EN

Case No IV/M.618 -
CABLE AND
WIRELESS / VEBA

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REGULATION (EEC)No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 16/08/1995

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.08.1995

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b)DECISION

To the notifying parties

Dear Sirs,

Subject : Case N° IV/M.618 - CABLE AND WIRELESS/VEBA
Notification of a concentration pursuant to Article 4 of Council Regulation No 4064/89

1. The above operation concerns the formation of two jointly controlled companies : VEBACOM and Cable & Wireless (Europe) to offer telecommunications services in Germany and the EU (plus Switzerland but excluding the UK) respectively. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and that it does not raise serious doubts as to its compatibility with the common market.

I THE PARTIES

2. Cable and Wireless plc (C&W) is an international provider of telecommunications services with activities in Asia, the Caribbean, Europe, the United States, Japan, the Middle East and Africa. Its European activities are centred in the UK with its majority interest in Mercury Communications, the second telecommunications operator following liberalisation of services in the UK. C&W also has a worldwide strategic alliance called the C&W Federation. The C&W Federation is an umbrella organisation which provides the participants with the opportunity to co-operate by making facilities available and offering joint services to multinational corporate clients.

3. VEBA AG is a German holding company for subsidiaries with activities in electricity, chemicals, oil, trade, transport and services and telecommunications. Its existing telecommunications interests are consolidated in VEBA Telecom. VEBA holds a shareholding of 10.5% in C&W and is a member of the C&W Federation.

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II THE OPERATION

4. The operation consists of the formation of two joint ventures in Europe in the telecommunications sector. The first, VEBACOM, will comprise all the parties' telecommunications interests in Germany (except for certain dedicated telecommunications activities carried out by and for other VEBA AG companies). The second, Cable & Wireless Europe (CWE), will be established in Belgium and will contain substantially all the parties' activities in Europe other than in Germany or the UK. C&W will keep Mercury Communications and the PCN operator Mercury One2One outside the joint ventures.

5. Both parties have activities in PCN networks in Europe. C&W has a 50% stake in Mercury One2One in the UK, a 20% stake in Bouygues Telecom in France and a 5% stake in Mannesmann Mobilfunk GmbH in Germany. VEBA has a 28.375 % stake in E-Plus in Germany and a 15% stake in Bouygues Telecom. The E-Plus stake will be transferred from VEBA to VEBACOM at closing. The two parents' stakes in Bouygues Telecom will be managed by CWE for 12 months after which time they will be transferred to CWE or the new joint venture outlined below. C&W has undertaken, at the request of VEBA to either dispose of or waive its rights in Mannesmann Mobilfunk (except those relating to dividends). The C&W stake in Mercury One2One will remain outside the joint venture.

6. The interests in the Swiss cable TV activity, Cablecom and the French paging business Infomobile will be transferred to CWE following the consent of the other shareholders. In the meanwhile, the stakes will be managed by VEBACOM and CWE respectively. The transfer of shares in the relevant C&W subsidiaries will be completed within three months of closing. C&W also has a holding in Tele 2 (the Swedish PSTN operator) which may also be held for a short period before being transferred to the JV. CWE will also manage the two parents' stakes in Bouygues Telecom (C&W - 20%, VEBA - 15%).

III CONCENTRATION

Joint control

7. The shares in VEBACOM will be held 55% by VEBA (through VEBA Telecom) and 45% by C&W. VEBA will have the management lead in VEBACOM. VEBACOM will have four levels of corporate governance: Shareholders' Meeting, Shareholders' Committee, Supervisory Board and Management Board. Day to day matters will be dealt with at the latter level. Strategic decisions will be taken in the Shareholders' Committee and will require unanimity for *inter alia* future budgets and business plans following the expiry of the start up business plan for 1995/97 and the budget for 1995, capital expenditure of over DM 50 million and the entering into of any interconnection agreement over DM 10 million.

   Accordingly, VEBACOM will be jointly controlled by C&W and Veba.

8. The shares in CWE will be held 50% each by C&W and Veba. Day to day management of CWE will be delegated to a management committee which will consist of at least three people and will be lead by C&W. This committee will manage CWE's affairs in accordance with its business plan and budget.

   CWE's board of directors will manage the companies' ordinary activities and will consist of no fewer than eight directors, four from each parent. Other directors can be appointed with the agreement of both shareholders. The initial business plan (1995/97) and budget have been agreed by C&W and Veba. A revised business plan (1995/99) may be agreed pre-completion. All future business plans and budgets will require the unanimous approval of CWE's board of directors as well as decisions on capital expenditure in excess of DM 50 million and applications for licences from regulatory authorities.

Accordingly, CWE will be jointly controlled by C&W and VEBA.

Autonomous full function entity

9. The activities of the parent companies in the allocated territory will be taken over by the joint venture. VEBA's telecommunications interests in Germany will be taken over by VEBACOM. C&W will transfer activities in the relevant territories to CWE. Both companies' telecommunications businesses in the territories of the joint ventures will be contributed to the joint ventures together with their respective staff. Therefore, the two joint ventures are autonomous entities on a lasting basis.

Absence of co-ordination of competitive behaviour

(a) Withdrawal of VEBA from the market

10. By the operation, VEBA will transfer all of its principal activities in telecommunications into the joint ventures. It will, however, retain certain marginal activities which are integrated into their subsidiaries which operate in other (non-telecommunications) sectors. These include the internal telecommunications activities of the VEBA subsidiary companies (for example the remote measurement of heat consumption by energy companies via telecommunications networks) which are incidental to those companies' activities. They do not undermine VEBA's withdrawal from the telecommunications market.

VEBA's has a non-controlling stake (10.5%) in C&W and a standstill agreement has been signed by which VEBA undertakes not to increase it any further. VEBA has one member of the board of C&W by invitation of C&W.

Accordingly, VEBA does not exercise any control over C&W and therefore it cannot be considered to retain any presence in telecommunications activities other than through the joint venture.

(b) No likelihood of the re-entry of parent companies into the markets of the joint venture

11. As both C&W and VEBA will put all their telecommunications activities (with certain minor exceptions as set out above) in the allocated territories into the joint ventures, it is not economically feasible for the parents to re-enter the market in competition with either of the joint ventures. This is particularly true for C&W which would, outside VEBACOM, lack the local knowledge for a successful entry into the German market alone. This withdrawal from the market is confirmed by the non-compete clause in the VEBACOM agreement which excludes the possibility of a separate entry into the German market by C&W with any other German partner.

In respect of PSTN networks, certain activities in which VEBACOM is expected to be active, may involve the use of telecommunications infrastructure which belongs to the VEBA subsidiary PreussenElektra. According to the agreement, VEBA has specified that it will offer to VEBACOM use of that network on at least open market arm's length terms which it offers to third parties. The right of VEBACOM to use the network cannot be of an exclusive nature since VEBA is obliged to offer use of the PreussenElektra network to third parties by draft German legislation which will implement the Open Network Provision directive (90/387/CE). However, this provision only applies to third party access and not to the possibility of VEBA offering telecommunications services in competition to VEBACOM. Through the alliance with C&W, VEBACOM shall financially and technologically be put into the position to compete in services with Deutsche Telekom and other suppliers from 1998 onwards. Also, VEBA will transfer to VEBACOM both the shareholding and any rights in respect of the proposed joint venture with Deutsche Bahn to establish a fibre optic network. A re-entry of VEBA into the market is therefore equally very unlikely.

The VEBACOM agreement contains a very limited exception to the non-compete clause which allows for the possibility of financial investments by one of the parents alone if and only if they cannot agree within VEBACOM.

For these reasons there is no likelihood of the parent companies re-entering the market of either of the joint venture companies.

(c) Conclusion on absence of co-ordination

12. In the light of the above information, there are no grounds to consider that the establishment and operation of CWE or VEBACOM will lead to the co-ordination of the competitive behaviour of independent undertakings, falling within the meaning of Article 3(2) second sub-paragraph of the Merger Regulation.

Conclusion

13. Thus, the notified operation constitutes a concentration within the terms of Article 3 of the Merger Regulation

IV COMMUNITY DIMENSION

14. C&W has a worldwide turnover of 6,615 million ECU in the last financial year whilst VEBA has a worldwide turnover of 36,915 million ECU. C&W has a turnover of 2,219 million ECU in the EU whilst Veba's EU turnover is 30,927 million ECU. C&W makes over two-thirds of its EU turnover in the United Kingdom whilst VEBA makes more than two-thirds of its EU turnover in Germany.

15. Accordingly, the concentration has a Community dimension within the meaning of Article 1 of the Merger Regulation.

V COMPATIBILITY WITH THE COMMON MARKET

Market definitions

16. VEBACOM and CWE will be active in the following fields: national and international fixed terrestrial telephone networks, satellite telecoms services, mobile PCN networks, paging, cable TV, corporate networks, managed bandwidth and value-added services. However, there is no overlap between the two companies' activities in any of these fields and also significant actual (eg Deutsche Telekom) and potential (eg the emerging alliances mentioned below) competitors are present.

17. There is no overlap between Veba´s and C&W´s activities for national and international terrestrial networks since for the time being, VEBA does not operate those networks for third parties. The optic cable system of PreussenElektra, a subsidiary of VEBA, currently only serves its internal telecoms use, and the proposed joint venture between VEBA and Deutsche Bahn AG concerning the installation of fibre-optic links alongside railway lines in Germany with regard to deregulation in 1998 would be established through VEBACOM. Furthermore, VEBA has no activities in managed bandwidth and international voice access nor is C&W active in satellite telecoms services.

18. Mobile telephone networks form a distinct market from fixed telephony markets. PCN networks, in particular, have some characteristics which even distinguish them from GSM mobile networks. PCN ("Personal Communication network") and GSM ("Global System for Mobile communication") operate on different frequencies (900 MHz for GSM and 1710-1880 MHz for PCN). A PCN network requires a denser system of transmitters and rather aims at local or regional users. In the UK, PCN phones are primarily used by domestic and small-trade users. A PCN phone can, furthermore, not log into a GSM network at present. PCN networks which are also licensed on a national basis are altogether younger than GSM networks and the system infrastructure is still in the developing stage (see for example E-Plus as compared to the D1 and D2 GSM networks in Germany). International roaming agreements do not yet exist, and even national coverage is not yet reached for PCN in any Member State. Due to these characteristics of PCN, there are strong indications that PCN forms a separate product market which is different from GSM and has to be considered as a national market.

19. However, the precise market definition can be left open as, even on the basis of the narrowest market definition, the concentration raises no competition problem.

20. Mobile radio paging systems represent a separate product market which has to be considered on a national basis due to national regulatory systems and marketing on a national level.

21. The markets for cable TV networks are equally national in scope (see Commission´s decision of 19.7.1995, IV/M.490 - Nordic Satellite Distribution, no. 73).

22. Corporate networks exist for data transmission and for voice transmission between large closed user groups. The concentration involves data network services which are provided on a national or international level according to the needs required by corporate customers.

23. Value-added services comprise a wide range of electronic communication applications which are tailored to the needs of customers. They may include messaging services (EDI, E-mail, E-fax, multi-messaging), in-flight telephony or access to databases. In the absence of regulatory or technical barriers, this market is EEA-wide, if not a world market.

24. In conclusion, given the absence of any competition problems in any of the possible market segments affected by the operation (as set out above), there is no need to define either product or geographic markets precisely.

Assessment

25. Apart from the above-mentioned markets where either of the parent companies has not been active up to now, the areas of paging and cable TV involve only activities on the side of VEBA, which will be transferred to the JVs: a 40 % interest of VEBA in Miniruf GmbH in Germany and a 10% stake in Infomobile SA in France (both in paging). C&W´s paging activities in the UK will, in any case, remain outside the operation. VEBA will transfer two cable TV businesses, Tele Columbus and Concepta Kommunikations und Gebäudetechnik GmbH, as well as a Swiss subsidiary (Cablecom) into VEBACOM while C&W´s cable TV interest in the UK will remain separate. In the absence of any overlap, competition concerns do not arise. In particular, VEBA could not be seen as a potential entrant in the UK in both markets which are determined by licence requirements and strong actual competitors (BT Mobile, Vodapage, Hutchinson in paging; and regional cable TV operators).

26. As to corporate networks and value-added services, VEBA has a controlling interest in Meganet, which operates a data network primarily for customers of the financial and services sector in Germany, and in LION which provides different communication solutions. Apart from its business in the UK, C&W is active in Germany only as far as Germany-based multinational companies or the "German end" of international networks are concerned. Since a number of significant suppliers such as national telecom operators (e.g. Deutsche Telekom), telecoms and computing service providers (IBM, EDI etc.) and a growing number of recently created or proposed alliances (e.g. BT/Viag, RWE/Générale des Eaux) are already active or will offer those services in these fields, the proposed concentration does not raise a competition problem.

27. Finally, both parent companies have interests in PCN networks which will, apart from C&W´s UK activities ("One2One"), be part of the JVs´ businesses. VEBACOM has a 28.375% stake in E-Plus in Germany, and both have interests in Bouygues Telecom, currently the only operator of PCN in France (C&W 20 %, VEBA 15 %). The parties might at a later stage put all these interests together in another joint venture as it is foreseen in a non-binding Memorandum of Understanding. At present, E-Plus will be part of VEBACOM, and the two stakes in Bouygues will, as set out above, be managed by CWE until the final transfer of the shares within 12 months time provided the agreement of the other Bouygues shareholders has been secured. The three PCN networks in which the parties or the JVs are involved operate in different member states. This would, on the assumption of national markets, exclude any overlap in market shares. On a European wide market for PCN and GSM combined, the market shares of the two parties taken together would be well below 10%.

28. As a result, the creation of VEBACOM and CWE will not lead to the creation or the strengthening of a dominant position in any market.

VI ANCILLARY RESTRAINTS

29. In each of the Shareholders' Agreements, C&W and VEBA each undertake to procure that none of their respective group companies will compete with the two JVs. These non-compete covenants are necessary to reflect the lasting withdrawal of C&W and VEBA from the JVs' markets and are integral to the concentration.

VII CONCLUSION

The proposed concentration therefore does not raise serious doubts as to its compatibility with the common market.

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 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,