

*Case No COMP/M.2077 -
CLAYTON DUBILIER &
RICE / ITALTEL*

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 01/09/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 01.09.2000

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

Subject: Case No COMP/M.2077-ClaytonDubilier&Rice/Italtel

Notification of 31.07.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 31.07.2000, Clayton, Dubilier & Rice (D&R) notified a proposed concentration by which the undertaking indirectly acquires within the meaning of Article 3(1)(b) of the Council Regulation (EEC) No 4064/89 sole control of Italtel S.p.A. (Italtel) by way of purchase of shares.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation No. 4064/89 and does not raise serious doubts as to its compatibility with the common market and the EEA Agreement.

I. THE PARTIES AND THE OPERATION

3. CD&R is an US-American portfolio management company with a wide spread of activities of the portfolio companies.
4. Italtel is an Italian supplier of public telecommunications equipment and systems, set top boxes and telephone sets.
5. Clayton, Dubilier and Rice Fund VI Limited Partnership, an investment fund ultimately controlled by CD&R, will acquire indirectly the majority of a holding company which will acquire all shares of Italtel. Telcom Italia and Cisco Systems will acquire minority stakes of the holding company.

II. CONCENTRATION

- 6 The acquisition by CD&R of sole control of Italtel constitutes a concentration within the meaning of Article 3(1)(b) of the Council Regulation No. 4064/89.

III. COMMUNITY DIMENSION

- 7 The undertakings concerned have a combined aggregate world wide turnover of more than EUR 5 billion ¹ (CD&R: EUR 14,382 million; Italtel: EUR 753,4 million). Each of the undertakings concerned have a Community-wide turnover in excess of EUR 250 million (EUR 1,506 million for CD&R and EUR 684 million for Italtel), but 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.
8. It does not constitute a co-operation case under the EEA agreement.

IV. COMPATIBILITY WITH THE COMMON MARKET

9. Italtel is active in three areas: public telecommunications systems for voice, data and video and in particular public central office switching equipment, data network systems and operation support systems for voice telephony operators; set top boxes and private telecommunications terminals, consisting of telephone sets.
10. The relevant product markets in this operation are in the public telecommunications sector as defined in Case IV/M. 468 Siemens/Italtel, The set top box market has been considered as a part of a wider market of pay TV technical services (Case IV/M.469 MSG/Media Service). The notifying party considers that telephone sets are part of the telecommunication terminals market.
11. The notifying party considers that the geographic scope for all relevant markets except set top boxes is at least Community wide. The geographical dimension of this relevant market is supranational. At a minimum such market consists of the countries that have adopted the European DVB standard.
12. However, for the purpose of the present case the definition of the relevant product markets as well as the definition of the relevant geographic markets can be left open, since in all alternative market definitions the operation will not lead to the creation or strengthening of a dominant position.
13. CD&R portfolio companies are not active in any of the three business areas of Italtel. Consequently the notified concentration will not have any horizontal impact on any market. There are no vertical relationships with Italtel business, too, with the limited exception of the telecommunications measuring and testing equipment market on which the TTC-WWG division of the portfolio company Dynatech is active. Dynatech can be viewed as a significant competitor. Its most important competitors are the two US companies Agilent Technologies (seperated from Hewlett Packard in 1999), Textronic and Anritsu, a Japanese company, so that TTC-WWG faces significant competition.

¹ Turnover calculated in accordance with Article 5(1) of the Council 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.

14. Consequently, the proposed concentration does not lead to the creation or strengthening of a dominant position as a result of which effective competition would be significantly impeded in the common market and the EEA or a substantial part thereof.

V. Ancillary Restraints

15. Telecom covenants not to compete with the current businesses of the Italtel companies for a period of three years. This non-competition clause is necessary to protect the buyers' investment in Italtel as Italtel possesses relatively few significant patents and a substantial part of the value of their businesses is comprised of know-how and goodwill. The clause appears acceptable as directly related and necessary to the concentration in accordance with the terms of the relevant Commission Notice.

VI. CONCLUSION

16. 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 by N. KINNOCK, Member of
the Commission