

*Case No IV/M.1091 -  
CABLEUROPA /  
SPAINCO / CTC*

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 28/01/1998

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## COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.01.1998

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dears Sirs,

**Subject: Case N° IV/M.1091 - Cableuropa/SpainCom/CTC  
Notification of 17.12.1997 pursuant to Article 4 of Council Regulation N° 4064/89**

1. On 17.12.1997, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) N° 4064/89 by which Cableuropa S.A. ("Cableuropa"), Bank of America International Investment Corporation ("Bank of America") and General Electric Capital Services Structured Finance Group Inc. ("General Electric") acquire joint control over Cable I Televisio de Catalunya S.A. ("CTC") through their joint venture, Spain Telecommunications Limited s.a.r.l. ("SpainCom").
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) N° 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. Cableuropa is a Spanish company active in the provision of services using or related to cable television networks ("CATV"). Cableuropa is bidding for the necessary authorisations for the deployment and operation of CATV networks and telecommunications services in Spain. General Electric and Bank of America jointly control Cableuropa.<sup>1</sup>
4. SpainCom is a joint venture established between General Electric and Bank of America for the purpose of reaching a unified position over issues concerning Cableuropa.

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<sup>1</sup> See decision of the Commission on 19.06.1997 in case N° IV/M.939-BankAmerica/General Electric/Cableuropa.

5. CTC is a Spanish company established in 1995 which has been awarded a concession to construct a cable network and provide cable telecommunications services in Catalonia.

## II THE OPERATION

6. The present operation has to be seen in the context of another operation which relates also to the question of control over CTC. On 11.11.1997 the undertakings, STET INTERNATIONAL NETHERLANDS N.V. ("SIN") belonging to the Group Telecom Italia; GET-GRUPO ELECTRICO DE TELECOMUNICACIONES, S.A. ("GET") belonging to the Group ENDESA; REDES DE ENERGIA, S.A. ("REDESA") belonging to the Group ENDESA; INVERCATALUNYA CABLE, S.L. ("INVERCATALUNYA") under the control of CAIXA D'ESTALVIS DE CATALUNYA ("CAIXA CATALUNYA"); and GAS NATURAL, S.D.G. ("GAS NATURAL"), notified to the Commission an operation by which they acquire joint control over CTC<sup>2</sup>. This group of shareholders in CTC can be referred, for the purposes of this decision, as the "European partners" in CTC.
7. The acquisition of control by the European partners over CTC prompted as a reaction the present operation, by which General Electric and Bank of America (the [ ]<sup>4</sup> for the purposes of this decision) re-establish a situation of joint control within CTC.
8. The triggering element for the notification by the [ ] is the signature of a Shareholders Agreement between them, the effect of which is to ensure that the shareholdings in CTC held by SpainCom and Cableuropa will be the subject of concerted voting. This voting agreement followed the acquisition of control by SpainCom in Tisa Cable S.L., which is a shareholder in CTC and which holds 7.5 % of the capital, and therefore it increased the shareholding in CTC controlled by the [ ]<sup>6</sup>.

## III COMMUNITY DIMENSION

9. The operation has a community dimension. The joint world-wide turnover of the undertakings concerned exceeds ECU 5,000 million (General Electric: 62 357 MECU, Bank of America: 17 382 MECU).

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<sup>2</sup> See case N° 1022-Cable I Televisio de Catalunya. The Commission in application of Article 4 (3) of Commission Regulation (EC)N° 3384/94 suspended on 11.12.1997 the proceedings in this case given a material change in the facts contained in the notification, i.e. the acquisition of joint control by Cableuropa and SpainCom over CTC. The notification in case N° 1022 became effective on 17.12.1997. The Commission takes a decision on case N°-1022 the same date as in the present notification (case N°-1091)

<sup>3</sup> Through their subsidiaries SpainCom and CABLEEUROPA.

<sup>4</sup> Cableuropa partners

<sup>5</sup> Cableuropa partners

<sup>6</sup> Cableuropa partners

10. The aggregate EC-wide turnover of at least two of the undertakings concerned exceeds ECU 250 million (General Electric: 8 895 MECU, Bank of America: 354 MECU), but they do not achieve more than two-third of their aggregate Community-wide turnover within one and the same Member State. The notified operation has therefore a community dimension, but does not constitute a co-operation case under the EEA Agreement, pursuant to Article 57 of that Agreement.

#### **IV CONCENTRATION**

##### **A) JOINT CONTROL**

11. Following the transactions notified under cases IV/M.1022 (acquisition of control by the European partners) and IV/M.1091 (acquisition of control by the [ ]), the present ownership of CTC is as follows:

Cableuropa S.A.	20%
Gas Natural	10%
GET (ENDESA)	15%
InverCatalunya Cable (Caixa Catalunya)	10%
Multimedia Cable	7.5%
Redesa (ENDESA)	5%
SpainCom	12.5%
SIN	12.5%
Tisa Cable	7.5%

12. Under the rules which govern CTC the decisions which determine the commercial strategy of CTC will have to be adopted by an affirmative vote of Directors representing [ ] of issued share capital. The [ ] have a shareholding of 40% ( Cableuropa 20%, SpainCom 12.5%, and Tisa Cable 7.5%). The European partners have a shareholding of 52.5% (GET/REDESA/ 20%, SIN 12.5%, INVERCATALUNYA 10% y GAS NATURAL 10%).
13. Therefore, as a result of the present operation, CTC will be jointly controlled by the European partners and the [ ]<sup>0</sup> within the meaning of the Merger Regulation, both groups of shareholders having a negative veto right to block the commercial strategy of CTC.

##### **B) FULL FUNCTION JOINT VENTURE**

14. CTC is currently a full function joint venture which performs, as an autonomous economic entity, the functions normally carried out by other undertakings operating on the same market and it has sufficient financial and other resources in order to operate a business activity on a lasting basis.

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<sup>7</sup> Cableuropa partners

<sup>8</sup> business secret - qualified majority

<sup>9</sup> Cableuropa partners

<sup>10</sup> Cableuropa partners

## **C) ABSENCE OF COORDINATION OF THE PARTIES COMPETITIVE BEHAVIOUR**

15. The acquisition of control by the [ ]<sup>1</sup> over CTC does not increase the possibility of coordination between the parent companies in the markets in which the joint venture operates. Indeed, the acquisition of joint control by the [ ]<sup>2</sup>, following their veto right on the strategic commercial decisions, would make extremely difficult for the European partners who have a joint venture, Retevisión<sup>3</sup>, to use CTC to coordinate with the [ ]<sup>4</sup> their competitive behaviour in the telecommunications market.
16. Therefore, the Commission concludes that CTC is a full function concentrative joint venture.

## **V COMPATIBILITY WITH THE COMMON MARKET**

### **A) RELEVANT PRODUCT AND GEOGRAPHIC MARKETS**

17. The notifying parties state that there are no affected markets within the meaning of Form CO as a result of the present operation. CTC will be primarily active in the provision of cable services in Catalonia, including pay-tv services and voice telephony.
18. The Commission has in previous decisions defined pay television as a separate market, distinct from free access television, financed by advertising or by State contributions. The geographic market would be national, in particular for cultural reasons.
19. The cable TV networks and namely the broadband networks are able to carry voice telephony services. With regard to the geographic market, it could be argued that, at present, voice telephony is a national market in Spain as a result of the Community and national legal framework.
20. However, for the assessment of the present operation, it is not necessary to define the relevant and geographic markets, since even on the narrowest definitions, such as a product market geographically limited to Catalonia, it will not give rise to the creation or strengthening of a dominant position.

### **B) ASSESSMENT**

21. The acquisition by the notifying parties of control in CTC or the joint control by the European and [ ]<sup>5</sup> over CTC will not affect the competitive structure of the relevant markets. CTC has at present neither any relevant market share in the markets described above nor any degree of market power at the commencement of its operations. CTC is a new entrant in the provision of

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<sup>11</sup> Cableuropa partners

<sup>12</sup> Cableuropa partners

<sup>13</sup> See Comision decision of 20.8.1997, case N° IV/M.927, STET/GET/UNION FENOSA.

<sup>14</sup> Cableuropa partners

<sup>15</sup> Cableuropa partners

broadcasting and telecommunication services using cable television networks. The new player will face active competition from other companies with a very strong presence in the markets affected, and in particular from Telefónica in the telecommunications field and from Sogecable in the pay-tv market. Accordingly, no competition concerns arise.

## **VI CONCLUSION**

22. 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 functioning of the EEA Agreement. This decision is adopted in application of Article 6 (1)(b) of Council Regulation (EEC) N° 4064/89.

For the Commission