

***Case No COMP/M.4217 -  
PROVIDENCE /  
CARLYLE / UPC  
SWEDEN***

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 02/06/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 02.06.2006

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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 Sir

**Subject: Case No COMP/M.4217 – PROVIDENCE/CARLYLE/UPC SWEDEN**

**Notification of 24 April 2006 pursuant to Article 4 of Council Regulation No 139/2004<sup>1</sup>**

1. On 24.04.2006 the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004, by which Carlyle Europe Partners II L. P. (“Carlyle”, USA) and Providence Equity Offshore Partners V LP (“Providence”, Cayman Islands ) acquire, within the meaning of Article 3(1) (b) of the Council Regulation, joint control of NBS Nordic Broadband Services AB (“UPC Sweden”, Sweden).

**I. THE PARTIES**

2. *Carlyle* is one of the European investment funds of the Carlyle Group, a US-based private investment group, which makes private equity investments through various funds.
3. *Providence* is one of the investment funds of the Providence Equity Partners group, a US-based global private investment firm specializing in equity investments in media and communication companies.

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<sup>1</sup> OJ L 24, 29.1.2004 p. 1

4. The target company, *UPC Sweden*, currently part of the UPC group, is made up of NBS Nordic Broadband Services AB and its two subsidiaries: UPC Sverige AB and UPC Digital AB. UPC Sweden provides cable television and internet services in the Stockholm region in Sweden, and in the near future plans to offer also telephony services to its subscribers.
5. Providence and Carlyle have recently acquired joint control of *Com Hem*, the largest cable television operator in Sweden, which also offers internet and telephony services to its customers.<sup>2</sup> In addition, Providence controls the Hollywood film studio Metro-Goldwyn-Mayer Inc. (MGM), and Crown Media, the producer and distributor of the Hallmark channel.

## **II. THE CONCENTRATION**

6. The envisaged transaction concerns the joint acquisition of the whole business of UPC Sweden (NBS and its subsidiaries) by Providence and Carlyle, pursuant to a share purchase agreement entered into by the parties on 4 April 2006. The transaction will be carried out by means of vehicle companies controlled by Carlyle and Providence, which will acquire the entire share capital of UPC Sweden. The proposed concentration, therefore, constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

## **III. COMMUNITY DIMENSION**

7. The combined aggregate worldwide turnover of the undertakings concerned is more than €5 billion (Carlyle € [...] billion, Providence € [...] billion, UPC Sweden € [...] million). The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than € 250 million (Carlyle € [...]\*, Providence € [...] billion). None of the parties achieved more than two-thirds of their Community-wide turnover in 2004 in one Member State. The operation has therefore a Community dimension in the sense of Article 1(2) of Council Regulation (EC) No 139/2004.

## **IV. THE RELEVANT MARKETS**

### ***RELEVANT TV PRODUCT MARKETS***

#### *Retail market for cable TV*

8. The retail market affected by this transaction and in which both Com Hem and UPC are active can be described as "TV supply services", that is to say the services which are provided by the cable operators who own networks and which are used to supply end-users with TV content. In this market, the cable operators are the providers and the landlords or end-users are the customers.
9. There are indications from the market investigation that there are certain specific features of the Swedish market which would tend to show that the market for cable TV may constitute a separate market from other platforms, such as distribution by (digital) terrestrial networks (DTT) or by satellite (DTH). However it cannot be ruled out that,

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<sup>2</sup> Case COMP/M. 4075 – *Providence/Carlyle/Com Hem*

notwithstanding these specific features, other platforms are already or will in the near future be in competition with cable.

10. These specific features of the cable market in Sweden are as follows: There are strong indications from the market investigation that in urban areas and in so far as big apartment blocks are concerned, satellite is not always a viable alternative. For example there may be difficulties for customers, particularly those living in large apartment blocks, to obtain access to satellite and /or DTT. For DTT a central antenna on the apartment building is needed from which the DTT signal needs to be forwarded to the end-users. Also an in-door antenna may not always be an alternative as this depends on the flat being in a location which receives a sufficiently strong signal. There are also indications that there may be legal restrictions especially for those living in apartment buildings applying to the use of DTH receivers mounted on facades and balconies in urban areas.
11. There are indications from the market investigation<sup>3</sup> that, there may be *lock-in effects* resulting from the agreements contracted between the subscribers and the landlords. Thus there may be little incentive for an existing cable subscriber who is at the beginning or middle of the contract period to switch to another form of distribution even where the former is more expensive than the new offering from an alternative distribution mode.
12. In general however it may be said that new platforms such as DTT and DSL-technology may already and are in any case very likely in the near future to form viable alternatives to cable for the purpose of TV reception. For the purpose of the present transaction, the exact product market definition can however be left open, since even on the basis of this narrowest possible market definition the concentration does not raise serious doubts. *A fortiori*, there are no competition issues on the basis of a broader market definition including the other transmission platforms.

#### *Wholesale market for cable TV*

13. The wholesale market affected by this transaction and in which both Com Hem and UPC are active can be described as “programme transmission services”, that is to say the services which are provided by the cable operators who own networks and which are used for the distribution of TV broadcast content to end-users. Such services are required by programme companies who wish to reach end-users with their content. The affected market can thus be defined as broadcasting transmission services, to deliver broadcast content to end-users. Purchasers of services are either programme makers<sup>4</sup> or companies which provide packages of channels to end-clients and therefore act as suppliers of the content of the programme production companies.
14. With regard to TV, a transmission service is required, directly or indirectly, by programme production companies to deliver the TV broadcast content of the company to the end-users. The companies which can provide programme transmission services

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<sup>3</sup> See two decisions (04-13521/23 and 04-6953/23) of the Swedish Post and Telecom Agency (PTS) of 22 June 2005 at p. 22-23. These are decisions taken by the PTS imposing regulatory measures taken in the context of Art 7 of the Framework Directive.

<sup>4</sup> Programming companies are companies which package their (own produced or bought in) content in channels. An example of a programme production company is Sveriges Television (SVT).

have access to network capacity, since TV broadcasts in Sweden are distributed by various types of network (cable<sup>5</sup>, terrestrial and satellite).

15. The parties believe that the proposed transaction should be evaluated in the context of the overall market for TV broadcasting in Sweden including all forms of distribution i.e. including cable, satellite and terrestrial transmission modes.
16. The Commission's market investigation in the present case provided however indications that it would be appropriate for the Swedish market to define separate markets based on the respective transmission platforms i.e. distribution via cable network, terrestrial network and satellite each constitute separate product markets to a significant extent.<sup>6</sup>
17. Even if there is a substantial increase in cost of access to the cable network platform, it appears in most cases difficult for broadcasters to substitute cable with satellite. They are namely already on other platforms, and they need the transmission by cable network given that the network covers 60% of the viewers. Satellite and cable therefore rather be regarded as complementary by the programme production companies.

#### ***RELEVANT GEOGRAPHIC MARKET***

18. In relation to the wholesale market the geographic scope has always been defined by the Commission as national or along linguistic homogeneous areas. The market investigation has not shown that there would be any reason to taken a different view in this case.
19. In relation to the retail market the geographic market may be limited to the either area of the publicly owned overall network i.e. the network owned and operated by Stokab (see below) or the area of each cable network. The Commission held in a recent decision<sup>7</sup> that if a separate market for the transmission via cable is distinguished, this market should be defined geographically in such a way that each cable network constitutes a separate geographic market, given that those customers who are connected to a specific network can only be reached through that network.<sup>8</sup> If the market is defined as the distribution of TV signals via cable networks only, the geographic market is limited to the individual networks of UPC Sweden and Com Hem. Customers connected to a cable

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<sup>5</sup> The definition of a cable network follows the definition which is provided in particular in the legislative draft of the government "Must carry obligation in cable networks" of 10 February 2005 (page 18): "the logical network of the network operators which is used for the transmission of TV programmes to the public, irrespective of who owns all or part of the physical network."

<sup>6</sup> This conclusion accords with the assessment of the PTS in its two decisions of 22 June 2005, *ibid.*, regarding the market for terrestrial broadcast digital TV.

<sup>7</sup> Cf. Case No COMP/M.3355, *Apollo/JPMorgan/Primacom*, decision of 15 June 2004, paragraph 10.

<sup>8</sup> As also follows from footnote 8 of the Commission's letter dated 8 June 2005 to PTS, in PTS's view 20% of all households in Sweden connected to a cable television network have the possibility to switch to another cable television network operator within a reasonable time and at a reasonable cost. The parties submit that this modest percentage does not justify the establishment of a national cable market. In any event, as set out below, there is limited overlap between the cable networks of Com Hem and UPC Sweden and the large majority of the individual households connected to the networks of UPC Sweden respectively Com Hem cannot switch to another cable operator.

network can only be reached through that cable network and not through another cable network. Customers cannot switch from UPC Sweden's network to Com Hem's network and vice versa. For the purpose of the present transaction, the exact geographic retail market definition can however be left open, since even on the basis of this narrowest possible market definition - the area covered by the public network i.e. the sum of the two parties' individual cable network in the Stockholm metropolitan area - the concentration does not raise serious doubts.

## V. COMPETITIVE ASSESSMENT

### *STRUCTURE OF THE TV SECTOR IN SWEDEN*

20. There are 4.2 million households in Sweden with access to television. Of these an estimated 0.6 million have access only to analogue terrestrial television, which is exclusively reserved for the 3 public channels (TV4, SVT 1, SVT 2). The remaining 3.6 million households receive television through one of the alternative broadcasting distribution platforms: cable, satellite (direct-to-home known as "DTH"), and digital terrestrial ("DTT").
21. Only the three state channels, SVT1, SVT2 and TV4 are true "free" TV channels available to all households. They are also the only TV channels that cover the whole population. These, along with 3 digitalised TV channels (SVT24, SVT Barn & Kunskapskanalen, and the local channel) enjoy "must-carry" status in law -that is all cable operators must carry these channels free of charge and distribute them to 100% of their households.
22. All other channels in Sweden depend on cable, DTT and DTH operators for distribution to end-users, as they derive their revenue from a mix of advertising income, distribution fees and premium TV fees via transmission by these operators. Some of such TV channels are stand-alone pure premium-TV channels depending only on subscriptions from households connected via their operators (such as Canal + or TV 1000), some others are so-called mini-channels bundled into different packages that the operators offer to the households for a monthly fee. All these TV channels range from a high degree of carriage fees dependence and low advertising dependence to the contrary - high dependence on advertising and low carriage fees.
23. One particular feature of the Swedish TV market is that a very high number of households are connected to a cable TV network. Out of the total 4.2 million TV households in Sweden – around 2.6 million or 60% use cable TV. There are currently some 70 companies operating cable-TV networks in Sweden, however the four largest operators account for some 85 % of the market, reaching some 2.2 million households. These cable operators are Com Hem with approximately 1.4 million households, Tele2/Kabelvision with approximately 300 000, UPC Sweden with approximately 277 000 and Canal Digital with approximately 222 000.
24. With around 54% out of the total number of cabled households, Com Hem is the largest cable television operator and is the only one having a nationwide coverage. The remaining three large cable TV operators are focused on certain regions of Sweden: e.g. UPC is only active in the Stockholm region, where neither Canal Digital nor Tele2 is active. In the Stockholm region Com Hem and UPC together serve more than [80-100]\*% of cabled households.

25. The overall cable network covering a certain area is generally owned by the respective city or municipality, and is open for access on equal terms. At the same time, the “access network” i.e. the last bit of wire connecting the end-user with the basic municipal network is owned by the cable operators. This is the case in Stockholm as well, where the basic network is owned and operated by Stokab, a municipal company.
26. The Swedish cable TV market is characterised by the “landlord” system which is due to the fact that the overwhelming majority of the cabled households live in large apartment blocks. In this system landlords contract directly with the cable operators on behalf of the end-users. A basic cable TV package is included in the rent and tenants do not have the opportunity to connect to a different cable operator from the one chosen by the landlord. They may however subscribe to extra channels or packages with the same cable operator. Some [80-100]\*% of the parties’ customers live in these large apartment blocks.
27. The strategies of Com Hem and UPC differ with regard to their pay-TV packages on offer. Com Hem offers to the landlords a basic package consisting of 12 channels at the price of approximately [3-7]\*€, UPC offers to landlords the 3 analogue must-carry channels for approximately 1€. In addition to the basic landlord packages, Com Hem offers three digital packages (Small, Medium and Large) plus 101 additional channels “à la carte“ for subscription; UPC has further analogue and digital packages too. With 65% of the households, analogue TV is still the prevailing technology, even if digital switchover is expected to gradually phase out analogue technology in the coming years.
28. The Swedish households not connected to any cable network procure pay-TV services transmitted through alternative platforms: DTH and DTT. 0,7 million households, the majority of which are located in remote or non-urban areas receive TV through direct-to-home (DTH) satellite transmission supplied by one of the two operators, Viasat or Canal Digital. Furthermore, DTT is already available in Sweden offered by Boxer, having a customer base of around 500 000 households. It has to be mentioned that television through DSL network (or IPTV) constitutes a further available platform; however it is still in the launch phase in Sweden, but is expected to have a significant growth in the future.

#### *EFFECTS ON THE RETAIL MARKET FOR CABLE TV*

29. The Stockholm area is the only geographic area where Com Hem’s and UPC’s activities to a certain extent overlap. It has to be noted, however, that despite this overlap there is very little competition between the two cable operators given the fact that customers are historically connected to the network of UPC Sweden or Com Hem which solely depends on the connection which the landlord has been provided with. The individual household therefore cannot switch to another cable operator in order to enter into individual contracts. As a result, any competition between UPC Sweden and Com Hem therefore would concern mainly the apartment blocks, a specific segment where the ability of the cable operators to successfully compete is greatly determined by the distance of the apartments from the existing networks. In this regard it is noted that the overlap of the parties network imprint is marginal, being limited only to the central areas of Stockholm. In this inner centre of Stockholm, UPC services [200.000 – 300.000]\* households and Com Hem services [20.000-40.000]\* households.

30. Even where switching by landlords between UPC and Com Hem is theoretically possible, it happens in reality only in exceptional cases. According to the parties, the churn from Com Hem to UPC and vice versa is extremely low, in the range of [ $<1$ ]\*%. Any competition between Com Hem and UPC seems therefore limited to newly built apartment blocks in the overlapping areas, a fact which further reduces the scope of possible competition between the two operators. Furthermore, the scope for potential competition through an extension of the existing cable network seems also to be very limited. In this respect, Com Hem estimates that it could service an additional [0-10]\*% of subscribers by extending its network without having to incur an investment which would be commercially not viable. Since this figure relates to the whole region of Stockholm and not only to the neighbouring areas of the UPC network, the scope for competition through an extension of the network seems to be rather marginal.
31. The Commission received critical comments by third parties that cable TV operators offer especially for new buildings a roll out of fibre infrastructure at low cost if they receive in turn an exclusivity right for the provision of services. It has been argued that this would foreclose the fibre infrastructure which could be open for other service providers and this practice could be further enhanced by the proposed concentration. However, these concerns pertain to some features of the functioning of the market which are not relevant to the assessment of the concentration. These third parties have not adduced any convincing element supporting the idea that there could be a direct link justifying further investigation.
32. It can be, therefore, concluded that the concentration does not lead to a significant change in the structure of the market and the parties' overall market position in the retail market for cable TV. It should be noted that should the Commission have identified any risk of impediment to effective competition it would relate to a very limited geographic area so that the question whether it concerned a substantial part of the common market would have had to be carefully examined.

#### *EFFECTS ON THE WHOLESALE MARKET FOR CABLE TV*

33. The Commission has received comments from a number of respondents to the market investigation who are concerned that Com Hem's strong position vis-à-vis the broadcasters on the wholesale market for the acquisition of content will be further increased by the proposed acquisition of UPC. It is true that given the high penetration rate of cable in Sweden, and the large market share of Com Hem in the Swedish cable market a TV channel that wants to achieve a significant coverage of the Swedish TV viewers would find it difficult if it were not transmitted through Com Hem. However, the position of broadcasters vis-à-vis Com Hem would not deteriorate to a significant extent as a result of the proposed concentration. With its customer base of 1.4 million TV households Com Hem accounts for 35% of all Swedish TV households. UPC would add a customer base of 0.3 million TV households which represent 7% of all TV households. However it should be noted that only [150.000-200.000]\* of UPC's subscribers receive commercial TV channels, because the remaining customers only subscribe to the basic analogue package of UPC which contains only the 3 "must-carry" analogue channels. Therefore in reality there is only an increase in the position of Com Hem vis-à-vis the commercial broadcasters in the order of [ $<5$ ]\*% of the Swedish TV households. Furthermore, it should be noted that any possible dependency of broadcasters on Com Hem, or on the combined new entity is essentially limited to analogue cable TV. In fact, it appears that in the digital environment the merged entity would have incentives to attract as many broadcasters as possible to benefit from the



opportunities of the digital TV and generate the maximum profits from this platform. This is evidenced already in the fact that, both Com Hem and UPC offer digital packages with a much wider variety of channels than analogue packages. This increase in offer is also apparent in the prices as digital TV packages has considerably higher prices (6-channels 29 SEK, 27 channels 159 SEK, 49 channels – 299 SEK) per channel compared to analogue ones. Given the foreseeable transition of cable TV to digital transmission, these facts play a decisive role in the structure of the cable TV market.

34. On the basis of the above, it can be concluded that the proposed merger would only insignificantly change the already existing dependency of broadcasters in the analogue environment. On the other hand the situation of broad-casters vis-à-vis Com Hem is already today much better, and over time is expected to continue to get stronger in the context of the current process of transition from analogue to digital technology. This is illustrated by the fact that while for the analogue TV channels of the broadcasters Com Hem does not pay carriage fee, this is not the case in the digital environment where Com Hem uses a split of revenues (i.e. the paid consumer price) with broadcasters.
35. In the light of the above, the merger does not raise serious doubts as to its compatibility with the common market on the market for the distribution of TV channels in Sweden.

## **VIII. CONCLUSION**

36. 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 (EC) No 139/2004.

For the Commission

(signed)

Neelie KROES

Member of the Commission