

***Case No COMP/M.1978 -  
TELECOM ITALIA /  
NEWS TELEVISION /  
STREAM***

Only the English text is available and authentic.

**REGULATION (EEC) No 4064/89  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 29/06/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **29.06.2000**  
**SG(2000)D/104578**

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EEC) No 4064/89 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

**To the notifying parties:**

Dear Sirs,

**Subject: Case No COMP/M. 1978 - Telecom Italia/News Television/Stream**

Notification of 25.5.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. The notification concerns the proposed acquisition by Telecom Italia (TI) and the British News Television (“News”) of joint control of Stream.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

**I. THE PARTIES**

3. Telecom Italia is the leading telecommunications operator in Italy providing the full range of telecommunication services.
4. News is a subsidiary of News International plc (which is controlled by News Corporation Limited) is a UK based company. The News group is active in printing and publishing of national newspapers in the UK, development and sale of conditional access software, warehousing, transportation, and the provision of satellite television in the UK and Republic of Ireland, the production and distribution of filmed entertainment, television broadcasting, books, newspapers, magazines, insert publishing and data processing.

Stream has been acting as an operator of satellite and cable digital pay-TV in Italy since 1998.

## **II. THE OPERATION**

5. Before the present concentration the shares of Stream were divided among TI (35%), News (35%), Cecchi Gori Group FINMAVI S.p.A. (CGG) (18%) and S.D.S. – Società Diritti Sportivi S.r.l. (SDS).

Following a capital increase from 400 billion to 940 billion Italian lira, which increased the shareholding of the parties to 41, 7% each, TI and News on the one hand and SDS and CGG on the other hand agreed on the transfer of the remaining shares of SDS and CGG to TI and News respectively. As a result, TI and News will each have a 50% stake in Stream.

## **III. CONCENTRATION**

6. The operation involves the acquisition of joint control by TI and News. Stream is an existing company. It will continue to perform on a lasting basis all the functions of an autonomous economic entity.

## **IV. COMMUNITY DIMENSION**

7. The undertakings have a combined aggregate worldwide turnover in excess of EUR 5 billion. (TI: [...], News:[...]. TI and News have each a Community wide turnover of more than EUR 250 Million (TI: [...], News:[...]. They do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

## **V. COMPETITIVE ASSESSMENT**

### pay-TV-market

8. The present operation concerns the market for pay-TV, which the Commission has regarded to be distinct from the free-access-TV, which – in contrast to pay-TV - is financed by public fees or/and advertising rates and offers a more general program mix whereas pay-TV has to meet more specified consumer-preferences to persuade potential viewers to pay extra fees<sup>1</sup>. However, as the present case does not raise competition concerns even in the narrowest possible market of pay-TV, the product market can be left open.
9. The pay-TV is still a national market due to language differences throughout the Community which continue to hinder a wide expansion of television channels outside their home countries and distinct cultural and political interests of the respective national

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<sup>1</sup> OJ L 53/ 1, 27.2.99 - Bertelsmann/Kirch/Premiere

audience, which have to be taken into account by the TV-operators when designing a program-mix<sup>2</sup>.

10. In Italy the pay-TV market is still at a very early stage of its development being only penetrated to a degree of approximately [5-15%] of all Italian households. There are two operators active – Telepiù and Stream, with Stream holding a share of [15 - 25] of the market in terms of subscribers by the end of 1999 ([...] subscribers) and Telepiù, which is controlled by Canal+, accounting for [75 - 85] of the market ([...] subscribers by the end of December 1999). In terms of turnover Telepiù even holds marketshares of approximately [...], leaving only [...] to Stream.
11. The increase of the shareholding of the parties to the concentration does not lead to an addition of market shares. However, due to the activities of the parent companies in upstream markets the proposed concentration will have vertical effects.

#### Transmission-capacity

12. According to the information given in the notification, Telecom Italia (through its subsidiary Telespazio) provides [75 - 85] of transmission capacity (in terms of turnover) needed for pay-TV on the Italian market, which - as the parties suggest - comprises cable as well as satellite capacity. Disaggregating transmission capacity, 82 % account for satellite capacity, which leaves 18% to cable capacity. As regards satellite capacity, Telecom Italia provides [75 - 85 ]% by its subsidiary Telespazio. As far as cable services are concerned, Telecom Italia - as the owner of the only existing cable network in Italy - accounts even for 100% of the capacity. Thus, independent from the product market definition, the Telecom Italia-concern is the main supplier of transmission capacity for pay-TV.
13. As a consequence of the proposed merger, Telepiù will have to acquire the needed transmission capacity from a parent of its main competitor Stream. Nevertheless, at the present stage of the market, the proposed concentration does not give sufficient evidence for foreclosure effects to the detriment of Stream's competitors.
14. Satellite capacity is transmitted via transponders, which form part of the satellite and are owned by the Satellite consortium (here: the Eutelsat Consortium, in which 48 nations participate). The Eutelsat Consortium allots the transponders to its members. Customers wanting to lease transponder capacity, have to address the single members of the consortiums. They cannot acquire directly from the Consortium.
15. In Italy 15 digital transponders are used for the transmission of pay-TV-services, Telespazio subleases 11 transponders, three account for British Telecom and 1 for Slovenian PTT. Telepiù uses in total 8 transponders for the transmission of pay-TV, out of which only 4 are leased from Telespazio. The duration of the underlying contracts are linked to the commercial lifetime of the satellite, which is expected to be at least 12 years from the beginning of the contract onwards. Thus, Telepiù's position as regards its dependence on transmission capacity should not be worsened as a consequence of the proposed merger. In addition to that, the contract of Telepiù contains an English clause, thus balancing a prospective incentive for Telespazio to discriminate against Telepiù. In

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<sup>2</sup> More detailed, see Kirch/Richemont/Telepiù OJ C 225 of 13.8.1994

any case, Telepiù can demand transmission capacity from each of the 48 members of the Eutelsat consortium.

16. As to the Italian cable network as a second source of transmission capacity, it is developed only to a minor extent and has not played a significant role for the emerging of the pay-TV-market by now. Only Stream has connected some of its customers ([...] in total by the end of April 2000, i.e. [0-10]% of all pay-TV subscribers) by cable. (Telepiù, however, has just settled a contract on the deliverance of cable capacity with Telecom Italia to cover some blind spots, which occur with the satellite supply). The further development of the cable is, nevertheless, difficult to predict. In fact, the “Socrates Project”, which formed the framework which led to the set up of the existing cable network and initially aimed at the connection of all 20 Mio Italian households, had been interrupted in 1998, due to the high costs of the project and the related economic risks. It is not foreseeable whether or when the Italian cable network, which connects 1 Mio of the Italian households at present, will be further extended. It is also not certain that it will be Telecom Italia, who takes the initiative. As the current cable network is not widespread and as considerable investments would be necessary during the start-up phase of such an expansion, it is conceivable that a third party will have to take over the cable.

It must also be noted that the Commission is just developing a regulatory framework for communications infrastructure and associated services to secure fair and non-discriminatory access to telecommunication networks: As regards access to cable TV-networks, an “obligation to negotiate access” on a cable TV operator with significant market power for delivery of broadband services with the possibility of a National Regulatory Authority’s intervention when commercial negotiation fails is foreseen<sup>3</sup>.

#### Set-top-boxes and conditional-access-technology

17. The parties state that Telecom Italia through its subsidiary Italtel participate by a share of [35 - 45]% in the sale of set-top-boxes in Italy. Given that in 1999 Italtel sold about 99% of its set-top-boxes to Stream, the proposed concentration will have no market effects beyond the relationship of the involved parties. It is therefore not necessary to decide, whether set-top-boxes are a separate market (as the parties suggest) or whether they form part of the market for technical and administrative services for pay-TV. Neither has to be decided, whether the geographic market is not only national.
18. Foreclosure effects to the detriment of Stream’s competitors on the pay-TV market cannot be predicted, either, because of the fact, that – as from April 2000 – News – through the NDS group plc, in which it holds a 80% stake - provides Stream with the CA-technology NDS. To fulfil the requirements of Directive 95/47/EC on the use of standards for transmission of television signals and its Italian implementation, Stream is expected to adopt the symulcrypt option to ensure that viewers can receive digitally-transmitted services of different broadcasters by means of a single decoder. Stream’s competitor Telepiù uses the CA-technology SECA, belonging to the same group as Telepiù, and Irdeto. As neither NDS in the market of CA-technology nor Stream in the

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<sup>3</sup> see: COM (1999) 539: Towards a new framework for Electronic Communications infrastructure and associated services – The 1999 Communications Review, page 30 , paragraph 4.2.4

market of pay-TV has a dominant position in Italy this vertical effect of the operation will not lead to foreclosure effects

### Broadcasting rights

19. In line with previous Commissions decisions the acquisition of broadcasting rights for Pay TV channels constitutes a separate product market within the wider one for Pay TV.  
<sup>4</sup> There are two distinct categories of products in this sector. The first one, referred to as “premium” offer, regards major sporting events and first television screenings of recent movies bearing the higher attraction on users. The second package, called “basic” offer, includes different products, such as news, music programs, general culture programs or second wind movies, that, although not particularly attractive in themselves, usually contribute to the general programme-mix.
20. At the present stage of Pay-TV’s development, the market for broadcasting rights can be regarded as national for a number of reasons. Firstly, TV programs are nationally restricted and transmitted only in the relevant national language. Secondly, the range of programmes available and the programme mix are clearly determined by the cultural differences and the specific preferences of the relevant audience. Accordingly, broadcasting rights are generally granted for one or more specified countries or language regions. However, the geographic definition of the market can be left open for the future since neither a narrower nor a greater dimension of the market for the acquisition of broadcasting rights would entail the creation or the strengthening of a dominant position as a result of the proposed operation.
21. With respect to major sporting events, the operation doesn’t lead to the addition of market shares. Stream owns long term exclusive broadcasting rights of approximately 40% of the Italian Football League matches (7 teams out of 18) whereas Telepiu` which is the current leading operator in the Italian Pay TV sector, holds the exclusive rights for the encrypted transmission of approximately 60 % of the Italian Football League matches (11 teams out of 18 playing in the Premier League).
22. As regards other premier products there are not significant conglomerate aspects to this concentration. Stream has acquired the broadcasting rights for the distribution of the leading children channel (“Fox Kids”) produced by the 20<sup>th</sup> Century Fox, a company controlled by News Television, and, up to the present time, has mainly entered agreements concerning broadcasting rights for second wind movies. The sector is therefore still dominated by Telepiu` which has concluded output deal agreements with all the USA majors producers (Buena Vista-Disney, Columbia, Paramount, 20<sup>th</sup> Century Fox, Time Warner) and holds long-term exclusive pay-TV and pay-per view rights on all the movies released by the quoted producers. In 1998 Telepiu` had the broadcasting rights of [70- 80]% of the most profitable premier movies. Following the market investigation and due to the broad range of suppliers, it does not appear that the vertical

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<sup>4</sup> *British Interactive Broadcasting/Open (BiB)*, case IV/36.539 OJ L312 of 6-12-99 and also *MSG Media Service*, case IV/M.469 OJ L364, 31.12.1994 p.1

integration between Stream and the 20<sup>th</sup> Century Fox or other companies belonging to the Newscorp Investments Group could prospectively foreclose the acquisition of broadcasting rights by Telepiu` and hinder the competition in this sector.

## **VI. CONCLUSION**

23. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of Council Regulation (EEC) No 4064/89.

For the Commission,  
**(Signed) Mario Monti**