

***Case No COMP/M.4338 -  
CINVEN / WARBURG  
PINCUS / CASEMA /  
MULTIKABEL***

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: 06/09/2006

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 06.09.2006

**SG-Greffe(2006) D/205003**

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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/Madam,

**Subject: Case No COMP/M.4338 – Cinven-Warburg Pincus/Casema-Multikabel  
Notification of 01.08.2006 pursuant to Article 4 of Council Regulation  
No 139/2004<sup>1</sup>**

1. On 01.08.2006, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (“The Merger Regulation”) by which the undertakings Cinven Limited (“Cinven”, UK) and Warburg Pincus International LLC (UK) belonging to the Warburg Pincus group (“Warburg Pincus”, USA) acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertakings Casema Holding B.V. (“Casema”, the Netherlands) and Multikabel B.V. (“Multikabel”, the Netherlands) by way of purchase of shares. Prior to the proposed concentration Multikabel is solely controlled by Warburg Pincus.

## **I. THE PARTIES**

2. Cinven is a UK-based private equity company which is engaged in the provision of management and advisory services to a number of investment funds.

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

3. Warburg Pincus is a US-based global private investment firm with interests in a wide range of economic sectors.
4. The target companies, Casema and Multikabel, are two Dutch cable operators providing radio and television, Internet access and fixed telephony services in the Netherlands. Casema is currently jointly controlled by Carlyle and Providence. Its supply area covers the Northern part of the Zuid-Holland province as well as the provinces of Utrecht and Noord Brabant. Casema is the third largest cable operator in the Netherlands (subscriber base of approximately 1.345 million). Mutlikabel is currently solely controlled by Warburg Pincus. Its supply area covers the Northern part of the Noord-Holland province. Multikabel is the fourth largest cable operator in the Netherlands (subscriber base of approximately 316,000).

## II. THE OPERATION

5. The proposed concentration consists of two transactions whereby Cinven and Warburg acquire the joint control of: (i) Casema, from Carlyle and Providence, and (ii) Multikabel, currently solely controlled by Warburg Pincus. However, both transactions constitute one single concentration within the meaning of Article 3 of the Merger Regulation for the following reasons.
6. First, the two transactions are contractually linked<sup>2</sup>. Pursuant to a subscription agreement entered into by the parties on 17.07.2006, the acquisition by Cinven of joint control on Multikabel is conditional upon the joint acquisition of Casema by Cinven and Warburg Pincus “*becoming unconditional* (i.e. cleared by the competent competition authority) *and immediately capable of completion*”<sup>3</sup>. As soon as the joint acquisition of Casema by Cinven and Warburg Pincus is cleared by the relevant competition authority, the same parties are obliged to implement the Multikabel transaction.
7. Second, this legal conditionality reflects the economic considerations for which the notifying parties have entered into these transactions<sup>4</sup>. Indeed Cinven and Warburg Pincus submit that they expect synergies to arise as a result of the integration of Casema and Multikabel, notably in relation to overheads, operating costs and general network infrastructure costs.
8. Third, the interdependence between the two transactions is demonstrated by the fact that both transactions will be financed by a single banking facility arranged by the same pool of banks<sup>5</sup>.
9. Fourth, the nature of the control exercised by the notifying parties will be the same for the two transactions. Furthermore, Casema and Multikabel are active in the same product markets as they provide the same type of services<sup>6</sup>.

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<sup>2</sup> See Case COMP/M.2926 – EQT / H&R / Gragoco, decision of 16.09.2002, point 8.

<sup>3</sup> Clause 2.1(b) of the subscription agreement.

<sup>4</sup> See Case COMP/M.2926 – EQT / H&R / Gragoco, decision of 16.09.2002, point 9.

<sup>5</sup> See Case COMP/M.2926 – EQT / H&R / Gragoco, decision of 16.09.2002, point 11.

<sup>6</sup> See, to that effect, cases IV/M.409 – ABB / Renault Automation, decision of 09.03.1994, point 4 and IV/M.479 – Ingersoll-Rand/MAN, decision of 28.07.1994, points 4 and 5.

10. As a result of the proposed concentration, each of the notifying parties will indirectly own (via various vehicle companies) slightly less than 50% of the shares in Casema and Multikabel (the remaining shares being held by some managers of the target companies).
11. Cinven and Warburg Pincus will have equal voting rights in relation to the vehicle and target companies. In addition, pursuant to a shareholders' agreement entered into on 14.07.2006, each of Cinven and Warburg Pincus can veto strategic decisions on the business policy of the target companies (in particular approval of the annual budget and major investments as well as appointment or dismissal of senior managers). The parties will therefore exercise joint control over Casema and Multikabel.

### **III. CONCENTRATION**

12. In view of the foregoing, the proposed transactions constitute a concentration within the meaning of Article 3(1)b of the Merger Regulation.

### **IV. COMMUNITY DIMENSION**

13. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR [...] billion (Cinven: [...] million, Warburg Pincus: [...] million, Casema: [...] million and Multikabel: [...] million)<sup>7</sup> and three of them have a Community-wide turnover in excess of EUR [...] million (Cinven: [...] million, Warburg Pincus: [...] million and Casema: [...] million). The undertakings concerned 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**

#### **V.1 Market definition**

14. The business sectors concerned by the transaction are cable radio and television (TV) and telecommunications services.
15. The notifying parties have identified five potential relevant product markets where both Casema and Multikabel are active: (a) wholesale distribution of radio and TV signals<sup>8</sup>, (b) retail distribution of radio and TV signals<sup>9</sup>, (c) broadband Internet access services<sup>10</sup>, (d) retail distribution of fixed telephony services<sup>11</sup>, and (e) leased lines<sup>12</sup>.

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<sup>7</sup> 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.

<sup>8</sup> See for instance Case COMP/M.4217 – Providence-Carlyle/UPC Sweden, decision of 02.06.2006, points 13-17.

<sup>9</sup> In a number of decisions, the Commission has left open the question whether the relevant market should be limited to cable, although it identified reasons for both a narrow and a broader definition for example in Case COMP/M.3609 – Cinven/FTC-NCN, decision of 04.03.2005, points 26-32.

<sup>10</sup> Case COMP/M.3914 – Tele2/Versatel, decision of 07.09.2005, point 13.

<sup>11</sup> Case COMP/M.3914, op. cit., point 10.

16. According to the notifying parties only the wholesale and retail markets for the distribution of radio and TV signals are affected by the proposed concentration.
17. Notwithstanding the existence of limited horizontal overlaps, the combined market shares of Casema and Multikabel in all the other product markets in which they are both active are below 15% at national level<sup>13</sup>. This is due to the fact that these markets are largely dominated by telecommunications operators, in particular KPN, the Dutch telecommunications incumbent. In addition, Casema and Multikabel only compete with each other to a minimal extent as they are only marginally active in these other product markets outside the coverage areas of their respective cable networks<sup>14</sup>. For these reasons, the markets for broadband Internet access, retail distribution of fixed telephony and leased lines will not be discussed further.
18. In addition to the markets identified by the parties, the proposed transaction might also have an impact on the (potential) multiple play market. Multiple (or triple) play refers to the bundled offers of Internet access and/or radio and TV services and/or fixed telecommunications services proposed by cable and telecommunications operators. As Casema and Multikabel do not offer multiple play services outside their respective coverage areas, customers cannot switch from Casema to Multikabel and *vice versa* (see below paragraph 50). The proposed transaction will therefore have no impact on customers and thus on competition in a (hypothetical) multiple play market. For these reasons, the hypothetical market for multiple play offerings will not be discussed further.

#### *Wholesale distribution of radio and TV signals*

##### Product market

19. The wholesale market for the distribution of radio and TV signals is the market where distributors and broadcasters negotiate the terms and conditions for the distribution of radio and TV signals to end-users<sup>15</sup>. Distributors provide carriage (or transmission) services for signals based on different infrastructures (i.e. cable networks, satellite, DSL networks, (digital) terrestrial networks). Broadcasters are the companies which package radio or TV content, either internally produced or bought from external suppliers, into channels. Whereas broadcasters need transmission services provided by the distributors

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<sup>12</sup> Case COMP/M.3914, op. cit., point 12.

<sup>13</sup> In case COMP/M.3914, op. cit, the markets for broadband Internet access, fixed telephony and leased lines were considered to be national in scope (see point 18).

<sup>14</sup> Multikabel owns a small ISP provider, QuickNet, which provides Internet access services nationally on the basis of access agreements with other telecommunications operators (bbned and Tiscali). QuickNet's share of the Dutch market for Internet access is only *de minimis* ([...] subscribers outside Multikabel's coverage area, representing less than 1% at national level). Each of Casema and Multikabel also provides leased lines services to corporate customers outside their respective coverage areas on the basis of agreements with network providers. According to the parties, the volume of these services to the extent they are provided outside their service areas is marginal.

<sup>15</sup> Case COMP/M.4217 – Providence/Carlyle/UPC Sweden, op. cit., points 13 and 33.

to reach the end-users (i.e. the viewers), the distributors need the content packaged by the broadcasters to constitute the offer they deliver to their subscribers.

20. Even though it is conceptually possible to distinguish between the acquisition by the broadcasters of transmission services, on the one hand, and the acquisition of distribution rights over radio and TV channels by the distributors, on the other hand, there is in practise one single negotiation where both issues are jointly addressed. Depending on the respective bargaining positions of the broadcaster and the distributor concerned, the outcome of the negotiation will be that either the broadcaster will pay a fee for the transmission of the signal (“carriage fee”) to the distributor, or alternatively the distributor will pay royalties to the broadcaster. Even when it is mutually agreed that the broadcaster pays a carriage fee and the distributor pays royalties for the distribution of a given channel, the respective levels of both are closely linked.
21. The notifying parties submit that the relevant wholesale market encompasses transmission services of radio and TV signals over all categories of infrastructures available in the Netherlands (i.e. cable networks, satellite, DSL networks and digital terrestrial networks)<sup>16</sup>. This position is based on the recent technological evolutions which make it possible to transmit radio and TV signals over various categories of infrastructure.
22. In a previous decision, the Dutch competition authority (NMa) came to the conclusion that the transmission services of TV-signals by cable formed a separate product market. This conclusion was based on the fact that 91% of Dutch households receive TV-signals by cable, so that no other distribution platform was substitutable to cable networks from a content provider’s point of view<sup>17</sup>. In a recent decision concerning the Swedish cable sector, the Commission also found that wholesale distribution via cable constituted a market distinct from the wholesale distribution via other platforms<sup>18</sup>. Most respondents in the market investigation were of the opinion that in the Netherlands the wholesale distribution of radio and TV signals via cable constitutes a distinct product market, notably because of its high penetration ratio compared to the other distribution platforms.
23. However in the present case the question whether the relevant wholesale market includes all or several radio and TV distribution platforms or should be limited to cable distribution can be left open. Indeed the proposed concentration does not raise competition concerns under any alternative market definition.
24. The Commission traditionally distinguished between free-TV channels, relying on revenues stemming from advertising or public funds, and pay-TV channels, relying on revenues stemming essentially from subscription fees<sup>19</sup>. The notifying parties submit that this distinction is not relevant as far as the Dutch wholesale market is concerned. The parties explain that this is due to the size and attractiveness of so-called “standard” packages that all cable operators offer to end-users. These packages consist of 30 to 45 TV channels that subscribers receive for a fee of around €15/month. Virtually all Dutch

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<sup>16</sup> Analogue terrestrial transmission of TV signals shall be switched off as of 01.11.2006.

<sup>17</sup> Case 3052 – Liberty Media/Casema, decision of the NMA of 06.11.2002, point 46.

<sup>18</sup> Case COMP/M.4217 – Providence/Carlyle/UPC Sweden, op. cit., points 16 and 17.

<sup>19</sup> Case COMP/M.2876 – Newscorp/Telepiu, decision of 02.04.2003, point 20.

cable subscribers receive standard packages. As a result only a very limited number of Dutch end-users subscribe to “additional” or “premium” channels or packages of channels. According to the parties, additional packages would only account for 2% of the total revenues of the TV sector in the Netherlands.

25. For the above reasons, the NMa found that additional channels or packages (seen as pay-TV) belong to a distinct wholesale market. Because of their limited audience, additional packages are not substitutable to standard packages for the vast majority of content providers who are dependent upon advertising revenues and therefore need to achieve a large audience<sup>20</sup>. This view was shared by most respondents in the market investigation.
26. However, for the purposes of the competitive assessment of the present case, the exact delineation between free and pay-TV wholesale markets can be left open, as the proposed concentration does not raise competition concerns under any alternative market definition.

#### Geographic market

27. The notifying parties submit that the geographic market for the wholesale distribution of radio and TV signals is national in scope because the reach of terrestrial, satellite and DSL operators is national or near-national. The parties also note that these operators propose a single offering throughout the country.
28. If a wholesale market limited to the distribution of radio and TV signals by cable were to be considered relevant, the notifying parties submit that the geographic scope of this market would be limited to the coverage area of each cable operator.
29. In previous decisions<sup>21</sup>, the NMa left open whether the wholesale market for cable distribution of radio and TV signals in the Netherlands should be defined as local or national. However the NMa noted that there are strong indications that this market is national because broadcasters who are dependant on advertising revenues seek to obtain a nation-wide coverage.
30. Even though cable operators provide transmission services only in their respective coverage areas, their bargaining position vis-à-vis broadcasters depends on their respective customer base at a national level. Therefore even if distribution by each individual cable operator is limited to local (or sub-national) areas, the outcome of the negotiations between cable operators and broadcasters mentioned above reflects the respective position of the former at a national level.
31. However, in the present case, the geographic scope of the wholesale market for radio and TV signals distribution can be left open as under any alternative definition (i.e. national or local, corresponding to the coverage area of each cable operator) the proposed concentration does not raise competition concerns.

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<sup>20</sup> Case 3052 – Liberty Media/Casema, op. cit., point 59. For the same reason, the Dutch telecommunications regulator, OPTA, made a distinction between broadcast cable transmission for free and pay radio and TV packages. See Commission’s letter to OPTA of 28.10.2005 in case NL/2005/0246.

<sup>21</sup> Lastly in Case 4490 – UPC/Canal+, decision of the NMa of 28.06.2005, point 40.

## *Retail distribution of radio and TV signals*

### Product market

32. The retail market affected by the proposed concentration can be described as the market for the provision of supply services to end-customers, that is to say the services supplied by cable operators to their subscribers to provide them with packages of radio and TV channels. Purchasers of these services are therefore the end-users, i.e. the viewers<sup>22</sup>.
33. As in the case of the wholesale market, the notifying parties submit that the relevant retail market encompasses the distribution of radio and TV signals over all categories of infrastructures available in the Netherlands (i.e. cable networks, satellite, DSL networks and digital terrestrial networks). In a number of recent decisions, the Commission left open the question whether the relevant retail market should be limited to cable distribution, although it identified reasons for both a narrow and a broader definition<sup>23</sup>. Until recently, the NMa considered that distribution of radio and TV signals by cable constitutes a distinct product market. However, in its most recent decisions, the NMa noted that DSL could become a credible alternative to cable<sup>24</sup> and found that at least distribution by cable and DVB-T (i.e. digital terrestrial network) belong to the same product market<sup>25</sup>.
34. Most respondents in the market investigation (i.e. the main broadcasters and distributors of radio and TV channels active in the Netherlands) confirmed that cable and other distribution platforms are technically substitutable for end-customers. However, respondents also underlined that only a small proportion of subscribers have effectively chosen to be supplied by an alternative distribution platform so far. They explain that this is due to the costs involved in switching from cable to these alternative platforms and because the geographic coverage of DSL and digital terrestrial networks is still limited. Finally respondents explain that satellite is the main alternative platform in terms of subscribers, mainly because it covers the rare Dutch regions which are not penetrated by any cable network.
35. However the exact definition of the retail market for the distribution of radio and TV signals can be left open in the present case as the proposed concentration does not raise competition concerns under any alternative market definition.

### Geographic market

36. In line with previous decisions of the Commission<sup>26</sup> and the NMa<sup>27</sup>, the notifying parties submit that the geographic market for the retail distribution of radio and TV signals is

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<sup>22</sup> Case COMP/M.4217 – Providence/Carlyle/UPC Sweden, op. cit., point 8.

<sup>23</sup> For example in Case COMP/M.3609 – Cinven/FTC-NCN, op. cit., points 26-32.

<sup>24</sup> Case 4490 – UPC/Canal+, op cit., point 38.

<sup>25</sup> Case 5454 – KPN/Nozema Services, decision of the NMa of 06.03.2006, point 65. The NMa left open the question whether other distribution platforms, such a satellite and DSL, should also be included in the same market as cable and digital terrestrial (DVB-T) networks.

<sup>26</sup> For example Cases COMP/ M.4217– Providence/Carlyle/UPC Sweden, op. cit., point 19.



either national (if this market were to include all distribution platforms) or limited to the coverage area of each cable operator (if this market were to be limited to the distribution of radio and TV signals by cable operators).

37. In the present case, the geographic scope of the retail market for radio and TV signals distribution can be left open as under any alternative definition (i.e. national or local, corresponding to the coverage areas of each cable operator), the proposed concentration does not raise competition concerns.

## V.2 Competitive assessment

### *Wholesale distribution of radio and TV signals*

#### Non-coordinated effects

38. Any competitive concerns in the Dutch wholesale market would have to relate to the change of the negotiating power of Casema and Multikabel vis-à-vis broadcasters.
39. The proposed concentration will not result in a significant strengthening of the bargaining position of these two companies in view of Multikabel's relatively limited customer base. Indeed, there are 6.9 million households in the Netherlands which receive radio and television via one of the different broadcasting platforms, out of which 6.2 million are cable subscribers. Multikabel serves only 316,000 households (i.e. 5% of the total number of Dutch cable subscribers) whereas Casema has 1.345 million subscribers (i.e. less than 22% of the total number of Dutch cable subscribers). Casema is pre-merger the third largest retail distributor in the Netherlands, behind UPC (2.236 million subscribers, 36%) and Essent Kabelcom (1.740 million subscribers, 28%). Post-merger the new Casema-Multikabel entity will remain the third largest distributor in terms of subscribers.
40. As noted above, the Commission in earlier cases distinguished between pay-TV and free-TV based on the nature of the contractual relationship between the end-users and the broadcasters. As noted above, the NMa in earlier decisions made a distinction between standard packages, on the one hand, and additional (or premium) packages, on the other. In the present case, the notifying parties explain that to the best of their knowledge all cable distributors have a similar proportion of their customers who have subscribed to extended packages (approximately 5-7%). On this basis, the parties submit that the respective market shares of the companies providing transmission services to pay-channels (or to the channels included in their extended packages) will not be materially different from their respective shares of the total Dutch wholesale market (i.e. transmission services provided to all radio and TV channels). The market investigation broadly confirmed the parties' views in this respect.
41. In view of the foregoing, it can be concluded that the proposed concentration will not strengthen to a significant extent the individual bargaining position of Casema-Multikabel vis-à-vis the broadcasters of radio and TV channels active in the Netherlands.

#### Coordinated effects

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<sup>27</sup> For example Case 4490 – UPC/Canal+, op. cit.

42. Post-merger the three largest Dutch cable operators (UPC, Essent and Casema-Multikabel) will account for roughly 90% (instead of approximately 85% pre-merger) of the total number of Dutch cable subscribers to radio and TV offerings. In addition, the symmetry between these three companies will be enhanced as Essent and Casema-Multikabel will each account for roughly 27% of the total number of Dutch subscribers (instead of 22% for Casema pre-merger). In view of the foregoing, it needs to be assessed whether the proposed concentration could result either in pre-existing coordination amongst the three largest cable operators vis-à-vis broadcasters being strengthened or otherwise facilitated or alternatively whether it could result in these companies having greater ability and incentives to coordinate vis-à-vis the broadcasters.
43. In the course of the market investigation, the commercial relations between the broadcasters of the main radio and TV channels distributed in the Netherlands and the four largest Dutch cable operators (namely UPC, Essent, Casema and Multikabel) have been carefully examined and no evidence of coordination among the latter vis-à-vis the former was found.
44. On the contrary, the evidence gathered points towards the absence of any likelihood of such coordination. First, the market investigation revealed that there are significant differences in the royalty levels paid by the four largest Dutch cable operators to the individual broadcasters as well as in the carriage fee levels paid by the former to the latter. The market investigation also revealed that the fees per subscriber per period, which are usually the calculation basis for royalties and carriage fees, agreed by each distributor with the individual broadcasters are significantly different. In many instances, the extent of these differences even goes beyond the mere differences in the respective subscriber bases of UPC, Essent, Casema and Multikabel.
45. Second, the market investigation confirmed that the Dutch cable operators, either individually or collectively, do not enjoy exclusivity for the distribution of any TV or radio channel<sup>28</sup>. Respondents in the market investigation indicated that exclusivity over radio and TV channels is not a feature of the Dutch market.
46. Although the Dutch cable operators trade association VECAI is sometimes involved in the negotiations between cable operators and broadcasters, its role in these negotiations is not such that it leads to a sufficient degree of transparency enabling the largest cable operators to coordinate vis-à-vis the broadcasters. VECAI's involvement in the negotiations with the broadcasters results in standardised, non binding, model agreements setting out the general terms for the distribution of their channels by its members. However, each of the largest cable operators (UPC, Essent, Casema and Multikabel) negotiates directly with the broadcasters its own terms and conditions, notably royalties and carriage fees, reflecting the individual bargaining power of the respective parties (see above paragraphs 20 and 44). These bilateral negotiations create opacity, and therefore uncertainty, in the market as the bilateral agreements entered into by each of the largest cable customers with each individual broadcaster may deviate from the model agreements negotiated by VECAI. These deviations are not disclosed to VECAI or its other members.
47. In light of the foregoing, it can be concluded that, pre-merger, there is no coordination amongst the four largest Dutch cable operators vis-à-vis the broadcasters of the main TV

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<sup>28</sup> For instance, although in The Netherlands BBC 1 and BBC 2 are not available via DSL and digital terrestrial networks, they are distributed via cable and satellite.

and radio channels distributed in the Netherlands. Moreover, it should be noted that no respondent in the market investigation, including all the broadcasters, claimed that there would be any such coordination.

48. Finally, given the relatively small subscriber base of Multikabel, it cannot be expected that the proposed concentration will result in the remaining three largest Dutch cable operators having greater ability and incentives to start coordinating vis-à-vis the broadcasters. In this respect, it can also be noted that although the merged entity Casema-Multikabel will have a customer base similar to that of Essent, UPC will remain the market leader. It is therefore questionable whether it would have incentives to collude with two other smaller operators as regards negotiations with the broadcasters.
49. In light of the foregoing, it can be concluded that the proposed transaction will not significantly impede effective competition in the Dutch market for the wholesale distribution of radio and TV signals or any sub-market thereof.

*Retail distribution of radio and TV signals*

50. As noted above, there is no geographic overlap between Casema's and Multikabel's respective cable networks. This means that both companies are not substitutable to each other for viewers, as they cannot switch from Casema to Multikabel and *vice versa*. Hence, the proposed concentration will not reduce the number of distributors which are available for customers.
51. In any event, it is not likely that the proposed concentration will have a significant impact in the Dutch retail market for the distribution of radio and TV signals in view of the respective market shares of Casema and Multikabel and those of their competitors.
52. In a retail market limited to radio and TV distribution via cable, Casema-Multikabel will rank third with a market share of 26.8% (Casema: 21.7% and Multikabel: 5.1%), behind UPC (36.1%) and Essent Kabelcom (28.1%). These figures are not significantly different if one considers a retail market including all radio and TV distribution platforms (i.e. cable, satellite, DSL and digital terrestrial). In such a market, Casema-Multikabel would still rank third with a market share of 24% (Casema: 19.4% and Multikabel: 4.6%), behind UPC (32.2%) and Essent Kabelcom (25.1%).
53. In addition, distribution platforms alternative to cable are rapidly growing in the Netherlands, which increases to a certain extent the level of competition exerted on cable operators in their respective coverage areas. Indeed, CanalDigitaal, a satellite operator which was launched in 2001, had 600,000 subscribers at the end of 2005; Digitenne, a digital terrestrial operator which was launched in April 2003, had 184,000 subscribers at the end of 2005; and Tele2/Versatel which launched an IP TV offer via DSL network in 2005, had 55,000 subscribers at the end of the first quarter of 2006, consisting exclusively of subscribers to its football related programmes. Tele2/Versatel launched a general TV package in April 2006, followed by KPN in May. Wanadoo/Orange and Tiscali are expected to launch their IP TV offerings by the end of 2006. According to the consulting firm Dialogic, cable operators are expected to lose some 7% of their customers by 2008 and 9% by 2009 to the three most important alternative platforms, namely IP TV, digital terrestrial and satellite, while the overall

size of the market is expected to grow with slightly more than 2% in the period 2004-2008 and slightly more than 2.6% in the period 2004-2009<sup>29</sup>.

54. In view of the foregoing, it is also unlikely that the proposed concentration will result in foreclosure effects with regard to radio and television content. Indeed, the subscriber base of the new entity Casema-Multikabel does not appear large enough as to enable it to obtain exclusive distribution rights over key channels from the broadcasters.
55. As noted above, the notifying parties explain that to the best of their knowledge all cable operators have a similar proportion of their customers who have subscribed to extended packages (approximately 5-7%). On this basis, the parties submit that competitors' shares of the Dutch retail market for pay-TV (or for additional packages) will not be materially different from their respective shares of the total Dutch retail market (including all radio and TV channels). The market investigation broadly confirmed the parties' views in this respect.
56. Finally, even though post-merger the three largest cable operators (UPC, Essent, Casema-Multikabel) will account for roughly 90% of the total number of Dutch cable subscribers to radio and TV offerings, it is unlikely that the proposed concentration will result in coordinated effects at the retail level. Indeed, as noted above, cable operators distribute radio and TV signals only in their respective coverage areas and the geographic scope of their networks does not overlap. Therefore, cable operators do not compete with each others at the retail level and are therefore unlikely to have any incentives to coordinate.
57. In light of the foregoing, it can be concluded that the proposed transaction will not significantly impede effective competition in the Dutch market for the retail distribution of radio and TV signals or any sub-market thereof.

## **VI. CONCLUSION**

58. 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

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<sup>29</sup> Dialogic report of 09.09.2005 « Verwachte ontwikkeling van alternatieve kanalen voor televisieverspreiding in 2006-2008 », pages 13 and 54.