

*Case No IV/M.410 -  
Kirch / Richemont /  
Telepiu*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 02/08/1994

*Also available in the CELEX database  
Document No 394M0410*



# COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 2.8.1994

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

TO THE NOTIFYING PARTIES

Subject: Case IV/M. 410 - KIRCH /RICHEMONT /TELEPIÙ  
Notification of 1.07.1994 pursuant to Council Regulation (EC) No. 4064/89.

1. This notification concerns the proposed acquisition by Compagnie Financière Richemont AG (Richemont) and the Kirch Group of joint control of Telepiù S.r.l.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of application of Council Regulation No. 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 OPERATION AND THE PARTIES

3. On 27th June 1994 Compagnie Financière Richemont AG (Richemont), through its subsidiary Ichor, [...] <sup>(1)</sup>, signed a sale and purchase agreement by which Richemont acquired the whole share capital of CIT, whose unique asset is 25% of the shares of Telepiù. On the same day a shareholders agreement was signed between Kirch, through its subsidiary Ptb Pay TV Beteiligungs GmbH, which holds 34,72% of Telepiù's share capital and Richemont, whereby they will jointly control Telepiù. The other principal shareholders in Telepiù are the Italian property group Fin. Tel. S.r.l. (part of Della Valle Group), which holds 23,39% of the share capital, and Reti Televisive Italiane SpA (10%), a subsidiary of the Italian Group Fininvest.
4. The group Richemont is a Swiss-based holding company which controls Rothmans International p.l.c. and Luxco SA. Rothmans International produces and distributes tobacco products including the international brands Rothmans, Peter Stuyvesant, Dunhill and

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<sup>(1)</sup> [...] deleted business secrets

Cartier. Luxco has controlling interests in Cartier Monde SA., through which it controls Cartier, Piaget and Baume & Mercier and A Sulka Company.

Within the television broadcasting industry, Richemont has a 50% interest in Network Holdings which holds 90% of the voting rights in FilmNet. FilmNet is a Luxembourg holding company active in the pay-TV business in Belgium, the Netherlands, Denmark, Norway, Sweden and, though an agent, in Finland. The remaining 50% of the capital of Network Holdings is held by Electronic Media Network Limited, a South African pay-TV operator.

5. The Kirch Group is active in film and television production and broadcasting in Germany. As a distributor, it holds a very important library of German language films. In the field of broadcasting, it has interests in two commercial and one pay-TV channel in Germany: the commercial channels SAT-1 (43%) and DSF (24,5%) and the pay-TV channel Première (25%). The Kirch Group also owns a 25% shareholding in the Spanish commercial channel Gestavision Tele Cinco S.A. and a 34,72% shareholding in Telepiù.
6. Telepiù Srl is the holding company of the undertakings which operate the three television channels: Prima TV Spa (Telepiù 1), Europa TV Spa (Telepiù 2) and Omega TV Spa (Telepiù 3). Telepiù has the control of Atena Servizi Spa, which operates the business of subscriber management and service, Telepiù Pubblicità Srl, sales company and Gamma Televisiva Srl, which owns the group's television production studio.

## II. CONCENTRATION

7. As a result of this transaction, Richemont and Kirch will be Telepiù's principal shareholders. They have agreed that the number of the members in the board of Telepiù shall be increased to 12 and that each of them shall be represented by 3 directors. They have committed themselves to convene a shareholders meeting to elect a new board of directors within 60 days of the completion of the sale/purchase agreement and to vote accordingly in that meeting. The shareholders meeting will appoint new directors by a simple majority vote.
8. The parties have agreed that the President of the Board shall continue to be a representative of Kirch; that the present managing director shall continue in office and that a member of the Board nominated by Richemont shall also be managing director.
9. Clause II. of the shareholders' agreement sets forth a special mechanism in order to ensure that the parties reach an agreement in all decisions considered to be essential, which include:
  - appointment/ dismissal of the President of the Board of Directors and of the key management of Telepiù;
  - adoption of the annual budget of Telepiù.
  - approval of the annual accounts.

Regarding all other matters of interest for Telepiù, the parties have agreed to use their best efforts to coordinate their voting in the shareholders' meeting and board of directors.

10. With regard to resolutions of the shareholders meeting, the parties commit themselves to execute the votes attaching to their respective shareholdings in accordance with their joint decision.
11. As a result of the above, the parties will together have the right at least to veto the principal decisions referring to Telepiù's activities. Therefore they will have joint control of Telepiù.
12. Telepiù is an existing company which provides television broadcasting services in Italy. It will therefore continue to perform on a lasting basis all the functions of an autonomous economic entity.

The acquisition of joint control of Telepiù will not give rise to coordination of the competitive behaviour between the parties, since the television activities of Richemont (through FilmNet), the Kirch Group and Telepiù are carried out in separate geographic markets as will be seen below.

13. Thus the acquisition by Richemont and Kirch of joint control of Telepiù constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

### III. COMMUNITY DIMENSION

14. The undertakings have a combined aggregate worldwide turnover in excess of 5,000 million ECU. In particular, Richemont achieved a turnover of 4,817 million ECU in 1993, the Kirch Group [...] <sup>(2)</sup> and Telepiù 125 million ECU. Richemont and the Kirch Group have a Community wide turnover of more than 250 million ECU. They do not achieve more than two thirds of their aggregate Community-wide turnover in one and the same Member State. The operation has therefore a Community dimension.

### IV. COMPATIBILITY WITH THE COMMON MARKET

#### The relevant product market

15. The present operation concerns the market for television broadcasting, and more specifically, the segment of pay-TV.

In order to determine whether pay-TV should be regarded as distinct from free-access channels, a certain number of elements should be taken into account. First, pay-TV is primarily financed by subscription fees, whereas free-access television is financed by public authorities and/or by advertising revenue, depending on whether the channel in question is State-owned or a private commercial one. Although a pay-TV channel may take advertising, it is of lesser importance.

Secondly, pay-TV offers a more specialised programme-mix in order to meet the requirements of a target audience. This can consist of live coverage of sport events, first television screenings of recent films or well-reputed works, etc. In most countries pay-TV channels acquire the right to broadcast major new films only after they have been on general release on cinemas (the so-called theatrical window) for a period of 6 to 12 months, and after they have been made available on video (video window) for around 6

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<sup>(2)</sup> [...] deleted business secrets

to 10 months once the theatrical window has expired. The pay-TV channel will broadcast those films (pay-TV window) within a period of 6 to 12 months, after which they will become available for free- access channels.

16. The above factors seem to lead to the conclusion that pay-TV represents a separate market. However, some substitutability exists between pay-TV and free access television, since the value of the former depends directly on the alternative viewing possibilities. In any event, the present case does not raise competition concerns even in the narrowest possible market. Consequently, the precise definition can be left open.

#### Geographic reference market

17. The television broadcasting market is undergoing a strong process of development and geographical expansion. This trend is in particular due to the growing importance of satellite television, which enables viewers (through a cable network or a dish) to have access to a greater range of television channels than when only terrestrial broadcast is available. Notwithstanding these technical advances, conditions of competition in this sector seem to vary considerably from one Member State to another for the following reasons:
- a) Programme rights to broadcast are purchased by television channels on a national or language basis. This applies to films, sports and other general interest events, such as live concerts.
  - b) The rights to broadcast major new films are subject to the rules in each country on the time periods for release in cinemas, video, pay-TV and free-access television (windows). These rules are set forth by law or by industry and the duration of the windows varies from country to country. In addition, film producers often release films to be broadcast in different Member States at different times.
  - c) The programme- mix of the main television channels in the Community is designed on the basis of the cultural interests of a national or regional audience. Although pan- European channels are starting to develop, their success in terms of viewers is so far very limited. As regards pay-TV channels, they usually target a specific audience on a national basis. For example, Telepiù substantially increased its number of subscribers after it purchased the rights to show certain football league matches live. Even FilmNet, which has a wide international coverage, has adapted its second channel, FilmNet Plus, to national needs, so that the programmes broadcast in Belgium are not the same as those broadcast in the Netherlands.
  - d) Language differences throughout the Community still hinder a wide expansion of television channels outside their home country. For the same reason foreign programmes broadcast by the main television channels in their home country are often shown in the language of that country after having dubbed them. This is the case in countries such as Italy, France or Spain. In other countries (the Netherlands, Scandinavia) foreign programmes are usually broadcast in the original language including subtitles.
  - e) In the case of pay-TV, the setting-up of a subscriber management system requires an extensive customer service organisation in the country where subscribers are located.

In the light of the above, it can be concluded that although technical advances have significantly contributed to a gradual process of internationalisation, television broadcasting markets remain mainly national or regional (language-based).

### Assessment

18. The present transaction concerns the television broadcasting market in Italy, the only country where Telepiù operates and has subscribers.

There are six principal television channels in Italy, of which three are State-controlled (Rai 1, Rai 2 and Rai 3) and three are commercial channels controlled by the Fininvest group (Canale 5, Italia 1 and Retequattro). These channels account together for 90% of total viewing time. The remaining 10% includes minor private national networks and a number of local television channels.

The Telepiù group operates three channels in Italy: two pay-TV channels (Telepiù 1 and 2, focusing on films and sports respectively) and a free-access channel (Telepiù 3), whose future is uncertain due to recent changes in the legislation in Italy. The group derives [...] <sup>(3)</sup> of its revenue from subscriptions, the rest being advertising. It currently has 570.000 subscribers.

19. Under the legislation adopted in Italy in August 1993, Telepiù's three channels may only continue to use terrestrial frequencies to broadcast for four more years and must begin to use alternative transmission means after two years. Currently, cable networks are limited in Italy and the number of satellite dishes is estimated at around 200.000. Under these circumstances, the need to adapt to a cable or satellite transmission system constitutes a technical and economic difficulty for the development of Telepiù.
20. None of Telepiù's parents are present in the Italian television market. Rlichemont, through its shareholding in FilmNet, has television broadcasting activities only in Belgium, the Netherlands, Denmark, Norway, Sweden and Finland. The Kirch group's main interests in the television sector are in Germany. Consequently, the present operation will not lead to any addition of market share. Furthermore, the national character of the television market seems to show that Kirch and FilmNet are not in a particularly advantageous position in order to enter the Italian market on their own with the setting-up of a new pay-TV channel as compared to other television operators in the EC. Therefore, the present transaction does not amount to an appreciable elimination of potential competition in the television market in Italy.
21. Although the Kirch Group holds a very significant portfolio of feature films in German language, its rights to distribute them to pay-TV and free-access channels are limited to German-speaking territories. Consequently, no significant vertical effects can be expected as a result of this transaction.

### V. ANCILLARY RESTRAINT

22. The parties have agreed not to compete in the following fields of business for the territory of Italy: Pay-TV channels, subscriber management systems for pay-TV and placement of satellite platforms for pay-TV broadcasting purposes. This clause is to be considered as

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<sup>(3)</sup> [...] more than 75%

a restriction directly related and necessary to the implementation of the concentration and is covered by the present decision.

## VI. CONCLUSION

23. Given that the present transaction will not lead to any addition of market shares between the parties, as well as the relatively small operations of Telepiù in the Italian market, the proposed concentration will not create or strengthen a dominant position as a result of which effective competition will be significantly impeded in the common market or EEA or in a substantial part thereof.

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For the above reasons, the Commission decided not to oppose the notified concentration 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 No. 4064/89.

For the Commission