EN

Case No COMP/M.6775 - TCP CABLE / INTERNATIONAL CABLE HOLDINGS / KUTXABANK / EUSKALTEL

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 04/12/2012

In electronic form on the EUR-Lex website under document number 32012M6775

Office for Publications of the European Union
L-2985 Luxembourg

EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 04/12/2012

C (2012) 9205

PUBLIC VERSION

MERGER PROCEDURE

ARTICLE 6(1)(b) DECISION

To the notifying parties:

Dear Sir/Madam,

Subject: Case No COMP/M.6775 – TCP Cable / International Cable Holdings / Kutxabank / Euskaltel
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 5 November 2012, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which TCP Cable, S.àr.l. ("TCP Cable"), International Cable Holdings, S.àr.l. ("ICH"), and Kutxabank, S.A. ("Kutxabank") acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of Euskaltel, S.A. ("Euskaltel") by way of purchase of shares.[2] TCP Cable, ICH and Kutxabank are designated hereinafter as the "notifying parties".

2. After examination of the notification, the Commission has concluded that the notified transaction falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the internal market and the EEA Agreement.

I. THE PARTIES

3. **TCP Cable** is a 100% subsidiary of Trilantic Capital Partners IV (Europe) LP, a private investment fund ultimately controlled by Trilantic Capital Partners Management Limited, a private equity firm ("Trilantic").

4. **ICH** is a company incorporated in Luxembourg and owned by Investindustrial IV LP ("Investindustrial"), a private equity fund that is part of the Investindustrial group.

5. **Kutxabank** started operating on 1 January 2012 following the merger of three Basque saving banks, namely BBK (Bilbao BizkaiaKutxa, AurrezkiKutxa eta Bahitetxea),

---

1 OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 Publication in the Official Journal of the European Union No C 346, 14.11.2012, p.10.

Kutxa (Caja de Ahorros y Monte de Piedad de Gipuzkoa y San Sebastián-Gipuzkoa eta DonostiakoAurrezkiKutxa) and Vital (Caja de Ahorros de Vitoria y Álava–Araba eta GasteizkoAurrezkiKutxa).

6. Kutxabank currently exercises sole control over Euskaltel, a telecommunication operator with activities in Spain, specifically in the Basque Country. Euskaltel offers fixed and mobile telecommunication, as well as Internet and digital television services. Euskaltel was founded in 1995 and started its activities as landline telephony operator in 1998 and as a mobile telephony operator in 1999.

II. THE CONCENTRATION

7. On […], TCP Cable, ICH and the current shareholders of Euskaltel[3] entered into a Share and Purchase Agreement ("SPA"), which is complemented by two Shareholders Agreements ("SHA") entered into between TPC Cable, ICH, Kutxabank (and two of its subsidiaries) and Euskaltel.

8. Pursuant to the SPA, TCP Cable and ICH will jointly acquire a 48.1% stake in Euskaltel, with Kutxabank retaining a 49.9% stake (and Iberdrola holding the remaining 2% of Euskaltel's share capital). For these purposes, before closing, TCP Cable and ICH will set up a newly created company ("Newco"), to which they will assign all their rights and obligations under the SPA. TCP Cable and ICH will have to agree on all actions to be taken by Newco's representative(s) at Euskaltel's shareholder and Board meetings.

9. The SHA provides that, post transaction, each of Kutxabank and TCP Cable and ICH (through Newco) will have the right to appoint a certain number of Euskaltel's Board members and that the adoption of so-called "relevant decisions" will require the affirmative vote of at least one Board member appointed by Kutxabank and one Board member jointly appointed by TCP Cable and ICH (through Newco). These decisions include the approval of Euskaltel's annual budget, the business plan and the appointment of Euskaltel's senior executives.

10. Based on the above, it can be concluded that, post transaction, each of Kutxabank and TCP Cable and ICH will exercise joint control over Euskaltel.[4] The notified transaction therefore entails a change in the quality of control over Euskaltel from sole control by Kutxabank to joint control between Kutxabank and TCP Cable and ICH and constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

11. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million [Kutxabank EUR […], TCP Cable EUR […] and ICH and […]].[5] Each of them also has an EU-wide turnover in excess of EUR 250 million [Kutxabank EUR […], TCP Cable EUR […] and ICH and […]], but they do not achieve more than two-thirds of their aggregate Union-wide turnover within one and the same Member State. The notified operation therefore has an EU dimension.

---

3 Namely: Kutxabank, Araba Gertu, S.A.U., CK Corporación Kutxa-KutxaKorporazioa, S.L., Administración General de la Comunidad Autónoma de Euskadi, Iberdrola, S.A., Endesa, S.A., and Mondragón Inversiones SPE, S.COOP.

4 Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (2008/C 95/01), para. 65, 66, and 67.

5 Turnover calculated in accordance with Article 5 of the Merger Regulation.

IV. COMPETITIVE ASSESSMENT

1. Market definition

Assessment at the level of the joint venture

12. Euskaltel is active in the telecommunications and audio-visual markets. In particular, Euskaltel provides fixed and mobile telecommunication and Internet and digital television services, mainly in the Basque Country.

13. (Other than Kutxabank through Euskaltel) none of the notifying parties carries out activities in any of these markets, neither directly nor through their subsidiaries and investments. Therefore, the notified transaction will not give rise to any horizontal overlaps between the activities of the future parent companies and the joint venture.

14. Furthermore, none of the companies in which Trilantic or the Investindustrial group invest carries out activities that are vertically related to those of Euskaltel.

15. Therefore, no horizontal concentration or vertical integration results from the notified transaction with regard to the acquisition by the notifying parties of control over Euskaltel. Hence, it is not necessary to define the markets on which Euskaltel is active.

Assessment at the level of the notifying parties

16. While the notifying parties have not identified any vertical relationships between their respective portfolio companies, there is a horizontal overlap between the activities of Trilantic's and Investindustrial's respective portfolio companies in the game and betting sector in Italy.

17. In more detail, Trilantic is active in the Italian gaming and betting sector, including, in particular, in the slot machines and video-lotteries businesses, through a […] controlling stake in the company Gamenet.

18. Investindustrial exercises joint control over two companies that are also active in the gaming and betting sector in Italy, namely Cogetech and SNAI.

19. Cogetech is a technology provider and concessions operator in the Italian gaming sector and operates one of ten gaming concessions in Italy. The company's primary business is the operation and management of a network of slot machines and video-lotteries.

20. SNAI's core business is the collection and acceptance of sport and horse-racing bets and the operation of machines and skill games through a distribution network of betting shops, betting corners and its online platform. SNAI also owns three horse racing tracks, two in Milan and one in Montecatini, Tuscany.

21. As regards product market definition, in its *Lottomatica/GTech* decision,[6] the Commission left the question open whether the different types of gaming and betting activities included in the overall gaming and betting sector comprise a single relevant product market or constitute several separate product markets.

---

[6] Commission decision in Case No. COMP/M.4114, *Lottomatica/GTech* of 19.05.2006.

22. The notifying parties submit that according to the *Amministrazione Autonoma dei Monopoli di Stato* , the Italian regulator of the gaming and betting sector, the sector may be segmented into the following types of activities: (1) gaming machines, (2) horse/sport betting, and (3) others, including lotteries, scratch and win, bingo and online games.

23. As regards geographic market definition, in previous cases including *Lottomatica/GTech*, the Commission defined the relevant markets as national in scope due to the differences in terms of demand across national territories and in the national regulatory systems.

24. As the concentration does not raise serious doubts under any alternative definition, the product and geographic delineation of the relevant markets can be left open for the purpose of this decision.

2. Assessment

25. The Commission considers that the notified transaction will not give rise to any anti-competitive spill-over effect within the meaning of Article 2(4) of the Merger Regulation between the retained activities of each of Trilantic's and Investindustrial's portfolio companies in the Italian gaming and betting sector.

26. First, any such spill-over effects resulting from the proposed transaction can be excluded based on the fact that the Italian gaming and betting sector, where there is an overlap between the retained activities of each of Trilantic's and Investindustrial's portfolio companies, does not have any relation with the sector where Euskaltel operates, namely the provision of fixed and mobile telecommunication and Internet and digital television services in the Basque Country.

27. Second, even if it were to be considered that, as a result of the notified transaction, Gamenet, Cogetech and SNAI were to be able to coordinate their commercial conduct in the Italian gaming and betting sector (which in itself is highly unlikely because of the considerations outlined above, as well as, among other things, the fact that Investindustrial only exercises joint control over each of Cogetech and SNAI), anti-competitive spill-over effects would be unlikely. Indeed, based on available information, their combined share would remain below 20% in the overall Italian gaming and betting sector and below 30% in any of its possible segments.

28. In light of the above, the Commission concludes that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market as a result of spill-over effects between the notifying parties' retained activities within the meaning of Article 2(4) of the Merger Regulation.

V. CONCLUSION

29. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission

(Signed)

Joaquín ALMUNIA
Vice-President