

***Case No COMP/M.5014 -
EQT / SAG***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 13/02/2008

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13-II-2008

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 party:

Dear Sir/Madam,

**Subject: Case No COMP/M. 5014 – EQT/ SAG
Notification of 09.01.2008 pursuant to Article 4 of Council Regulation
No 139/2004¹**

I. INTRODUCTION

1. On 09.01.2008, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the undertaking EQT V Limited ("EQT", Channel Islands) which is part of the EQT-group acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of the undertaking SAG GmbH ("SAG", Germany) by way of purchase of shares.

II. THE PARTIES

2. EQT is a private equity fund with a portfolio of companies active in various industries, such as telecoms, engineering, medical devices, service outsourcing, technology and branded consumer products.
3. SAG is a German private limited company manufacturing and providing energy-related products and services to the utility and industry sector. The services offered by SAG Group include design, construction, refurbishment and maintenance of networks,

¹ OJ L 24, 29.1.2004 p. 1.

public lighting and traffic systems, design, repair, assessment of and construction of transmission lines and substations, and geodata based support services. In 2006, SAG achieved a global turnover of EUR [...] million, mainly in Germany ([...] % of its Community-wide sales).

III. THE OPERATION AND CONCENTRATION

4. Pursuant to a Sale and Purchase agreement signed by the parties on 07.12.2007, EQT will acquire 100% of SAG's share capital. This will confer sole control to EQT over SAG and therefore constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. COMMUNITY DIMENSION

5. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion² (EQT, EUR [...] million; SAG, EUR [...] million). Each of them have a Community-wide turnover in excess of EUR 250 million (EQT, EUR [...] million; SAG, EUR [...] million), 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 within the meaning of Article 1(2) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

6. The concentration does not give rise to any horizontal overlap between the parties. However there is one vertical relationship between SAG and a company controlled by EQT, namely Kabel BW, which is a customer of SAG in Germany for cable related works services and IT grid management and geographic information services

Upstream market where SAG is active

7. Among its various activities, SAG provides cable companies with products and services related to the cable network such as servicing, repair and minor construction work as well as planning and documentation of infrastructure networks and supporting IT solutions. Cable companies represent only minor customers to SAG, generating less than [0-5] % of its global turnover.

² 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).

8. The notifying party submits that, on the basis of a market defined as the provision of services³ to cable networks in Germany, which would be a narrow product market definition as it would exclude similar services provided to companies in telecommunications and other sectors, SAG's market share is [0-5] %.

Downstream markets where Kabel BW is active

9. Kabel BW is a German cable network operator providing transmission of TV and radio broadcasting signals, and to a lesser extent, internet and telephone services mainly operating in Baden-Württemberg.
10. Markets for cable television in Germany were assessed in previous national⁴ and Community⁵ decisions and three separate product markets were identified: the market for the transmission of broadcasting signals, the market for the provision of TV and radio signals network level 3⁶ operators to network level 4⁷ operators and the market for the provision of TV and radio signals to end customers. According to the market delimitation retained in those cases, each cable network operator holds a local/regional monopoly.
11. Therefore, although Kabel BW is the smallest player of the three regional German cable network operators and its market share would be lower than [0-10] % on the basis of a market including the transmission of radio and television signals in Germany, which the notifying party submits is the relevant market, Kabel BW's market share on a regional basis is 100% on each of the three relevant product markets for feed-in services, signal delivery and end customers.
12. The proposed transaction gives rise to an affected market as the acquiring company holds, through its subsidiary Kabel BW, a market share above 25% in the three relevant downstream regional markets for the provision of cable television described in paragraph 10. However, the change brought about by the proposed transaction is limited. Indeed Kabel BW is a relatively small customer to SAG, as SAG sales to Kabel BW accounts for less than [10-20] % of SAG's total sales of services to cable operators. Other cable operator customers of SAG for same services include Deutsche Telekom, Arcor and Iesy Hessen. Therefore the incentive for SAG to restrict access to its services to other customers seems limited.
13. Furthermore, it seems unlikely that post merger SAG would have the ability to restrict access to services to cable networks. Indeed SAG's market position on the upstream market for the provision of services to cable networks is minimal ([0-5] %) and there are several larger alternative suppliers such as Siemens, Areva, ABB, Demaz Primaville and EGE Montaze.

³ Services include for the purposes of this case servicing, repair to and minor construction work on the cable network and IT grid management and geographic information services.

⁴ See decisions B7- 22/05, June 20, 2005 – Ish/Iesy and B7 – 38/05, June 21, 2005 –BC Patners/Ish of the German Federal Cartel Office.

⁵ See Commission decision Art. 9(3) in case N° COMP/M.3271 – Kabel Deutschland/Ish.

⁶ Network level 3 corresponds to the cables running from the cable head-end to the boundary of a given plot of land.

⁷ Network level 4 is a network infrastructure between such boundary and the junction boxes of TV-households.

14. In view of the absence of concerns raised by third parties and the limited change brought about by the proposed transaction, the Commission concludes that the proposed operation does not raise any competition concerns.

VI. CONCLUSION

15. 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