this market, the parties have a combined market share of [30-40]% ([20-30]% plus [10-20]%).
62. Otto has no retail shops in Austria and hence there is no overlap between the parties' activities with respect to possible local markets in Austria comprising "brick and mortar" retailing and home-shopping.

Closeness of competition

63. Regarding closeness of competition, as already explained above for the German market, a majority of respondents to the market investigation indicated that Otto and Quelle were each other's closest competitors followed by Neckermann and Amazon for the entire home-shopping market.⁵³ Similar to the situation in Germany, Otto and Quelle at least to a certain extent focussed on different customer groups, with Otto on average targeting younger customers compared to Quelle.⁵⁴ Furthermore, closeness of competition between Otto and Quelle has likely decreased with Quelle's insolvency.

Competitive pressure from "brick and mortar" retailing

64. As regards the competitive pressure between "brick and mortar" and home-shopping in Austria, it should be noted that a certain degree of competitive pressure from "brick and mortar" upon the home-shopping market does exist in all identified product categories. The prices and conditions of comparable goods at these channels

⁵³ Responses to questions number 32 and 33 of the Commission's questionnaire to competitors dated 06/01/2010 and questions number 21 and 22 of the Commission's questionnaire to consumer organisations dated 06/01/2010.

⁵⁴ Responses to questions number 29-31 of the Commission's questionnaire to competitors dated 06/01/2010.

have been converging and in some instances they might be identical. Furthermore, an increasing number of customers use various channels simultaneously in order to make a purchase decision. A large number of home-shopping providers regularly monitor "brick and mortar" competitors and vice-versa.

65. In addition, it is important to note that the home-shopping segment is according to the parties smaller in Austria than in Germany. Thus by the very nature of its size "brick and mortar" retailing exerts a stronger competitive pressure on the home-shopping segment.
66. Lastly, it should be noted that a broad majority of respondents to the Commission's market investigation considered that the proposed transaction will not have any negative impact on retail prices in the overall retail business or in the mail order / home-shopping business in Austria.⁵⁵ One respondent expects that the price competition will increase in the mail order / home-shopping business in Austria and the Austrian consumer organisation⁵⁶ foresees that the proposed transaction will lead to lower prices in the mail order / home-shopping business in Austria.

Conclusion

67. In view of the above, in particular the parties' market position, the existence of competitive pressure from a number of competitors in the home-shopping market and a considerable degree of competitive pressure stemming from "brick and mortar" retailing due to its size and significance in Austria, the proposed transaction does, with respect to Austria, not raise serious doubts as to its compatibility with the Common Market.

Further Member States where the proposed transaction does not lead to serious doubts

68. The proposed transaction also leads to affected markets in Poland, the Slovak Republic, the Czech Republic, Slovenia, Hungary and Italy⁵⁷ but serious doubts in these Member States are unlikely to arise for the following reasons.
69. As mentioned in section II above, the Quelle subsidiaries in Poland, the Czech Republic and the Slovak Republic have recently been sold to a third party and it is thus very unlikely that Otto will acquire the right to use Quelle's customer data in these Member States. It follows that in these Member States Otto will merely acquire the trademark rights and - either by way of contractual negotiation with the relevant Quelle subsidiary or by way of priority of its "Quelle" trademark rights – the "Quelle" internet domain. Against this background, for the following analysis, the Commission assumes

⁵⁵ 8 out of 9 respondents that replied to question number 45 of the Commission's questionnaire to competitors dated 06/01/2010 and question 30 of the Commission's questionnaire to customer organisations dated 06/01/2010.

⁵⁶ Verein für Konsumenteninformation, "VKI".

⁵⁷ As no GfK data is available for either of these countries in the required level of detail, the Parties have provided market data on the basis of Euromonitor data. For this reason, the names of the product categories differ somewhat, e.g. the product category "Clothing and Footwear" comprises all products that are referred to as "Fashion total" above; the same applies to the product category "Furniture and Furnishing", which stands for "Furnishing total".

that Otto will only be able to achieve 25% of Quelle's previous turnover in these countries.

Poland

70. In Poland only the product category "Clothing and Footwear" is an affected market with a combined market share of the parties of [30-40]% (Otto [30-40]%, Quelle [5-10]%). The parties' main competitors and their market shares are Allegro ([20-30]%), Neckermann ([5-10]%), Intymnie ([0-5]%), Ulla Popken ([0-5]%) and Tchibo ([0-5]%). It follows from the significant market position of the parties' competitors that no serious doubts as to the compatibility of the transaction with the Common Market are likely to arise in Poland.
71. The transaction also does not raise any serious doubts in possible local markets in Poland under the alternative product market definition comprising all retail channels since the parties' combined market shares in such local markets are much lower than on the national level in home-shopping only and there are numerous strong "brick and mortar" competitor present in each local area.
72. Furthermore, the market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in Poland.

Czech Republic

73. In the Czech Republic only the product category "Clothing and Footwear" is an affected market with a combined market share of the parties of [20-30]% (Otto [20-30]%, Quelle [0-5]%). Also in this market, several well-known competitors of the parties like Neckermann or Klingel are active. Therefore, and in view of the parties' own position, no serious doubts are likely to arise in the Czech Republic. More in particular, the parties' main competitors and their market shares (taking account of 25% of Quelle's turnover) are: Neckermann ([0-5]%), Klingel ([0-5]%), Astratex ([0-5]%), Tchibo ([0-5]%) and Moda Plus ([0-5]%).
74. Otto has no retail shops in the Czech Republic and hence there is no overlap between the parties' activities with respect to possible local markets in the Czech Republic comprising "brick and mortar" retailing and home-shopping.
75. Furthermore, the market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in the Czech Republic.

Slovak Republic

76. Also in the Slovak Republic only the product category "Clothing and Footwear" is an affected market with a combined market share of the parties of [20-30]% (Otto [10-20]%, Quelle [5-10]%). Also in this market, strong competitors of the parties like Aukro, Neckermann or Klingel are active. Therefore, and in view of the parties' own position, no serious doubts are likely to arise in the Slovak Republic. More in particular, the parties' main competitors and their market shares (taking account of 25% of Quelle's turnover) are: Aukro ([10-20]%), mininazar ([5-10]%), Neckermann ([10-20]%), Klingel ([5-10]%) and Pabo ([5-10]%).

77. Otto has no retail shops in the Slovak Republic and hence there is no overlap between the parties' activities with respect to possible local markets in the Slovak Republic comprising "brick and mortar" retailing and home-shopping.

78. Furthermore, the market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in the Slovak Republic.

Slovenia

79. It appears at this stage that the Quelle subsidiary in Slovenia has not yet been sold and it is therefore not excluded that Otto might also be able to acquire customer data besides the acquired trademark rights. Therefore, similar to the assessment for Germany and Austria, the Commission took 50% of the previous Quelle turnover into account for Slovenia.⁵⁸

80. For Slovenia no serious doubts arise on the basis of the parties' combined market share. The combined market share of the parties would be in the product category "Clothing and Footwear" [10-20]% (Otto [0-5]%, Quelle [10-20]%). Furthermore, it should be noted that home-shopping in this segment represents only [0-5]% of the "brick and mortar" "Clothing & Footwear" segment in Slovenia indicating the competitive pressure emanating from the "brick and mortar" segment.

81. In Slovenia several strong competitors are active in the product market "Clothing and Footwear", which underlines that no serious doubts are likely to arise. More in particular, the parties' main competitors and their market shares (taking account of 50% of Quelle's turnover) are Neckermann ([30-40]%), La Redoute ([5-10]%), superge.si ([0-5]%) and mimorste.si ([0-5]%).

82. Otto has no retail shops in Slovenia and hence there is no overlap between the parties' activities with respect to possible local markets in Slovenia comprising "brick and mortar" retailing and home-shopping.

83. Furthermore, the market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in Slovenia.

Italy

84. Also for Italy, it appears that the Quelle subsidiary has at this stage not yet been sold and it is therefore not excluded that Otto might also be able to acquire customer data besides the acquired trademark rights. Therefore, similar to the assessment for Germany, Austria and Slovenia, the Commission took 50% of the previous Quelle turnover into account for Italy.⁵⁹

85. For Italy no serious doubts arise on the basis of the parties' combined market share and the very low increment of [0-5]%. The combined market share of the parties would be in the product category "Clothing and Footwear" [10-20]% (Otto [10-20]%, Quelle [0-5]%). Furthermore, it should be noted that home-shopping in this segment

⁵⁸ See also responses to questions number 34-36 of the Commission's questionnaire to competitors dated 06/01/2010

⁵⁹ See also responses to questions number 34-36 of the Commission's questionnaire to competitors dated 06/01/2010

represents only [0-5]% of the "brick and mortar" "Clothing & Footwear" segment in Italy indicating the competitive pressure emanating from the "brick and mortar" segment.

86. The transaction also does not raise any serious doubts in possible local markets in Italy under the alternative product market definition comprising all retail channels since the parties' combined market shares in such local markets are much lower than on the national level in home-shopping only and there are numerous strong "brick and mortar" competitor present at each local area.
87. Furthermore, the market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in Italy.

Hungary

88. No serious doubts arise in Hungary (where insolvency proceedings were opened and it cannot be excluded that Otto will also acquire a right to use the customer data). Similar to the assessment for Germany, Austria, Italy and Slovenia, the Commission took 50% of the previous Quelle turnover into account for Hungary.⁶⁰
89. Similar to the situation in Austria, the parties argue that the available sources for total market volumes are imprecise and do not properly reflect competition on the Hungarian market. The parties have thus provided their best estimates for the relevant product categories, according to which the parties' combined market share would not exceed 20%.
90. On the basis of Euromonitor data however bearing in mind that these data are most likely not fully reflecting the market structure in Hungary, the parties have a combined market share of [30-40]% in "Clothing and Footwear" if 50% of Quelle's turnover is taken into account (market share increment of [10-20]%). However, it should be noted that home-shopping in Hungary is less developed than in e.g. in Germany and the competitive constraints stemming from the "brick and mortar" "Clothing & Footwear" segment in Hungary are thus stronger. Furthermore, the following competitors to the parties (with their market shares) have been identified: Teszvesz.hu ([0-5]%), Vatera.hu ([0-5]%) and Depo.hu ([0-5]%) and the parties submit that several further players exist such as brandshop24.com, playersroom.hu, globalplaza.hu, taskaplaza.hu, cipoplaza.hu, converse-shop.hu and diat.hu. The market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in Hungary. Despite the comparatively low market shares of the parties' competitors in the home-shopping segment it needs to be taken into account that home-shopping in this segment represents only [0-5]% of the "brick and mortar" "Clothing & Footwear" segment in Hungary.
91. Otto has no retail shops in Hungary and hence there is no overlap between the parties' activities with respect to possible local markets in Hungary comprising "brick and mortar" retailing and home-shopping.

⁶⁰ See also responses to questions number 34-36 of the Commission's questionnaire to competitors dated 06/01/2010

92. Furthermore, the market investigation has not revealed any specific concerns in relation to the impact of the envisaged transaction in Hungary.

Transaction 2

93. As regards Transaction 2 and the acquisition of sole control over Quelle Russia by Otto, the Commission notes that the notifying party submitted that Quelle Russia does not export goods into the EU and it will not do so in the future. On this basis, Transaction 2 has no appreciable effect on the Common Market and also the market investigation has not revealed any concerns in this regard.

Conclusion

94. In light of the above, the Commission considers that the present transaction raises serious doubts in several product categories of the German home-shopping market as to its compatibility with the common market.

VI. COMMITMENTS

95. In order to address the serious doubts identified by the Commission during its market investigation in Germany, Otto submitted commitments on 26 January 2010 pursuant to Article 6(2) of the Merger Regulation. On 27 January 2010 and 29 January 2010, Otto submitted revised versions of the commitments.

96. Following the submission of the revised version of the commitments on 29 January 2010, the Commission launched a market test to gather the opinion of competitors and consumer organisations on these commitments. In light of the results of the market test, Otto presented a final version of commitments on 16 February 2010 ("the Commitments"), complemented by a declaration of the German insolvency administrator of 16 February 2010, which addressed shortcomings identified in its previous proposal.

Description of the Commitments

97. The Commitments submitted by Otto on 26 January and subsequently modified consist of

- (i) The divestment to one purchaser of all trademarks, trademark applications and domain names purchased by Otto or its Affiliated Undertakings under the purchase sale and purchase agreement ("SPA") with the insolvency administrator with the exception of trademarks, trademark applications and domain names relating to the brands "Quelle", "Primondo" and "Privileg"⁶¹ as well as trademarks exclusively registered and used in Russia.⁶²

⁶¹ For the avoidance of doubt, the excepted "Quelle", "Primondo" and "Privileg" brands include all trademarks, trademark applications and domain names which include the words "Quelle", "Primondo" or "Privileg" including all synonyms for the word Quelle such as the single letters "q" and "Q" (e.g. "Q des Tages", "QStores" but not "Lebensquell" or "Sanoquell") and trademarks of the Privileg brand family for big household appliances ("Ökomat").

⁶² As to the trademarks, trademark applications and domain names which are necessary to continue the business of Quelle Russia, Otto is entitled to request from the purchaser or the purchasers an exclusive, unlimited royalty-free production and distribution license for the use of these trademarks, trademark applications and domain names in Russia vested with the right to grant sublicenses.

- (ii) The right for the purchaser of the trademarks, trademark applications and domain names to use the customer data of Quelle in the same way and under the same conditions as Otto is permitted under the SPA as of the starting day set out in the schedule. To this effect Otto commits to:
 - (a) irrevocably renounce its right [...] under the provisions of the SPA,
 - (b) irrevocably renounce its rights [...] pursuant to Article 7(3)(b)(ii) and 7(3)(c) of the SPA, as well as
 - (c) to use its right pursuant to Article 7(5) sentence 3 of the SPA to instruct the insolvency administrator to allow the purchaser to use the Quelle customer data in compliance with the applicable data protection rules and to the same extent and under the same conditions as Otto is allowed under the SPA, as modified by this commitment, i.e. in particular to get access to all available customer data in the database of Quelle by way of the so called “lettershop system” (as described in Annex 3) under the applicable data protection rules.
 - (d) Otto further commits not to use any Quelle customer data in accordance with the SPA prior to [...] weeks after the divestment has been sold to the purchaser, the Commission has given its approval to the Purchaser and the Purchaser and Otto have been informed of this event. For the avoidance of doubt "sold" in this context means that the Purchaser is in a position to consummate the acquisition of the Divestment Business, i.e. the Purchaser has obtained all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business. If requested by the Purchaser and approved by the Commission both Otto and the Purchaser may use the customer data in accordance with the SPA, as modified by this commitment, earlier than upon the expiry of the period of [...] weeks mentioned above.

Assessment of the Commitments

98. The Commitment consists of the sale of trademarks, trademark applications and domain names (together hereinafter "trademarks") to one purchaser. These trademarks constitute a comprehensive package as this package includes trademarks registered in almost all affected product categories. Together with the acquisition of the trademarks, the purchaser acquires the right to use the German Quelle customer data in the same way and under the same conditions as Otto. Similarly, also the customer data can be used for all product categories, i.e. not only for those in which the transaction leads to serious doubts.
99. These Commitments will thus allow a suitable Purchaser both to use several trademarks across the affected product categories, and to have access to the Quelle customer database which comprises approximately 8 million customers. This will allow the Purchaser – in compliance with the applicable European and national data protection laws – to engage in the mailing of catalogues and other marketing activities to the same extent as Otto is allowed under the SPA. The Purchaser can exercise this right to use the Quelle customer data for at least [...] and as many times as wished during that period; furthermore, the Purchaser has the right to negotiate an extension of that period with the Insolvency Administrator. The Purchaser will therefore be in position to have access to the former Quelle customers and to attract them through its product offer. The

Commitments thus will strengthen the commercial position of the Purchaser and enable the Purchaser to compete more effectively with Otto.

100. As explained above, home-shopping companies - by their very nature - do not have their own production facilities or shops at their disposal. Therefore, assets like trademarks, domain names, and customer data constitute an essential asset and a main basis for a home-shopping business and the turnover generated by trading with consumer goods. Consequently, the divestment of trademarks and the right to use customer data constitutes a structural remedy.

Independence, viability and competitiveness of the Divestment

101. In the Commission's view, the use of the customer data in combination with the acquisition of a large portfolio of Quelle's trademarks offered by Otto under the Commitments will effectively strengthen the purchaser in competition to Otto. This has been confirmed by the majority of respondents to the Commission's market test of Commitments. Indeed, the possibility to use Quelle's customer data base of Germany is particularly interesting for existing home-shopping companies.
102. As regards the importance of the trademarks offered by Otto under the Commitments, several respondents indicated that they would be interested in some of the trademarks offered even though the individual trademarks might not have as strong a significance as the Quelle umbrella trademark as such. In this context, it is however important to note that the purchaser not only acquires all trademarks offered under the Commitments but simultaneously the right to use the entire Quelle customer data base of Germany. According to the notifying party, there are approximately 8 million customers registered in the Quelle data base.

Effectiveness of the Commitments in removing the serious doubts

103. The proposed Commitment is a clear-cut, structural remedy. The market test confirmed that after the implementation of the remedies the transaction would not raise serious doubts. This view is mainly based on the value of the customer data base.
104. As regards the use of customer data offered by Otto under the Commitments, respondents to the market test generally consider these customer data as an important asset. Many respondents further consider that the procedure of use suggested by Otto is generally effective.
105. In line with the significant value of the customer data base which was underlined in the market test, the Commitments submitted by Otto were subsequently amended so as to ensure that the purchaser already has a significant presence in the home-shopping business in Germany (in particular in those product markets where serious doubts cannot be excluded) as well as sufficient financial resources and sufficient scope of business to be able to use the Quelle customer data at a similar scale as Otto. The purchaser will thus have its own existing umbrella brand in which the trademarks to be divested can be integrated.

106. Furthermore, following the results of the market test, Otto increased the time available for the purchaser to prepare its marketing activities⁶³ to [...] (from [...] in the initially proposed Commitments) as from the Commission's buyer approval and the granting of all necessary regulatory approvals. On this basis, the Commission takes the view that the Commitments now foresee sufficient preparation time for the purchaser and prevent a possible head start or "first mover" advantage of Otto.
107. Furthermore, the utilisation period for the purchaser of the customer data can independently from Otto be extended beyond the [...] usage period foreseen in the SPA, if the purchaser finds an agreement with the insolvency administrator of Primondo.

Conclusion

108. The Commission concludes that the remedies offered by Otto remove the serious doubts identified. The Commission considers that, in particular, the customer data are an important asset to resolve the serious doubts raised by the transaction. The effectiveness and value of the remedies package is further strengthened by the fact that it comprises trademarks covering almost all affected product markets and that the customer data can be used for all product categories at issue.
109. Since the remedy package will be divested to one single purchaser, the Commission considers it highly likely that an already existing competitor who has the financial resources and incentives to use the entire assets as a purchaser will be considerably strengthened through the remedies and will be enabled to compete with Otto effectively. This is in line with the general feedback received in the market test, i.e. that the position of a purchaser acquiring the trademarks and the right to use Quelle customer data will be effectively strengthened in competition to Otto, and that a majority of respondents do not consider that the transaction (as modified by the Commitments) would lead to serious doubts as to the compatibility of the proposed transaction with the Common Market.

Conditions and obligations

110. Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the Commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the common market.
111. The Commitments in section B constitute conditions attached to this decision, as only through full compliance therewith the structural changes in the relevant markets can be achieved. The remaining requirements set out in the other Sections of the Commitments constitute obligations.

VII. CONCLUSION

112. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the Commitments and to declare it compatible with the common market and with the functioning of the EEA Agreement, subject to full

⁶³ Marketing activities may, for example, entail mailings of catalogues or letters to the extent allowed under applicable data protection rules.

compliance with the conditions in section B of the Commitments annexed to the present decision and with the obligations contained in the other sections of the said commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of Council Regulation (EC) No 139/2004.

For the Commission

(signed)

Joaquín ALMUNIA

Vice-President of the Commission

By hand and by fax: 00 32 2 296 4301

European Commission

DG Competition

Rue Joseph II 70 Jozef-II straat

B-1000 BRUSSELS

Case COMP/M.5721 – Otto/Primondo Assets

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the “*Merger Regulation*”), Otto (GmbH & Co KG) (“*Otto*”) hereby provides the following Commitments (the “*Commitments*”) in order to enable the European Commission (the “*Commission*”) to declare the notified concentration concerning the acquisition of certain trademarks, trademark applications, patents, domain names, copyrights and customer data from various companies of the Primondo group compatible with the common market and the EEA Agreement by its decision pursuant to Article 6(1)(b) of the Merger Regulation (the “*Decision*”).

The Commitments shall take effect upon the date of adoption of the Decision.

This text shall be interpreted in the light of the Decision to the extent that the Commitments are attached as conditions and obligations, in the general framework of Community law, in particular in the light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EEC) No 139/2004 and under Commission Regulation (EC) No 802/2004.

Section A. Definitions

For the purpose of the Commitments, the following terms shall have the following meaning:

Affiliated Undertakings: undertakings controlled by Otto and/or by the ultimate parents of Otto, whereby the notion of control shall be interpreted pursuant to Article 3 Merger Regulation and in the light of the Commission's Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings.

Closing: the transfer of the legal title of the Divestment Business to the Purchaser.

Divested Brands Commitment: the trademarks and related rights as part of the Divestment Business as defined in Section B and the Schedule.

Divestment Business: the business as defined in Section B and the Schedule that Otto commits to divest.

Customer Data Commitment: the right to use customer data as part of the Divestment Business as defined in Section B and the Schedule.

Divestiture Trustee: one or more natural or legal person(s), independent from Otto, who is approved by the Commission and appointed by Otto and who has received from Otto the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of [...] months from the Effective Date.

Hold Separate Manager: the person appointed by Otto for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Insolvency Administrator: Dr. Klaus Hubert Görg, the insolvency administrator of several companies of the Arcandor group, inter alia Quelle.

Monitoring Trustee: one or more natural or legal person(s), independent from Otto, who is approved by the Commission and appointed by Otto, and who has the duty to monitor Otto's compliance with the conditions and obligations attached to the Decision.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

SPA: Kaufvertrag über Gesellschaftsanteile und weitere Vermögensgegenstände signed on 4 November 2009 (Annex 6 of the Form CO).

Trustee(s): the Monitoring Trustee and the Divestiture Trustee.

Trustee Divestiture Period: the period of [...] months from the end of the First Divestiture Period.

Otto: Otto (GmbH & Co KG), incorporated under the laws of Germany, with its registered office at Hamburg and registered with the Commercial Register at AG Hamburg under number HR A 62 024 as well as Otto's Affiliated Undertakings PROVISTA Siebenhundertdreiundsiebzigste Verwaltungsgesellschaft with its registered office in Hamburg (Germany), Otto Finance Cyprus Limited with its registered office in Nicosia (Cyprus) and BIC Retail Enterprises Ltd. with its registered office in Nicosia (Cyprus).

Quelle: Quelle GmbH i.L., (in liquidation) incorporated under the laws of Germany, with its registered office at Fürth and registered with the Commercial Register at AG Fürth under number HR B 10449.

Section B. The Divestment Business

Commitment to divest

1. In order to restore effective competition, Otto commits to divest, or procure the divestiture of the Divestment Business by the end of the Trustee Divestiture Period to one Purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 13. To carry out the divestiture, Otto commits to find a Purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If Otto has not entered into such an agreement at the end of the First Divestiture Period, Otto shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 22 in the Trustee Divestiture Period.
2. Otto shall be deemed to have complied with this commitment if, by the end of the Trustee Divestiture Period, Otto has entered into a final binding sale and purchase agreement related to the sale of the Divestment Business, if the Commission approves the Purchaser and the terms in accordance with the procedure described in paragraph 13 and if the closing of the sale of the Divestment Business takes place within a period not exceeding [...] months after the approval of the purchaser and the terms of sale by the Commission.
3. In order to maintain the structural effect of the Commitments, Otto shall, for a period of 10 years after the Effective Date, not acquire direct or indirect influence over the whole or part of the Divestment Business, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the common market.

Structure and definition of the Divestment Business

4. The Divestment Business consists of

- (i) all trademarks, trademark applications and domain names purchased by Otto or its Affiliated Undertakings under the SPA with the exception of trademarks, trademark applications and domain names relating to the brands “Quelle”, “Primondo” and “Privileg” as well as trademarks exclusively registered and used in Russia. All divested trademarks, trademark applications and domain names pursuant to this paragraph 4(i) are listed in **Annex 1a**.

As to the trademarks, trademark applications and domain names which are necessary to continue the business of Quelle Russia Otto is entitled to request from the Purchaser an exclusive, unlimited royalty-free production and distribution license for the use of these trademarks, trademark applications and domain names in Russia vested with the right to grant sublicenses.

For the avoidance of doubt, the excepted “Quelle”, “Primondo” and “Privileg” brands include all trademarks, trademark applications and domain names which include the words “Quelle”, “Primondo” or “Privileg” as well as synonyms for the word Quelle such as the single letters “q” and “Q” (e.g. “Q des Tages”, “QStores” but not “Lebensquell” or “Sanoquell”); the “Privileg” brand also includes the trademark “Ökomat”.

- (ii) The right for the Purchaser of the assets defined in Section 4(i) above to use the customer data of Quelle in the same way and at the same conditions as Otto is allowed under the SPA as of the starting day set out in the schedule (Customer Data Commitment as described in more detail in the schedule and in particular Annex 3). To this effect Otto commits to
 - (a) irrevocably renounce to its right [...] pursuant to §§ 7(1)(i), 7(3)(a) and 7(4)(i) of the SPA,
 - (b) irrevocably renounce to its rights pursuant to § 7(3)(b)(ii) and 7(3)(c) of the SPA, as well as
 - (c) to use its right pursuant to § 7(5) sentence 3 of the SPA to instruct the Insolvency Administrator to allow the Purchaser to use the customer data of Quelle in accordance with the applicable data protection rules and to the same extent and at the same conditions as Otto is allowed under the SPA, as modified by this commitment, i.e. in particular to get access to all available customer data in the database of Quelle by way of the so called “lettershop system” (as described in Annex 3). For the avoidance of doubt this paragraph 4(ii)(c) does not prevent the Purchaser to bilaterally conclude with the Insolvency Administrator an agreement to use the customer data of Quelle

after the expiry of the [...] time period set out in § 7(3)(b)(i) of the SPA, even if Otto does not exercise the option to extend its right to use the customer data.

Otto commits not to use any Quelle customer data in accordance with the SPA prior to [...] after the Divestment Business has been sold to the Purchaser and the Commission has given its approval pursuant to paragraph 13 to the Purchaser and the Purchaser and Otto have been informed of this event. [For the avoidance of doubt “sold” in this context means that the Purchaser is in a position to consummate the acquisition of the Divestment Business, i.e. the Purchaser has obtained all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business. If requested by the Purchaser and approved by the Commission both Otto and the Purchaser may use the customer data in accordance with the SPA, as modified by this commitment, earlier than upon the expiry of the period of [...] mentioned in this paragraph 4(ii) subparagraph 2.

Section C. Related commitments

Preservation of Viability, Marketability and Competitiveness

5. From the Effective Date until Closing, Otto shall preserve the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular Otto undertakes not to carry out any act upon its own authority that might have a significant adverse impact on the value or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy of the Divestment Business. For the avoidance of doubt and in view of the specific insolvency situation under which the sale of products under the trademarks being part of the Divestment Business is currently discontinued, this paragraph 5 does not oblige Otto to market/advertise or actively produce and sell products under the respective trademarks.

Hold-separate obligations of Otto

6. Otto commits, from the Effective Date until Closing, to keep the Divestment Business separate from the businesses it is retaining.
7. Until Closing, Otto shall assist the Monitoring Trustee in ensuring that the Divestment Business is kept as distinct and saleable rights separate from the businesses retained by Otto. Otto shall appoint a Hold Separate Manager who shall be responsible for the “management” of the Divestment Business, under the supervision of the Monitoring Trustee. The Hold Separate Manager shall manage the Divestment Business independently and in the best interest of the business with a view to ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by Otto.

Ring-fencing

8. Otto shall implement all necessary measures to ensure that it does not after the Effective Date obtain any business secrets, know-how, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business. Otto may obtain information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or whose disclosure to Otto is required by law.

Due Diligence

9. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, Otto shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process provide to potential purchasers sufficient information as regards the Divestment Business.

Reporting

10. Otto shall submit written reports in German language on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).
11. Otto shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of an information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

12. In order to ensure the immediate restoration of effective competition, the Purchaser, in order to be approved by the Commission, must:
 - (a) be independent of and unconnected to Otto;
 - (b) have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with Otto and other competitors; more specifically, the Purchaser must already have a significant presence in the homeshopping business in Germany, in particular in the product categories identified by the Commission in the decision as giving rise to serious doubts; moreover, the Purchaser must have sufficient financial resources and sufficient scope of business to be able to use the Quelle customer data at a similar scale as Otto;

- (c) neither be likely to create, in the light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business (the before-mentioned criteria for the purchaser hereafter the “**Purchaser Requirements**”).

13. The final binding sale and purchase agreement shall be conditional on the Commission’s approval. When Otto has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Trustee. Otto must be able to demonstrate to the Commission that the purchaser meets the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Requirements and that the Divestment Business is being sold in a manner consistent with the Commitments. The Commission may approve the sale of the Divestment Business without one or more trademarks or related rights, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment Procedure

14. Otto shall appoint a Monitoring Trustee to carry out the functions specified in the Commitments for a Monitoring Trustee. If Otto has not entered into a binding sales and purchase agreement one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by Otto at that time or thereafter, Otto shall appoint a Divestiture Trustee to carry out the functions specified in the Commitments for a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Extended Divestment Period.
15. The Trustee shall be independent of Otto, possess the necessary qualifications to carry out its mandate, for example as an investment bank or consultant or auditor, and shall neither have nor become exposed to a conflict of interest. The Trustee shall be remunerated by Otto in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, the fee shall also be linked to a divestiture within the Trustee Divestiture Period.

Proposal by Otto

16. No later than one week after the Effective Date, Otto shall submit a list of one or more persons whom Otto proposes to appoint as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period, Otto shall submit a list of one or more persons whom Otto proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the proposed Trustee fulfils the requirements set out in paragraph 15 and shall include:
- (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;
 - (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;
 - (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

17. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, Otto shall appoint or cause to be appointed, the individual or institution concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, Otto shall be free to choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by Otto

18. If all the proposed Trustees are rejected, Otto shall submit the names of at least two more individuals or institutions within one week of being informed of the rejection, in accordance with the requirements and the procedure set out in paragraphs 14 and 17.

Trustee nominated by the Commission

19. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom Otto shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

20. The Trustee shall assume its specified duties in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or Otto, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

21. The Monitoring Trustee shall:

- (i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.
- (ii) oversee the substance of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by Otto with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:
 - (a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by Otto, in accordance with paragraphs 5 and 6 of the Commitments;
 - (b) (i) in consultation with Otto, determine all necessary measures to ensure that Otto does not after the effective date obtain any business secrets, knowhow, commercial information, or any other information of a confidential or proprietary nature relating to the Divestment Business, without compromising the viability of the Divestment Business, and (ii) decide whether such information may be disclosed to Otto as the disclosure is reasonably necessary to allow Otto to carry out the divestiture or as the disclosure is required by law;
- (iii) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision;
- (iv) propose to Otto such measures as the Monitoring Trustee considers necessary to ensure Otto's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

- (v) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process, potential purchasers receive sufficient information relating to the Divestment Business in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process;
- (vi) provide to the Commission, sending Otto a non-confidential copy at the same time, a written report within 15 days after the end of every month. The report shall cover the operation and management of the Divestment Business so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers. In addition to these reports, the Monitoring Trustee shall promptly report in writing to the Commission, sending Otto a non-confidential copy at the same time, if it concludes on reasonable grounds that Otto is failing to comply with these Commitments;
- (vii) within one week after receipt of the documented proposal referred to in paragraph 13, submit to the Commission a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser.
- (viii) supervise that Otto and the Insolvency Administrator (as set out in the letter attached in Annex 4) follow their obligations pursuant to the Customer Data Commitment and provide the Commission with a monthly report written in German on the status of Customer Data Commitment. Such report shall be submitted within 15 days after the end of every month with a simultaneous copy of a non-confidential version to Otto.

Duties and obligations of the Divestiture Trustee

22. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement in accordance with the procedure laid down in paragraph 11. The Divestiture Trustee shall include in the sale and purchase agreement such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of Otto, subject to Otto's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

23. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in German on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Otto.
24. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall also supervise that Otto and/or the Insolvency Administrator follow their obligations pursuant to the Customer Data Commitment and provide the Commission with a comprehensive monthly report written in German on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to Otto.

III. Duties and obligations of Otto

25. Otto shall provide and shall cause its advisors to provide the Trustee with all such cooperation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have full and complete access to any of Otto's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and Otto shall provide the Trustee upon request with copies of any document. Otto shall make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.
26. Otto shall provide the Monitoring Trustee with all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. Otto shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. Otto shall inform the Monitoring Trustee on possible purchasers, submit a list of potential purchasers, and keep the Monitoring Trustee informed of all developments in the divestiture process.
27. Otto shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale, the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, Otto shall cause the documents required for effecting the sale and the Closing to be duly executed.

28. Otto shall indemnify the Trustee and its employees and agents (each an “*Indemnified Party*”) and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to Otto for any liabilities arising out of the performance of the Trustee’s duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.
29. At the expense of Otto, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Otto’s approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should Otto refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard Otto. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 28 shall apply mutates mutandis. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served Otto during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

IV. Replacement, discharge and reappointment of the Trustee

30. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a conflict of interest:
- (a) the Commission may, after hearing the Trustee, require Otto to replace the Trustee; or
 - (b) Otto, with the prior approval of the Commission, may replace the Trustee.
31. If the Trustee is removed according to paragraph 30, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 14-19.
32. Beside the removal according to paragraph 30, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The Review Clause

33. The Commission may, where appropriate, in response to a request from Otto showing good cause and accompanied by a report from the Monitoring Trustee:
- (i) Grant an extension of the time periods foreseen in the Commitments, or
 - (ii) Waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments.

Where Otto seeks an extension of a time period, it shall submit a request to the Commission no later than one month before the expiry of that period, showing good cause. Only in exceptional circumstances shall Otto be entitled to request an extension within the last month of any period.

Düsseldorf, 16. Februar 2010

.....

[*signed*]

duly authorised for and on behalf of Otto

SCHEDULE

1. Divested Brands Commitment:

The Divestment Business includes, inter alia, the following trademarks, trademark applications and domain names:

Main trademarks	Domains
Aguzzo	aguzzo.biz, aguzzo.eu, aguzzo.info
BUFFALO	
Casamaxx	casamaxx.at, casamaxx.com, casamaxx.de, casamaxx.eu, casamaxx.info, casamaxx.it, casamaxx.net
COME ON	
Dukaten®	
Euroval	euroval.biz, euroval.de, euroval.info
Explorer	explorer-fashion.com, explorer-fashion.de, explorer-fashion.ceu
Golden Style	
goodplay	goodplay.de, goodplay.eu, goodplay.ro
Helix	
Julietta	julietta.biz, julietta.eu, julietta.info
Lebensquell	lebensquell.biz, lebensquell.eu, lebensquell.info
MA MEISTERANKER	meisteranker.biz, meister-anker.biz, meisteranker.de, meister-anker.de, meisteranker.eu, meister-anker.eu, meister-anker.info
Maria Bellesi	maria-bellesi.com, maria-bellesi.de, mariabellesi.eu, maria-bellesi.eu
Maritim	
Mars	
MARS (Neue WM)	
Matura	matura.biz, matura.eu
PROFI Line BERUFSBEKLEIDUNG	
SANKT PAUL	sanktpaul.eu, sankt-paul.eu, st-paul.biz, st-paul.info
Sanoquell	sanoquell.biz, sanoquell.eu, sanoquell.info
Schlaf gut	schlafgut.biz, schlafgut.info
Silentic	silentic.biz, silentic.de, silentic.eu

Simone	
TOP HOME	
Umberto Rosetti	umberto-rosetti.com, umberto-rosetti.de, umbertorosetti.eu, umberto-rosetti.eu
Uniropa	uniropa.biz, uniropa.de, uniropa.eu, uniropa.info, uniropa-autobedarf.de
Universum	universum.biz, universum.info
Webschatz	webschatz.com, webschatz.de, webschatz.eu, webschatz.ro
WIWATEX	
Y.O.U. young order unlimited	

A complete list of all divested trademarks, trademark applications and domain names is attached as **Annex 1a**. Annex 1a also contains additional information, in particular registration numbers and the countries for which the trademarks are registered. **Annex 1b** only shows the trademarks and trademark applications without this additional information. Further information of all important trademarks such as the countries in which the trademarks are registered and the respective class(es) with a description of the corresponding goods and services (according to the Nice Classification) is attached as **Annex 2**.

Pursuant to the list in Annex 1a the Divestment Business shall not include any trademarks, trademark applications and domain names containing the words “Quelle”, “Primondo” or “Privileg” and synonyms for the word Quelle such as the single letters “q” and “Q”, the trademark “Ökomat” as well as trademarks exclusively registered and used in Russia.

As to the trademarks, trademark applications and domain names which are necessary to continue the business of Quelle Russia Otto is entitled to request from the Purchaser an exclusive, unlimited royalty-free production and distribution license for the use of these trademarks, trademark applications and domain names in Russia vested with the right to grant sublicenses.

2. Customer Data Commitment:

The Purchaser will get the right to use all customer data in the database of Quelle by way of the so-called “lettershop system” (description see **Annex 3**).

The Customer Data Commitment consists of Otto’s commitment to use its right pursuant to § 7(5) sentence 3 of the SPA to instruct the Insolvency Administrator to allow the Purchaser to use the customer data of Quelle to the same extent and at the same conditions as Otto is allowed under the SPA, as modified by this commitment. At the same time, Otto irrevocably

renounces to its right [...] pursuant to §§ 7(1)(i), 7(3)(a) and 7(4)(i) of the SPA and irrevocably renounces to its rights pursuant to § 7(3)(b)(ii) and 7(3)(c) of the SPA. For the avoidance of doubt Customer Data Commitment does not prevent the Purchaser to bilaterally conclude with the Insolvency Administrator an agreement to use the customer data of Quelle after the expiry of the [...] time period set out in § 7(3)(b)(i) of the SPA, even if Otto does not exercise the option to extend its right to use the customer data.

The Customer Data Commitment is complemented by the commitment of Quelle's Insolvency Administrator to make the same rights to use Quelle customer data available to the Purchaser. Furthermore, in order not to give Otto any "first mover" advantage, Otto commits not to use any Quelle customer data in accordance with the SPA prior to [...] after the Divestment Business has been sold to the Purchaser and the Commission has given its approval pursuant to paragraph 13 to the Purchaser and the Purchaser and Otto have been informed of this event. For the avoidance of doubt "sold" in this context means that the Purchaser is in a position to consummate the acquisition of the Divestment Business, i.e. the Purchaser has obtained all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business. If requested by the Purchaser and approved by the Commission both Otto and the Purchaser may use the customer data in accordance with the SPA, as modified by this commitment, earlier than upon the expiry of the period of [...] mentioned in this paragraph.

The Insolvency Administrator has signed a declaration attached in [Annex 4](#).

[Confidential: additional information concerning the trademarks, in particular registration numbers and the countries for which the trademarks are registered]

Trademark	Trademark	Trademark	Trademark	Trademark	Trademark
Aguzzo	EUROVAL	Kittelet	Kl.38+41)	Quellisana	Touspo
animal24	Explorer	Kuschelbär	Mars (nur DL- Kl.38+41)	Sankt Paul	TREND ZONE
Annabella	Fonetix	Lebensquell	MARS FASHION QUALITY SINCE 1919***	SANKT PAUL	Umberto Rosetti
Antonia	for U2	LiebeLust	MARS HOSE (DIE)	Sanoquell	Uniropa
ANTONIA	Frischquell	Lilie	Matura	Schlaf gut	UNIROPA
Bär	Fun Life	Löwe	MATURA	Schöpflin	Universum
Bijou	Funlife	Luciana	Meister Anker	Senator	UNIVERSUM
Buffalo	Globus/Flieger	Lunik	Meister Quarz	SENATOR	UR Umberto Rosetti
BUFFALO	GOLDEN STYLE	MA Meister Anker	MEISTER-ANKER	Shirt Master	UR UMBERTO ROSETTI
buon prezzo	GOOD PLAY	MA MEISTRANKER	MODAPLUS	Silentic	Webschatz
Carat	goodplay	Mailflower	Nashorn	spengler allures	Weekend
Casamaxx	Happy Day	MAILFLOWER 100% Frische - 100% Servi- ce	Nasty	spengler plus	weekend
Casamaxx garantiert wohnfühlen	Heas	Maria Bellesi	new image	suffix! casualwear	Wiwatex
CLAVARETTA	HEAS	Maritim	Nobless	Sunset	WIWATEX
Clever Shopping	Helix	MARITIM	Nümberger Siegel Lebkuchen	Synchain	Wohnstil
COME ON	HELIX	Mars	Practica	Taschennaht	WOHNSTIL
Digilino	Home	MARS	product finder	Taschennaht - Positi- onsmarke/Bildmarke	WORLD STYLE
Dukaten	Horseshoe	MARS (neue WM)	Profi Line	TERANDO	X (casamaxx)
Dukaten (mit Münzen)	HORSESHOE	Mars (nur DL- Kl.38+41)	PROFI Line	Terando	y.o.u. - young order unlimited
Dukaten®	HTE	Mars (nur DL- Kl.38+41)	BERUFSKLEIDUNG	Top Home	
e-kit	i.cy	Mars (nur DL- Kl.38+41)		TOP HOME	
Euroval	Julietta	Mars (nur DL- Kl.38+41)		Topriser	
	Karat				

Trademarks	Domains	Countries ⁺	Class(es) (Nice Classification) [*]
Aguzzo	aguzzo.biz, aguzzo.eu, aguzzo.info	AM, AT, BA, BG, BX, BY, CH, CZ, DE, ES, FR, HR, HU, IT, KG, KZ, LI, LV, MC, MD, MK, PL, PT, RO, RS, RU, SI, SK, SM, TJ, UA, UZ	25
BUFFALO		AT, BX, BY, CH, DE, DK, EE, ES, FR, GB, HR, HU, IT, LT, LV, PL, SK, UA	12
Casamaxx	casamaxx.at, casamaxx.com, casamaxx.de, casamaxx.eu, casamaxx.info, casamaxx.it, casamaxx.net	BA, CH, DE, EM, HR, NO, RO, RU, TR, UA	7, 8, 11, 14, 16, 20, 21, 24, 27, 35
COME ON		DE	16, 25
Dukaten®		BG, BX, BY, CH, CZ, DE, DZ, EG, FR, HR, HU, IT, KP, KZ, MA, MK, PT, RO, RS, RU, SD, SI, SK, UA, UZ, AT, CN, HR, LI, MC, MN, PL, SI, SM, VN, DE	23, 25
Euroval	euroval.biz, euroval.de, euroval.info	AT, BX, CH, CZ, DE, ES, FR, HR, HU, IT, MA, MK, RO, RS, SI, SK AL, BA, BY, N, , DK, FI, GB, LI, LV, MC, MD, NO, PT, SE, SM, UA	6, 14
		BG, GR, MC, PL, US, VN	14
Explorer	explorer- fashion.com, explorer- fashion.de, explorer- fashion.ceu	AT, BX, CH, DZ, EG, ES, FR, IT, LI, MA, MC	7-9, 11, 18, 20-22, 24- 26, 28
		HR, HU, ME, MK, RO, RS, SI, BG, BX, BY, CN, CZ, DZ, KP, KZ, LI, MA, MC, MN, PL, PT, RU, SK, SM, TR, UA, VN	18, 25
		DE	9, 18, 25
Golden Style		AT, BR, BX, CH, DE, DZ, EG, ES, FR, HR, IT, LI, MA, MC, MK, RS, SI, SM, BG, CN, CZ, HR, HU, KP, MN, PL, PT, RO, RU, SI, SK, VN	25
goodplay	goodplay.de,	AT, BA, BG, BX, BY, CH, CN, CZ, DK, EE, ES, FR, GB, GR, HR, HU, IT, LI, LT,	9, 11, 12, 16, 20, 22,

+ Country codes are explained at the bottom of this table.

* Class codes for the classification of goods and services are explained at the bottom of this table.

Trademarks	Domains	Countries⁺	Class(es) (Nice Classification)[*]
	goodplay.eu, goodplay.ro	LV, MK, PL, PT, RS, RU, SI, SK, TR, UA DE	24, 26, 28 9, 11, 12, 16, 20, 22, 24, 28
Heas		BA, BG, BY, CH, DE, EM, HR, IS, LI, MC, MK, NO, RO, RS, RU, TR, UA	25
Helix		AT, BX, BY, CH, CZ, DE, DZ, EG, ES, FR, HR, HU, IT, KZ, LI, MA, MC, MK, RO, RS, RU, SI, SK, SM, UA, UZ, VN	22, 23, 25, 26, 27
		BA, BG, CN, CY, EE, FI, GR, IS, KP, LT, LV, MN, PL, PT, CA, DK, GB, JP, NO, SE	25
		DE	22, 23, 24, 25, 26, 27
		IE	24, 25
Julietta	julietta.biz, julietta.eu, julietta.info	AT, BX, CH, DE, ES, FR, IT, LI	16, 24, 25
		BG, CN, CZ, DZ, EG, ES, HR, HU, KP, KZ, MA, MC, MK, MN, PL, PT, RO, EM, TR	24, 25
Lebensquell	lebensquell.biz, lebensquell.eu. lebensquell.info	DE, IT	3, 5, 10, 25
MA MEISTERANKER	meisteranker.biz, meister-anker.biz, meisteranker.de, meister-anker.de, meisteranker.eu, meister-anker.eu, meister-anker.info	AT, BA, BG, BX, BY, CH, CN, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IT, KP, LI, LT, LV, MC, ME, MK, NO, PL, PT, RO, RS, RU, SE, SI, SK, SM, UA, VN	9, 14
Maria Bellesi	maria-bellesi.com, maria-bellesi.de, mariabellesi.eu, maria-bellesi.eu	AL, FI, IE, IS, KG, KZ, MC, MD, NO, RO, SE, SM, TJ, TM, UZ	25
		CN, TR	14, 18
		AT, BA, BG, BX, BY, CH, CZ, DE, DK, EE, ES, FR, GB, GR, HR, HU, IT, LI, LT, LV, MK, PL, PT, RS, RU, SI, SK, UA	14, 18, 25
Maritim		AT, BX, CZ, DE, DZ, EG, ES, FR, HR, HU, IT, LI, MA, MC, MK, RO, RS, SI, SK, SM, CH, VN, BG, CH, CN, KP, KZ, MN, PL, PT, RU, UA	18, 24, 25
		BR	25
Mars		MT, SI	12, 18, 25, 28

Trademarks	Domains	Countries ⁺	Class(es) (Nice Classification) [*]
		DZ	1, 3-9, 11, 12, 19, 20, 22, 24, 25
		RU	1, 3-9, 11, 12, 19, 20, 22, 24
		AT, BX, CH, EG, FR, HU, IT, LI, MA, MC, ME, RO, RS, SM, VN	1, 3-9, 11, 12, 18, 19, 20, 22, 24, 25, 28
		AL, AM, BG, BY, CN, CZ, DZ, ES, KG, KP, KZ, MD, MN, PT, RU, SK, TJ, UA, UZ	12, 13, 18, 20, 25, 28
		BD, BR, HK, IN	24, 25
		AL, BA, BY, CH, CN, EM, HR, IR, IS, KG, KZ, MD, MK, MN, NO, TJ, TM, TR, UA, UZ	12, 13, 18, 20, 24, 25, 28
		CH, LI, MC, ME, RS, SM	1, 3-9, 11, 12, 13, 18, 19, 20, 22, 24, 25, 28
		CY, FI, IE, IS, LT, LV, NO, SE, TR	18, 25
		DK	25
		EE	6, 11, 12, 18, 20, 21, 22, 25, 28
		GB	11, 12, 20, 21
		PL	18, 19, 25
		DE	1, 3-9, 11, 12, 13, 16-22, 24, 25, 27, 28
MARS (Neue WM)		DE	24, 25
Matura	matura.biz, matura.eu	AL, AM, AT, BA, BG, BX, BY, CH, CN, CZ, DE, DK, DZ, EG, ES, FR, HR, HU, IT, KG, KP, KZ, LI, LV, MA, MC, MD, MK, MN, PL, PT, RO, RS, RU, SI, SK, SM, TJ, UA, UZ, VN	7, 11
		FI, GB	7
PROFI Line BERUFSBEKLEID UNG		AT, CH, CZ, DE, HU, PL, SK	9, 25
SANKT PAUL	sanktpaul.eu, sankt-paul.eu, paul.biz,	st- st-	AT, BG, BX, BY, CH, CN, CU, CZ, DZ, EG, ES, FR, HR, HU, IT, KP, KZ, LI, MA, MC, MK, MN, PT, RO, RS, RU, SD, SI, SK, SM, UA, UZ, VN
		DE, PL	1, 3, 5, 29, 30 3, 5, 29, 30

Trademarks	Domains	Countries⁺	Class(es) (Nice Classification)[*]
	paul.info	AT, BX, CH, FR, MC	3,5
Sanoquell	sanoquell.biz, sanoquell.eu, sanoquell.info	AT, BA, BG, BX, BY, CH, CN, CZ, DE, DK, DZ, EG, ES, FI, FR, GB, HR, HU, IT, KP, LI, LV, MA, MC, MK, MN, NO, PL, PT, RO, RS, RU, SE, SI, SK, SM, UA, VN	10
Schlaf gut	schlafgut.biz, schlafgut.info	AT, CZ, DE, HU, SK	20
Silentic	silentic.biz, silentic.de, silentic.eu	AT, BX, CH, CZ, DK, FR, HU, PL, SI, SK	7, 8, 9,11
		ES, IT, PT, BG, CN, CZ, DZ, EG, HR, KP, LI, MA, MC, MK, MN, PL, RO, RS, RU, SM, VN	7, 11
		DE	7, 9, 11
Simone		AT, BX, CH, CZ, DE, DZ, EG, FR, HR, HU, IT, LI, MA, MC, ME, PT, RS, SI, SK, SM, VN, BY, ES, KZ, MK, RU, UA, UZ, CN, KP, MN, PT, SI, TR	25
TOP HOME		AT, BA, BG, BX, BY, CH, CN, CZ, DE, DK, EE, ES, FR, GR, HR, HU, IT, LI, LT, LV, ME, MK, PL, PT, RS, RU, SI, SK, TR, UA	4,7,8,13-16,20,21,24,28,34
		HK	9
		TH	8, 9, 13, 14, 20, 21
		TW	7, 8, 14, 16, 20, 21, 34
Umberto Rosetti	umberto- rosetti.com, umberto-rosetti.de, umbertorosetti.eu, umberto-rosetti.eu	CU, DZ, EG, KP, KZ, MA, MC, MN, RO, RS, SD, SM, UA, VN	25
		AT, BA, BG, BX, BY, CH, CN, CZ, DE, DK, EE, ES, FR, GB, GR, HR, HU, IT, LI, LT, LV, ME, MK, PL, PT, RU, SI, SK, TR, UA	14, 25
Uniropa	uniropa.biz, uniropa.de, uniropa.eu, uniropa.info, uniropa- autobedarf.de	AT, BA, BX, CH, EG, ES, FR, HR, IT, LI, MA, MC, MK, PT, RS, SI, SM	1-9,11-13,15-22, 24-28,31-34
		DZ, HU, RO, RU, VN	1-9,11-12,16-22,24-28
		BG, DK, EE, FI, LT, LV, NO, SE, TR	1-12, 16, 18 bis 22, 28
		AM, BG, BX, BY, CZ, ES, KG, KZ, MD, SK, TJ, UA, UZ	6-9,11-12,20-21, 27

Trademarks	Domains	Countries ⁺	Class(es) (Nice Classification) [*]
		CN, KP, MN, PL, PT	1-9,11-12,16-22, 27, 28
		AT, FR	1-9,11-13,15-22, 24-28,31-34, 37
		DE	1-12, 16, 18-22, 24-28, 37, 38, 41, 42
		MT	2, 6-9, 19, 27
		HK	7, 8, 12
		JP	9
Universum	universum.biz, universum.info	DE, MT	9, 28
		AL, AM, AT, AZ, BA, BG, BX, BY, CH, CN, CZ, DK, DZ, EG, ES, FI, FR, GB, HR, HU, IT, KG, KP, KZ, LI, LR, LV, MA, MC, MD, ME, MK, MN, NO, PL, RO, RS, RU, SE, SI, SK, SM, TJ, UA, UZ, VN	9, 14, 28
		BG, CA, DK, EE, ES, GB, HK, IE, LT, LV, NO, SE, TR	9
		IS	28
		JP	11
		GR, FI	9, 11
Webschatz	webschatz.com, webschatz.de, webschatz.eu, webschatz.ro	AT, BX, CH, CZ, DE, ES, FR, HR, HU, IT, ME, MK, RS, SI, SK	10, 24-26
		BG, CN, DZ, EG, HR, KP, LI, MA, MC, MN, PL, PT, RO, RU, SI, SM, VN	24-26
Weekend	weekend.eu	BX, BX, CH, CZ, DZ, EG, ES, HR, HU, KZ, MA, MK, RO, RS, RU, SI, SK, UA, UZ, VN	1, 4, 6-9, 11, 12, 16-22, 24, 27-28
		BA, BG, CN, DK, FI, GB, KP, LV, MN, NO, PL, SE	4, 6, 8-9, 12, 19-20, 22, 24, 39
		AT, FR, IT, LI, MC, SM	1, 4, 6-9, 11, 12, 16-22, 24, 27-28, 34, 41
		DE	6, 12, 19, 20, 22, 28
WIWATEX		BA, BG, BY, CH, CN, DE, EM, HR, IS, LI, MC, MK, NO, RO, RS, RU, TR, UA	18, 22, 24, 25
Wohnstil	wohnstil.biz wohnstil.de wohnstil.eu	AT, BA, BG, BX, BY, CH, CN, CZ, DE, DK, DZ, EG, ES, FI, FR, GB, HR, HU, IT, KP, LI, LV, MA, MC, MK, MN, NO, PL, PT, RO, RS, RU, SE, SI, SK, SM, UA, VN	20

Trademarks	Domains	Countries⁺	Class(es) (Nice Classification)[*]
	wohnstil.info wohnstil.net wohnstil.ro		
World Style		DE	6, 16, 18
Y.O.U. young order unlimited		AL, AT, BA, BG, BX, BY, CH, CZ, DK, DE, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, KG, KZ, LI, LT, LV, MC, ME, MK, NO, PL, PT, RO, RS, RU, SE, SI, SK, SM, TJ, TM, TR, UA, UZ	18, 25

Country-Codes:

AL Albania	IS Iceland	UA Ukraine
AM Armenia	IT Italy	US United States of America
AT Austria	JP Japan	UZ Uzbekistan
AZ Azerbaijan	KG Kyrgyzstan	VN Viet Nam
BA Bosnia and Herzegovina	KP Democratic People's Republic of Korea	WS Samoa
BD Bangladesh	KW Kuwait	ZA South Africa
BG Bulgaria	KZ Kazakhstan	ZW Zimbabwe
BR Brazil	LI Liechtenstein	
BX Benelux Office for Intellectual Property	LR Liberia	
BY Belarus	LT Lithuania	
CA Canada	LV Latvia	
CH Switzerland	MA Morocco	
CN China	MC Monaco	
CU Cuba	MD Republic of Moldova	
CY Cyprus	ME Montenegro	
CZ Czech Republic	MK The former Yugoslav Republic of Macedonia	
DE Germany ⁽³⁾	MN Mongolia	
DK Denmark	MT Malta	
DZ Algeria	MX Mexico	

EE Estonia	NO Norway
EG Egypt	PL Poland
EM Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM)	PT Portugal
ES Spain	QA Qatar
FI Finland	RO Romania
FR France	RS Serbia
GB United Kingdom	RU Russian Federation
GR Greece	SD Sudan
HK The Hong Kong Special Administrative Region of the People's Republic of China	SE Sweden
HR Croatia	SI Slovenia
HU Hungary	SK Slovakia
IB International Bureau of the World Intellectual Property Organization (WIPO) ⁽⁴⁾	SM San Marino
ID Indonesia	TH Thailand
IE Ireland	TJ Tajikistan
IR Iran (Islamic Republic of)	TM Turkmenistan
	TN Tunisia
	TR Turkey
	TW Taiwan, Province of China

Class codes for the classification of goods and services

Class No.	Explanation
1	Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins, unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.
2	Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.
3	Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.
4	Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting.
5	Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.
6	Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores
7	Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs
8	Hand tools and implements (hand-operated); cutlery; side arms; razors.
9	Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for

	coin-operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire-extinguishing apparatus
10	Surgical, medical, dental and veterinary apparatus and instruments, artificial limbs, eyes and teeth; orthopedic articles; suture materials
11	Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes.
12	Vehicles; apparatus for locomotion by land, air or water.
13	Firearms; ammunition and projectiles; explosives; fireworks
14	Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.
15	Musical instruments
16	Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); printers' type; printing blocks.
17	Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.
18	Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.
19	Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal.
20	Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.
21	Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22	Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.
23	Yarns and threads, for textile use
24	Textiles and textile goods, not included in other classes; bed and table covers.
25	Clothing, footwear, headgear.
26	Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers..
27	Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).
28	Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.
29	Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats.
30	Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice
31	Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals, malt.
32	Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.
33	Alcoholic beverages (except beers).
34	Tobacco; smokers' articles; matches
35	Advertising; business management; business administration; office functions.
37	Building construction; repair; installation services.

38	Telecommunications
39	Transport; packaging and storage of goods; travel arrangement.
41	Education; providing of training; entertainment; sporting and cultural activities.
42	Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software

Use of customer data through the letter shop system

The envisaged use of customer data by the Otto-Group in line with the provisions of the SPA would work as follows:

- The company of the Otto-Group that wants to use the data (“Orderer”) provides the Insolvency Administrator with certain selection criteria (e.g. “female, between 18 and 50 years old, has bought women’s outer garments in the last six months”, or similar). The customer databank offers detailed selection criteria which the Orderer can use (via the Insolvency Administrator) in order to systematically identify potential customers who can be addressed through mailing campaigns (via the lettershop procedure explained hereafter).
- The Insolvency Administrator extracts the customer data which matches the selection criteria provided by the Orderer. Should the number of hits exceed the amount of data needed (e.g. 1.5 million addresses, even though only one million catalogues are to be delivered), the Orderer and the Insolvency Administrator will agree on further selection criteria, which narrow the number of hits. Once the selection criteria have been fixed, the process of filtering takes about half a day. This service provided by the Insolvency Administrator is at no costs for Otto Group, since it is already compensated for by the purchase price agreed for the overall transaction.
- The Insolvency Administrator sends the addresses selected in accordance with the above procedure to a letter shop, which is specified by the Orderer (e.g. mediadress). The letter shop is instructed by the Insolvency Administrator; the costs are borne by the Otto-Group.
- The Lettershop then conducts various so called “address cleaning” procedures. In doing this, the addresses are compared with data, which is publicly available and exists in the databank of the letter shop (e.g. city and street directories, register of deaths, etc.) and also with customer data of the Orderer in order to avoid duplication. This procedure takes about one to two days.
- Following this, the addresses are processed to ensure the lowest possible postage (this means, for example, sorted according to postcodes). Afterwards, another letter shop is engaged to conduct the labelling and sending out of the catalogues (which are provided by the Orderer). The time required for these preparations depends on the extent of the mailing campaign. For a circulation of 30,000 catalogues an estimated one or two days would be required.
- This procedure ensures that the Orderer himself cannot, at any stage, inspect the Quelle customer data. If a customer who was contacted via the letter shop system responds to the mailing campaign and buys from the Orderer, the latter will not know that this customer was recruited from the Quelle databank.
- Any use of the Quelle customer data needs to comply with the applicable European and national data protection rules (including but not limited to the rights of customers to be informed about their rights to object to any such use).

The procedure as set out above applies accordingly to the Purchaser, who also uses the Quelle customer data: The Otto-Group will instruct the Insolvency Administrator to make

the customer data available not only to the Otto-Group, but procedurally in the same way and to the same extent also to the Purchaser of the divested trademarks, trademark applications, and domains. In substance, Otto and the Purchaser are free to apply the selection criteria available; neither Otto nor the Purchaser will have any access to the selection criteria used and/or results by the other. For the avoidance of doubt, the Insolvency Administrator will treat Otto and the Purchaser on equal terms when running the selection process. As this process does not require more than half a day (see above) both, Otto and the Purchaser, can be served by the Insolvency Administrator (almost) simultaneously.

This commitment will be effective from a moment to be determined by the mechanism set out in the commitment document, before which no one (except for the Insolvency Administrator) will have access to the data. The Purchaser enjoys the right to use for the same period of time as Otto, i.e. for at least [...]. The consideration for the right to use the customer data during this period of time is [*conditions pertaining to the consideration*]; this [*conditions pertaining to the consideration*] for the selection process run by the Insolvency Administrator. The Insolvency Administrator will provide this selection service to the Purchaser [*conditions pertaining to the consideration*]. [*conditions pertaining to the consideration*] incurring on the Insolvency Administrator for the selection service carried out for the Purchaser shall be [*conditions pertaining to the consideration*]. Otto and the Purchaser (each individually) have the right to expand the duration of the usage and based on the commercial conditions as agreed upon with the Insolvency Administrator. Throughout the contract period, the right to use may be exercised as often as wished. All costs for the services of the lettershop(s) are borne by Otto and the Purchaser respectively. A consequence of this procedure will be that the Purchaser, through the Quelle databank, will also get access to customers of the Otto-Group, namely those customers who are Quelle customers as well as customers of the Otto-Group. To the use of Quelle customer data by the Purchaser of the trademarks, trademark applications, and domain names the same legal analysis applies as to Otto. This analysis is not changed by the fact that the data will be used by more than one undertaking simultaneously.

COMP/M. 5721
OTTO/Primondo Assets

I, [...], attorney, with business address at Ruhrallee 175, 45136 Essen, acting exclusively in my capacity as insolvency administrator (**„Insolvency Administrator**) of the assets of Quelle GmbH i.l. Fürth (to the extent permitted by law subject to exclusion of all personal liability) undertake the following commitment:

On written request of Otto (GmbH & Co KG) pursuant to Section 7 Subsection 5, 3rd Sentence of the Purchase Agreement of 4 November 2009 ("**SPA**") the Insolvency Administrator will - to the extent permitted by law and to the extent possible in the framework of the ongoing liquidation of Quelle GmbH i.l. - allow the purchasers of trademarks, trademark applications and domains ("**Purchaser**") pursuant to the commitment of Otto (GmbH & Co KG) and its affiliated undertakings in the meaning of sec. 15 AktG et seq. ("**Otto**") to use the customer data of Quelle GmbH i.l. ("**Customer Data**") to the same extent and at the same conditions as Otto is allowed.

There shall be no transfer of Customer Data to any third undertaking. The use of the Customer Data shall comply with the commitments that Otto made to the European Commission. The specifics of the possibility to use the Customer Data are described in Annex 3 of the commitments that Otto made to the European Commission. In doing so the Insolvency Administrator will obey all European and national data protection laws and regulations (including but not limited to information obligations, revocation rights etc.).

This commitment ends with the the licence agreement between the Insolvency Administrator and Otto. During this time the conditions of use of the Customer Data shall be for the Purchaser the same as for Otto, [*conditions pertaining to the consideration*]. Also Otto and the Purchaser shall be treated alike in implementing the selection.

Furthermore, this commitment also includes the obligation to enter, on request of the Purchaser, into an agreement with the Purchaser about the further use of Customer Data ("**Extension Agreement**"). The Purchaser has the right to request an Extension Agreement

irrespective of whether Otto makes use of this right. The Insolvency Administrator and the Purchaser are free to negotiate the conditions of the Extension of Agreement.

Cologne, 16 February 2010

[*signed*]

[*signed*]