

***Case No COMP/M.4477 -
SES ASTRA /
EUTELSAT / JV***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 25/07/2007

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25-VII-2007

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

**Subject: Case No COMP/M.4477 – SES ASTRA/EUTELSAT/JV
Notification of 20 June 2007 pursuant to Article 4 of Council Regulation
No 139/2004¹**

1. On 20 June 2007, the Commission received a notification of a proposed concentration pursuant to Article 4 and following a referral pursuant to Article 4(5) of Council Regulation (EC) No 139/2004 ("Merger Regulation") by which the undertakings SES Astra S.A. ("Astra", Luxembourg) and Eutelsat S.A. ("Eutelsat", France) acquire within the meaning of Article 3(1)(b) of the Council Regulation joint control in a newly created company constituting a joint venture ("JV") by way of purchase of shares.

I. THE PARTIES

2. Astra offers satellite-based broadcasting and broadband solutions which include broadcasting of television and radio programmes, internet access and network services.
3. Eutelsat, like Astra, is a satellite operator offering satellite-based broadcasting and broadband services.

¹ OJ L 24, 29.1.2004 p. 1.

II. THE OPERATION

4. Under the proposed transaction, Astra and Eutelsat would create a joint venture which would be active in the provision of infrastructure for both broadcasting content to mobile devices and two-way voice and data communication services to mobile devices. Astra and Eutelsat would each hold 50% of the shares in the JV.

III. CONCENTRATION

5. Pursuant to the memorandum of agreement (“MoA”), Astra and Eutelsat each has the right to appoint an equal number of directors to the board. Important business decisions including, *inter alia*, the approval of the business plan, the approval of major financial transactions and the appointment of senior management would require a unanimous vote by the board of directors.
6. The JV’s business plan provides for sufficient resources with respect to staff, finance and assets. The JV does not as yet hold the required license in the 2 GHz S-Band but it appears to be well placed to secure such in 2008. It has access to high priority filings at the International Telecommunication Union (“ITU”)². In any case, even if the JV is not awarded frequencies in the 2 GHz S-Band, the parties would provide broadcasting services to mobile devices via their satellite payload which they have already ordered.
7. Although it would have contractual relationships with its parents on an arms-length basis, the provisions in the MoA would allow the conclusion that the JV would be able to conduct its commercial activity independently from its parents.
8. On basis of the above, one can conclude that the JV would constitute a full-function joint venture performing on a lasting basis all the functions of an autonomous economic entity. Hence, the proposed transaction constitutes a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

IV. COMMUNITY DIMENSION

9. The notified concentration does not meet the turnover thresholds provided in the Merger Regulation.
10. On 16 March 2007, the Commission received from the parties a referral request pursuant to Article 4(5) of the Merger Regulation which has been transmitted to all Member States. Since no Member State expressed disagreement with respect to referring the case to the Commission, the concentration is deemed to have a Community dimension.

² ITU is the body to which an organisation must apply if it requires a licence to use satellite frequency spectrum. The JV entered into an agreement to use Alcatel Mobile Broadcast's licence application once it is awarded to them. While three other applications have a higher priority than Alcatel's application, two of them are unlikely to be put into operation before the expiration of the relevant deadline and with respect to the other filing, the company concerned lacks the funds to launch further satellites in orbit to allow them to begin commercial operations.

V. COMPETITIVE ASSESSMENT

11. Purpose of the JV would be to provide an infrastructure that allows broadcasting content to be delivered to mobile devices. Through the same infrastructure, it may also provide two-way voice and data communication services for handheld mobile devices³. In both instances, the JV will sell wholesale airtime to businesses that want to sell multi-media content to end users and which is delivered to their mobile devices⁴. The business plan, however, does not allow for the operation of the JV as a provider of multi-media content.

A. Infrastructure for broadcasting content to mobile devices

Broadcast infrastructures

12. Typically, service providers such as TV broadcasters or mobile phone network operators offer subscription services to consumers which deliver multi-media content to their mobile (handheld) devices. The JV will provide the necessary infrastructure needed for such a service.
13. At present, mobile telephony network operators ("MNO") already distribute multi-media content to consumers through their 3G/UMTS networks which are configured as a uni-cast type of platform (sometimes called a point-to-point infrastructure)⁵. Another way of broadcasting is in "multi-cast" (or point-to-multipoint) mode where the same multi-media content is transmitted continuously to the end users without any request⁶. With the increasing memory storage capacity of handheld devices, they will be able to store sufficient data in multi-cast mode. The end user will simply select from the various content available.

Relevant product market

14. The notifying parties submit that the JV's activities will be in the emerging market for the provision of infrastructure for broadcasting content to handheld devices. Whilst the notifying parties' principal competitors rely solely on terrestrial infrastructures⁷, the JV's infrastructure would offer a hybrid infrastructure where the satellite not only broadcasts content directly to the mobile device but, in areas where reception is difficult,⁸ the broadcast signal is repeated through terrestrially-based antennas.

³ However, this activity is not primary in the business focus of the JV.

⁴ According to the notifying parties, a wide range of businesses could become customers of the JV's infrastructure service *inter alia* mobile phone operators, virtual mobile telephony operators, TV broadcasters comprising free-TV and/or pay-TV operators, TV platform operators.

⁵ In a uni-cast platform, the (multi-media) content is only transmitted to the end user upon request.

⁶ By analogy, a typical example of a broadcast application is the broadcasting of TV signals which the end user can view on its TV set.

⁷ In case of mobile phone network operators, the 3G/UMTS networks

⁸ Satellite reception can be difficult indoors or in what are described as "urban canyons".

15. For this purpose, the JV applied for the 2 GHz S-Band frequency spectrum ("2 GHz S-Band") to use for their satellite payload. The notifying parties argue that whereas the 2 GHz S-Band represents only a small fraction of the satellite frequency spectrum, it is sufficient to enable the broadcast of content to mobile devices. Several technical standards exist which allow broadcasting of content via satellite or in combination with terrestrial antennas⁹. Apart from the frequency spectrum suitable for hybrid/terrestrial infrastructures, spectrum is also available for purely terrestrial based infrastructures. This is not only mobile phone spectrum but also spectrum for digital terrestrial TV or other media. Today's numerous technical standards all allow for broadcasting content to mobile devices¹⁰.
16. Respondents to the Commission's market investigation (i.e. MNOs and TV broadcasters operating in countries where the JV initially intends to develop its business) took the view that a sufficient number of different technology standards would be available to broadcast content to mobile devices. Hence, the relevant product market to consider in the present case would comprise both terrestrial-based infrastructures and hybrid infrastructures through which content will be broadcasted to mobile devices. Such a definition would also include 3G/UMTS and its future technological evolution with respect to broadcasting content to mobile devices.

Relevant geographic market

17. The notifying parties submit that such a market is likely to be national in scope, although clearly the footprint of the satellite signal is at least EEA wide. Potential customers exploiting the infrastructure usually operate within the territory of only one Member State. Frequencies and transmission standards which are necessary to operate the terrestrial part of the infrastructure vary between Member States.
18. In their replies, respondents to the market investigation provided a less clear geographic distinction which largely depended on their business focus. Whereas most MNOs tended to agree with the notifying parties' view, some TV broadcasters saw the geographic scope as being supra-national or even EEA-wide. However, the precise definition of the geographic scope can be left open since even on a national definition the proposed operation would give no raise to competition concerns.

Assessment of the market for broadcasting content to mobile devices

19. Only the JV will be active in the market for broadcasting content to mobile devices, whereas the JV's parents have activities in broadcasting content to fixed devices which belong to a distinct market.
20. On the basis of the market investigation, it can be concluded that broadcasting content to mobile devices is possible through different infrastructures. End users would notice no difference with respect to the different underlying technologies when viewing content on their mobile devices. Businesses, who want to offer broadcasting services to end

⁹ For example, S-DMB (Satellite – Digital Multimedia Broadcast), DVB-SH (Digital Video Broadcasting – Satellite services to handheld), E-SDR (European Satellite Radio Broadcasting System)

¹⁰ DVB-H (Digital Video Broadcasting – Handheld), T-DMB (Terrestrial – Digital Multimedia Broadcast), MediaFLO (Media Forward Link Only), ISDB-T (Integrated Services Digital Broadcasting – Terrestrial

users, would have a choice of alternative providers of the necessary infrastructure. Since handheld devices will become available on the market in mass volume only when transmission standards are known and harmonised within the EU¹¹, (as in the case with the introduction of the 2G/GSM standard for mobile telephony) end users will be able to use their mobile handsets to receive broadcasted content under the given infrastructures.

21. Whereas the JV is not yet active in this market, in some Member States other players have already started to deploy an infrastructure for broadcasting content to mobile devices. In Germany, for instance, *Mobiles Fernsehen Deutschland* provides mobile broadcasting services via a test license for an L-Band-based Digital Multimedia Broadcast service. In the UK, *Virgin Mobile* has been broadcasting TV services for mobile phones since October 2006 using the DAB-IP technology. *3 Italy*, a mobile broadcast network operator, has been providing broadcasting services to handheld devices since May 2006 using DVB-H technology. In Finland, the platform operator *Digita* (in cooperation with TeliaSonera) commercially launched mobile TV services through a terrestrial broadcasting network using the DVB-H technology.
22. According to the notifying parties, competitors of the JV are likely to be MNOs. The market investigation confirmed the parties' view that MNOs would be the most likely competitors to the JV and some respondents would also expect satellite operators themselves to enter such mass market in the future. Furthermore, the notifying parties also expect other operators of mobile transmission networks, e.g. WIMAX operators, to use their terrestrial base to complement their services by offering multi-media content to end users.
23. Whereas MNOs are currently capable of offering multi-media content to end-users, their infrastructure (e.g. the 3G/UMTS network) has limitations with respect to mass distribution because of the uni-cast topology of their networks (which is difficult to operate in broadcast mode). However, some MNOs, who replied to the market investigation, expect evolution in the 3G/UMTS technology which would offer better support for broadcasting content to mobile devices.
24. Since the JV's satellite payload would only enter into operation as from 2009, estimating precise market shares would appear to be a difficult exercise for the notifying parties. Depending on the underlying source (which estimates market volume according to expected subscriber numbers for consumption of mobile content) they calculate that the new entity's market share would be in the range of between 10% and 21%. In any event, the JV would face strong competition be it from MNOs or from other alternative operators of broadcast infrastructure.
25. Some TV broadcasters expressed concerns that the JV might be able to impose technical restrictions on the infrastructure and thereby foreclose competitors. However, the JV will only provide the technical means to broadcast content data based on existing standards (e.g. DVB-H and/or DBV-SH) and transmission technologies which the customers of the JV will use for their own mobile broadcasting platform. Since the JV will not themselves enter into the business of selling content to end users, it will implement a neutral technical transmission platform that would allow the servicing of a multitude of customers. Furthermore, since the transmission standards for broadcasting

¹¹ Recently, the Commission expressed its favour for the DVB-H standard for mobile TV as the sole technology standard within the EU.

content to mobile devices are likely to be set by national authorities and/or in collaboration at Community-level, the JV would not be in a position to impose its own standards neither on the infrastructure platform nor on the handheld devices.

26. With respect to the use of the 2 GHz S-Band frequency spectrum, some respondents to the market investigation were concerned that the JV would consume the entire spectrum available at the 2 GHz S-Band. However, the ITU procedures require formal co-ordination in the presence of other filers and this takes place among the representing ITU member state(s)¹². Its outcome, however, cannot be predicted at this stage.
27. In any event, i.e. even if the JV receives the entire spectrum, the JV is not in a different situation from any other player which could be granted the entire spectrum. However, even in such a case, the available technical standards which would be used for broadcasting content to mobile devices would allow the use of frequency bands other than the 2 GHz S-Band. If, on the other hand, the JV does not receive the entire spectrum, there are other satellite operators, such as the undertaking Terrestar, which has declared its intention to apply for access to the 2GHz S-Band and to implement the infrastructure to broadcast to mobile devices. Under these circumstances, the creation of the JV would not exclude upcoming competition even for broadcasting to mobile devices on the basis of the 2GHz S-Band.
28. On the above basis, it can be concluded that the proposed operation would not give rise to serious competition concerns in the market for the provision of infrastructure for broadcasting content to mobile devices.

B. Infrastructure for two-way voice and data communication services

29. Apart from the JV's primary business, as discussed above it may also provide satellite-based infrastructure for two-way mobile voice and data communication services for mobile (handheld) devices for maritime, aeronautical and land-based applications.

Relevant product market

30. The notifying parties refer to previous Commission's decisions¹³ in which similar types of services for the provision of satellite-based communication content to handheld terminals were identified. Replies to the market investigation largely confirmed the notifying parties' view of the relevant product market. In particular, most respondents would include Very Small Aperture Terminals ("VSAT") as part of such a market. For the purpose of the present case, however, the precise delineation of the relevant product market can be left open since no competition concern would arise from the proposed concentration.

Relevant geographic market

¹² According to the notifying parties, a number of formal co-ordination requests were submitted to ITU and about thirteen different projects on mobile satellite services are intended to operate in the 2 GHz S-Band. For instance, TerreStar Global intends to build their next generation mobile communications network integrating satellite and terrestrial technologies to offer Telematic services by exploiting some spectrum of the 2 GHz S-Band. In any event, technical coordination is necessary to avoid interference within the spectrum allocated to applicants.

¹³ Case No IV/35.518 – Iridium, IV/35.296 - Inmarsat

31. According to the notifying parties, the geographic scope of the product market would be of a global nature since many of the present satellite operators offer such services world-wide. While many respondents to the market investigation shared the notifying parties' opinion, only a few replies favoured a narrower scope at EEA-level. In any event, the precise definition can be left open, since the proposed operation would raise no competition concerns under any geographic definition.

Assessment of the market for two-way voice and data communication services

32. Although the above service is not central to the JV's business plan, the notifying parties have estimated the JV's market share to be below 15%. Would-be competitors¹⁴ are Inmarsat, enjoying a market share of approximately [40-50]%, Thuraya with approximately [20-30]%, Iridium with about [10-20]%, Globalstar with approximately [10-20]%, and others accounting for the remainder of roughly [0-10]%. In view of the presence of strong competitors, the proposed transaction is unlikely to give rise to serious doubts in the market for the provision of infrastructure for two-way voice and data communication services.

C. Upstream and neighbouring activities of the JV's parents

Upstream activities

33. Both Astra and Eutelsat offer services - which the notifying parties consider to be upstream of the JV's activities - that the JV would or could source from its parents: namely satellite payload operation services and satellite tracking, telemetry & command services. Since they only have negligible activities in these areas with regard to 3rd parties¹⁵, the contribution from the JV in terms of revenues would represent a negligible increase of market share for any of the parents.

Neighbouring activities

34. Astra's and Eutelsat's core business is the provision of satellite transponder capacity for broadcasting services to fixed devices and also for two-way communication services for fixed devices. Astra leases out transponder capacity mostly to TV broadcasters, while Eutelsat sells primarily to telecoms operators who either use it themselves, or in turn resell it to TV broadcasters and private customers. In both services, the signals to fixed devices differ from those to mobile devices with respect to many parameters, e.g. resolution, compression, bandwidth, time slicing, and hence the JV's services would not be able to substitute that of the parents.

¹⁴ Which are the other world-wide active satellite operators

¹⁵ Typically, satellite operators carry out these services only for their own satellite fleets. Occasionally, smaller operators of satellites outsource such services to other larger operators.

Assessment

35. The JV's parents' activities may be considered as neighbouring markets of the one in which the JV will develop its activities. The question is therefore whether the creation of the JV would lead to co-ordination of the parents' activities pursuant to Article 2(4).
36. Firstly, the revenues generated by the JV would be considerably smaller in the foreseeable future than those actually generated by any of the parents. Therefore this in itself would not represent a sufficient incentive to co-ordinate.
37. Secondly, the frequency spectrum which the JV will avail of is much smaller compared to any spectrum which SES Astra or Eutelsat currently uses to provide their broadcasting services to fixed devices.
38. Some respondents to the market investigation raised concerns that the proposed operation might lead to a co-ordination of the activities of the parent companies through the offering of bundled services with the JV. In view of the fact that the JV would be active in an emerging market in which it has to compete with established MNOs, the possibility of imposing bundled offerings on their customers would appear to be unlikely given that the JV would have relatively small market shares for many years. A possible bundling practice could theoretically work if transponder leasing agreements were to be concluded with the same customers as those who entered into agreements with the JV (and if these agreements were to be renewed simultaneously). However, customers of the JV are not necessarily the same as those of the parents. Transponder leasing agreements are typically concluded between satellite operators and TV broadcasters or telecommunication companies (for their fixed line services), while for the JV, the typical customers would be MNOs. Furthermore, transponder leasing agreements between either of the parents and TV broadcasters or telecommunications companies are not of the same duration as those envisaged between the JV and its customers.
39. It can therefore be concluded that the proposed operation would not lead to co-ordination of the competitive behaviour of both Astra's and Eutelsat's own operations under Article 2(4) of the Merger Regulation.

VI. CONCLUSION

40. 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
Franco FRATTINI
Member of the Commission