

***Case No COMP/M.2643 -
BLACKSTONE / CDPQ /
DETEKS BW***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 23/11/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.11.2001

SG (2001) /D 292312 /292313

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 Where possible the information omitted has been replaced by ranges of figures or a general

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject: Case No COMP/M.2643 – BLACKSTONE / CDPQ / DETEKS BW

Notification of 22.10.01 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22.10.01, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89¹ (“the Merger Regulation”) by which the undertakings Blackstone Group (“Blackstone”) and Caisse de Depot et Placement de Quebec (“CDPQ”), through their joint venture, Kabel BW GmbH & Co. KG (“K-BW”), acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking DeTeKabelService Baden-Württemberg GmbH & Co. KG (“DeTeKS BW”), by way of purchase of assets.

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Blackstone is a private merchant banking firm based in the US. It is active mainly in financial advisory services, private equity investing and property investment.
4. CDPQ is a private investment group that invests the funds entrusted to it by Quebec public pension and insurance plans as well as various public bodies. Capital Communications CDPQ is a wholly owned subsidiary and a member of the investment group of Caisse de Dépôt. Its activities are to invest in companies operating in all areas relating to communications, including audio-visual production, wireless technology, multimedia, publishing and media.
5. DeTeKS BW is an indirect subsidiary of Deutsche Telekom (Telekom) which is active as operators of level 4 cable network infrastructure in Baden-Württemberg. DeTeKS BW is one of the nine regional companies into which the remaining level 4 assets formerly owned by the Telekom subsidiary DeTeKabelService GmbH (DeTeKS) were transferred in June 2001.
6. In 2000, Blackstone and CDPQ have already acquired the level 3 (and some level 4) cable network assets of Telekom in Baden-Württemberg which had been spun-off into a regional company at the time of the initial negotiations. This acquisition was notified to the Commission and cleared on 1 August 2000². However, the DeTeKS level 4 assets were not part of that transaction since they were still concentrated at that time in the national company DeTeKS.

II. CONCENTRATION

7. Blackstone and CDPQ jointly control K-BW as a result of the previous transaction. DeTeKS BW will be jointly controlled by Blackstone and CDPQ via K-BW. The joint venture will perform on a lasting basis all the functions of an autonomous economic entity.

III. COMMUNITY DIMENSION

8. Undertakings Blackstone and CDPQ have a combined aggregate worldwide turnover in excess of EUR [...] ³ (Blackstone, EUR [...] million; and CDPQ, EUR [...] million). Each

² Case COMP/JV.50 -Callahan Invest/Kabel Baden-Württemberg

³ Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis.

of them has a Community-wide turnover in excess of EUR [...] million (Blackstone, EUR [...] million; and CDPQ, EUR [...] million). Neither Blackstone nor CDPQ do 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. However, it does not constitute a cooperation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

9. The present transaction concerns the acquisition of the remaining level 4 television cable network owned by Telekom in Baden-Württemberg. The cable network is currently only used for the transmission of television. However, it is the parties intention to upgrade the cable infrastructure in order to permit the offer of telecommunication and broadband services in competition with Telekom. Therefore, in its previous decision in Case COMP/JV.50 the Commission assessed the impact of the concentration on a number of markets, namely transmission capacity for television, telecommunication services and internet access⁴. However, it is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic markets

10. In its previous decision in Case COMP/JV.50 the Commission stated that the relevant geographic markets are either regional or national in nature⁵. However, it is not necessary to further delineate the relevant geographic markets because, in all alternative geographic market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

C. Assessment

11. Because of the historical development of the structure of cable television distribution, there are four levels of supply network in Germany. Level 1 corresponds to the studio instalments and is owned and operated by the broadcasting stations. Level 2 is the backbone network including the cable head end. Level 3 corresponds to the cables running from the cable head end to the boundary of a given plot of land. Level 4 is the network infrastructure between such boundary and the junction boxes of TV households. It involves the in-house wiring and the cable connecting various households on one real estate, for example in an apartment building.

⁴ Decision of 1 August 2000, Case COMP/JV.50 - Callahan Invest/Kabel Baden-Württemberg, paragraphs 20-24.

⁵ Decision of 1 August 2000, Case COMP/JV.50 - Callahan Invest/Kabel Baden-Württemberg, paragraphs 25-29.

12. For the supply of cable television, network levels 3 and 4 are of particular importance. In the past network level 3 was installed and operated almost exclusively by Telekom whereas network level 4 was built and operated by small independent private cable operators. They serve two thirds of the cable households on network level 4.
13. Blackstone and CDPQ are already active in the cable sector in Baden-Württemberg, through the joint venture K-BW. In Baden-Württemberg approximately 3.2 million households can be reached via the cable network and 2.3 million households are connected currently to the cable network. K-BW serves approximately 2 – 2,3 million households on the level 3 network and some 0.8 - 1 million households on the network level 4 which corresponds to a share of 35% - 44 %.
14. The remaining approximately 1 - 1.5 million households that are connected to K-BW's level 3 are served on level 4 by the following building management companies or private service providers:

Level 4 operators	Households connected	Share in percent
Housing associations	875,000 – 1,005,000	38% - 45%
RKS	140,000 – 200,000	6% - 9%
KFS	10,000 – 115,000	3% - 5%
Bosch	11,500 – 46,000	0,5% - 2%
Kabel Plus	11,500 – 46,000	0,5% - 2%
EWT	1,000 – 10,000	<1%
DeTeKS	1,000 – 10,000	<1%

15. As shown in the table above, the acquisition will allow K-BW to serve directly an additional less than 5% of the cable households. On a national level (22 million cable households) K-BW's share would rise by less than 1% to less than 5%.
16. In view of the market position of the parties to the concentration, it appears that the notified operation will have no impact on competition in the EEA. Consequently, the proposed concentration does not create or strengthen a dominant position as a result of which effective competition would be significantly impeded in the EEA or any substantial part of that area.

V. CONCLUSION

17. 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