

*Case No IV/M.584 -  
Kirch / Richemont /  
Multichoice / 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: 05/05/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 05.05.1995

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.584 - Kirch/Richemont/Multichoice/Telepiù  
Notification of 28.03.1995 pursuant to Article 4 of Council Regulation No 4064/89

1. On 28.03.1995 Compagnie Financière Richemont AG (Richemont), MultiChoice Limited and Ptb Pay-TV Beteiligungs-GmbH (Ptb), belonging to the Kirch group, notified an operation by which they will acquire 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, acquired the whole share capital of CIT, whose unique asset was 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 held 34,72% (currently 40,73%) of Telepiù's share capital and Richemont, whereby they jointly control Telepiù. The other principal shareholders in Telepiù were 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. The case was notified to and cleared by the Commission (case No. IV/M.410 - Kirch/Richemont/Telepiù)
4. Under the present arrangements Richemont and MultiChoice will merge their respective pay-TV business worldwide in PayCo, a company jointly controlled by them. As part of this transaction, Richemont will contribute its interest in Telepiù to PayCo. As a result PayCo will replace Ichor in the shareholders agreement in relation to Telepiù. PayCo will

be jointly controlled by Richemont and Multichoice and, therefore, Telepiù will be jointly controlled by Richemont, the Kirch group and MultiChoice.

5. Richemont is a Swiss-based holding company which exercises financial and operational control over companies operating throughout the world primarily in the fields of tobacco and luxury goods. Within the television broadcasting industry, Richemont has a 50% interest in Network Holdings (Nethold) which holds 100% of the voting rights in FilmNet SA. FilmNet is a Luxembourg holding company active in the pay-TV business in Belgium, the Netherlands, Denmark, Norway, Sweden and, through an agent, in Finland. The remaining 50% of the capital of Nethold is held by MultiChoice.
6. MultiChoice is a South African based company. Multichoice was set up in October 1993 as a result of the sale by Electronic Media Network Limited (M-Net) to Multichoice of its subscriber management services (SMS) and Communications Technologies (Comtech) divisions, as well as its African investments outside South Africa. MultiChoice's interests in the television broadcasting industry in the EEA territory are held through a 50% interest in NetHold which, in turn, owns FilmNet.
7. 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 40,73% shareholding in Telepiù.
8. Telepiù 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.
9. Under the same arrangements Richemont and Multichoice will contribute all their respective television interests to a newly formed jointly controlled company, PayCo. NetHold will contribute to PayCo its 100% interest in the following operating companies: FilmNet SA, Multichoice Kaleidoscope (Europe), Multichoice Development, Irdeto, Pronet. These transfers from NetHold to its wholly-owned subsidiary PayCo will constitute intra-group transactions with no effects on the control of the companies concerned and therefore no impact on competition in the markets concerned. Multichoice will contribute to PayCo some African companies and some African investments, whose activities and turnover is achieved exclusively in the African continent. The transfer to PayCo of the above African activities will therefore not affect competition within the EEA territory

## II. CONCENTRATION

10. As a result of this transaction, PayCo will replace NetHold as the holding company for the television interest of Richemont and MultiChoice. PayCo will have ten directors. Richemont and MultiChoice will each nominate three of the six non-executive directors. The executive directors will be appointed and removed by unanimous decisions of the directors of PayCo. All material decisions, including in particular the approval of the business plan of the PayCo group, the appointment and removal of the chief executive

officer, the chief financial officer and the chief operating officer of PayCo (who are executive directors of PayCo) and of the fourth executive director of PayCo require the unanimous consent of all the directors present at a meeting of the board of directors of PayCo or, where appropriate, the unanimous consent of the general meeting of PayCo. Under clause 25 of the Agreement if the directors of PayCo should fail to reach unanimity on the above mentioned material decisions, the matter may be referred to the directors of NetHold for a decision. The board of directors of NetHold is composed of four members, of whom two will be Richemont directors and two will be Multichoice directors. According to the Agreement decisions of the board of directors of NetHold must be unanimous. Thus PayCo will be jointly controlled by Richemont and MultiChoice.

11. The shareholders' Agreement of 27th June 1994 between Ichor and Ptb will remain unaffected by the proposed concentration except that under the present operation PayCo will replace Ichor as a party to the Shareholders' Agreement. 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.
12. Commission decision (case No. IV/M.410 - Kirch/Richemont/Telepiù) established joint control of Telepiù by Richemont and the Kirch group. As a result of the new arrangements between Richemont and Multichoice, Telepiù will be jointly controlled by Richemont, the Kirch group and Multichoice. 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 and MultiChoice, the Kirch Group and Telepiù are carried out in separate geographic markets as will be seen below.
13. Thus the acquisition by Richemont, MultiChoice 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. 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 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 [...] of its revenue from subscriptions, the rest being advertising. It currently has 680000 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 200000. 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 and MultiChoice, through its shareholding in FilmNet, have 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.

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(1) Deleted business secrets - more than 75%.

22. MultiChoice and Richemont are already partners in the pay-TV business throughout Europe. The proposed transaction is principally an internal restructuring and will have little impact in the present market position of Telepiù as operator of pay-TV in Italy.

#### V. ANCILLARY RESTRAINT

23. Clause 12.4 of the Principal PayCo Agreement provides that neither Multichoice nor Richemont will become interested in electronic media services without first having offered PayCo the opportunity to exploit it. This clause is to be considered as a restriction directly related and necessary to the implementation of the concentration and is covered by the present decision.

#### VI. CONCLUSION

24. 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