

*Case No IV/M.853 - Bell  
Cable Media / Cable &  
Wireless / Videotron*

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: 11/12/1996

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.12.1996

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sirs,

Subject : Case No IV/M.853 - Bell CableMedia/Cable & Wireless/Videotron  
Notification of 08.11.1996 pursuant to Article 4 of Council Regulation No 4064/89

Case No IV/M.865 - Cable & Wireless/Nynex/Bell Canada  
Notification of 13.11.1996 pursuant to Article 4 of Council Regulation No 4064/89

1. On 8 November 1996, BCE Inc. (BCE) and Cable&Wireless plc (C&W) notified an operation ("the first notification") consisting of the acquisition by C&W and BCE of joint control of Bell Cablemedia plc (BCM) and Videotron Holdings plc (Videotron).
2. On 13 November 1996 the Commission received a second notification ("the second notification") covering a series of transactions by which Cable & Wireless plc ("C&W") NYNEX Corporation ("NYNEX") and Bell Canada International ("BCI") would acquire joint control of a newly-formed company, Cable & Wireless Communications (referred to hereafter in appropriate cases as "Newco"). Newco would in turn acquire the activities of Mercury Communications Ltd (Mercury); Nynex CableComms Group PLC and NYNEX CableComms Group Inc (subsidiaries of NYNEX and hereinafter referred to collectively as Nynex CableComms); and Bell Cablemedia plc (incorporating Videotron as a result of the transaction covered by the first notification).

3. The concentration set out in the second notification would include the business covered by the first notification. Accordingly, the Commission has decided to deal with both notifications simultaneously in a single decision.
4. After examination of the notifications the Commission has concluded that the transactions as described fall within the scope of application of Council Regulation No 4064/89, but do not raise serious doubts as to their compatibility with the Common market and with the functioning of the EEA agreement.

## **I. THE PARTIES**

5. BCE is Canada's largest telecommunications company. Its subsidiaries and affiliated companies are involved in the manufacture of telecommunications equipment, research and development, cellular, paging, radio, mobile data and air-to-ground communications, investment and telephone directory services. Bell Canada International Inc. (BCI) is a wholly owned subsidiary of BCE.
6. Cable & Wireless plc is an international telecommunications group with operations in over 50 countries. It provides telecommunications services, and provides and manages communications facilities and services for public and private customers and provides telecommunications consultancy services worldwide.
7. NYNEX is a holding company with subsidiaries engaged principally in the telecommunications and directory publishing business sectors worldwide.
8. Bell Canada International (BCI) is an indirect wholly-owned subsidiary of BCE Inc, Canada's largest telecommunications company with assets in excess of Can \$38 billion and operations in 90 countries and territories. BCI is BCE's primary investment vehicle for investment in network operations outside Canada.
9. Mercury Communications Limited (Mercury) is the second largest UK telecommunications operator, and is 80% owned by Cable & Wireless.
10. Bell Cable Media, Nynex CableComms and Videotron carry on the business of providing cable television and telecommunications services in areas of the UK for which they hold franchises.

## **II. THE OPERATIONS**

11. The transactions covered by the first notification are as follows. BCM will increase its shareholding in Videotron from 26% by acquiring the 56% of the shares currently held by Le Groupe Vidéotron ltée, and then launch a public offer for the remainder. The acquisition will be financed by C&W subscribing US\$ 338 million in cash for 9,1 million shares in BCM. Prior to the transactions BCM is owned as to 42.1% by a subsidiary of BCE, as to 12.18% by C&W, as to 13.4% by Jones Intercable Inc and affiliates, and as to 31.8% by other investors. Following this set of transactions C&W and BCI will each hold 32.5% of BCM (incorporating Videotron), with Jones Intercable Inc and certain affiliates holding some 10.4% and public shareholders holding the balance of approximately 24.6%.
12. The second notification covers a number of further transactions which include the subject-matter of the first notification. The signing of an agreement on 22 October paved

the way for the creation of a new company, Cable & Wireless Communications ("Newco") which it is intended will ultimately hold 100% of Bell Cablemedia, Videotron and NYNEX CableComms. Newco will make offers for BCM and Nynex CableComms. C&W will acquire 5.17% of Mercury from BCI. Mercury will be acquired by Newco in return for shares. Upon completion, Newco will be owned 52.6% by C&W, 18.5% by Nynex and 14.2% by BCI, with the remainder being held by public shareholders.

### III. CONCENTRATION

13. The transactions which form the basis of the first notification would not give rise to a concentration within the meaning of the Merger Regulation if, as the parties intend, those transactions will be immediately followed by a series of further transactions as set out in the second notification. Nonetheless, to the extent that the transactions foreseen by the second notification may prove impossible to carry through, for example, because of failure to obtain expected approvals from other regulatory authorities, the structural changes created up to that point would then have a permanent character and thereby form a concentration within the meaning of the Regulation.
14. On either of the two outcomes described in the previous paragraph, there will be a concentration within the meaning of Article 3(1)(b) of the Merger Regulation. In the first case, BCE and C&W would each hold some 32.5% of the issued capital of BCM through their respective subsidiaries, BCMH and C&W Cable. BCMH and C&W Cable would each be entitled to appoint directors to the Board of BCM and the approval of their appointed directors would be required for a number of matters including the approval of each proposed Business Plan and 3 year Strategic Plan and any material modifications to those plans. Accordingly, BCE and C&W would acquire joint control of BCM (including Videotron).
15. BCM would be a full-function entity; the merged business would continue to supply cable-tv and telecommunications services to third parties and would therefore have an autonomous character.
16. In the second case, namely the creation of Cable & Wireless Communications ("Newco"), the operation envisaged would also constitute a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
17. Cable & Wireless, BCI and NYNEX will acquire joint control of Newco, and hence of Mercury, Nynex Cablecomms, and BCM as enhanced by Videotron.
18. Although the shareholdings give Cable & Wireless over 50% of the shares in Newco, the transaction agreement stipulates the content of the Articles of Association of Newco. These Articles will limit C&W's control over Newco. They provide arrangements whereby each 10% shareholding of Newco will enable the shareholder concerned to appoint a number of directors equal to its shareholding divided by 10, rounded up if the result is a fraction, but with an overall limit of 5. Any shareholder with the right to appoint 5 directors ("the principal shareholder") would be entitled to appoint the Chairman and to nominate the Chief Executive Officer of Newco, who would not be removable from office except with the consent of the principal shareholder.
19. However, under the shareholdings contemplated by the operation, C&W would have the right to appoint 5 directors of Newco, and NYNEX and BCI would have the right to appoint 2 each. Any shareholder appointed director would have veto rights, inter alia, in

relation to: acquisitions and disposals of over £100 million in value; changes in the scope of the business of the Group; issues of shares or the right to acquire shares; any proposals by the Board or shareholder to change the articles of association of the company; approval of the annual capital expenditure budget, and the approval of directors other than a shareholder director. Resolutions in respect of borrowing by the company in excess of £100 million; approval of the annual operating budget and annual business plan; and appointment of senior management could not be approved if shareholder-appointed directors appointed by different shareholders voted against the resolution.

20. The minority shareholders, Nynex and BCI, will therefore have veto rights over the commercial policy and strategy of Newco, in particular their power to block any decision related to the adoption of the annual budget and the company investments which constitute an essential feature of the market in which the joint venture will be active.
21. Newco will perform on a lasting basis and have all the functions of an autonomous economic entity on grounds of disposal of assets, staff and financial independence. Newco will operate independently on the market.
22. Coordination between the parent companies can be excluded as the activities to be contributed to Newco represent substantially all of the joint venture partners' interests in the cable television and telecommunications services sectors in the UK.

#### **IV. COMMUNITY DIMENSION**

23. Cable & Wireless has a worldwide turnover in excess of ECU 6 billion and a Community-wide turnover in excess of 2 billion. NYNEX has a worldwide turnover in excess of ECU 6.7 billion and a Community wide turnover in excess of ECU 123 million. BCI has a worldwide turnover in excess of ECU 13 billion, and a Community-wide turnover in excess of 1.7 ECU billion, and does not achieve more than two-thirds of its aggregate Community-wide turnover within one and the same member state. Therefore in either of the outcomes envisaged by the two notifications, the result would be a concentration with a Community dimension within the meaning of Article 1(2) of the Merger Regulation.

#### **V. COMPATIBILITY WITH THE COMMON MARKET**

24. The definitions of relevant product and geographical markets are the same for both the first and the second notifications.

##### **RELEVANT PRODUCT MARKETS**

###### Pay television

25. According to the parties, the relevant product markets are pay-TV broadcasting, cable networks, and fixed telecommunications networks and services.
26. The Commission has found in previous cases<sup>(1)</sup> that pay television does constitute an independent market. The conditions of competition are different from those obtaining in advertising-financed television: for example, a viewer who is a subscriber has a very

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<sup>(1)</sup> IV/M.410 of 5 August 1994, Kirch/Richmond/Telepiù;  
IV/M.469 of 9 November 1994, MSG Media Service

different relationship with the programme supplier than is the case in advertising-financed television. A distinction also has to be drawn between broadcasting as a service market and the provision of signals to subscribers. The parties do have some very limited broadcasting activities but these are de minimis and not relevant for the purposes of analysis of the competition issues arising. The relevant service market is therefore that for pay television.

#### Cable networks

27. On cable networks, it has been argued that a service market exists consisting of both the networks and the services offered on them. Equally it may also be considered appropriate to identify two separate markets, given that competition will occur at different time and in different circumstances. For example, a market exists where would-be investors enter into competition to acquire franchises, to construct networks and consolidate their position as cable operators, whereas the business of delivering services on that capacity, or of allowing others to do so, can be regarded separately. However, in this case there are no affected markets within the meaning of the Regulation, whatever way the markets are defined, and it has not been necessary to arrive at an exact definition for the purpose of assessment. The question has therefore been left open.

#### Fixed telecommunications networks

28. It has been argued that the capacity of optical fibre networks to carry voice telephony, and the unlikelihood that new entrants will confine themselves solely to offering television, may mean that market definitions based solely on fixed networks dedicated to voice telephony will no longer be appropriate in the future. In the meantime, it remains the case that telephony meets a type of need for the consumer which is not equivalent to the need for other types of services offered on fixed networks.
29. However, since in the present case the concentration would not raise competition problems, even on the narrowest market definition, the question can be left open.

#### Fixed telecommunications services

30. The parties argue that voice telephony services should be assessed as a single market for the purpose of assessing this concentration. This was not challenged in the responses from competitors. The question can be left open, as there is no competition problem arising.

### RELEVANT GEOGRAPHICAL MARKETS

#### General

31. According to the parties, the markets for activities such as pay television networks or services are national ones, owing to linguistic or cultural preferences and the regulatory regime under which the activities are carried out.

### Pay Television

32. In past cases<sup>(2)</sup>, the Commission has decided that pay-television should be defined as a national market, owing to the existence of factors such as different language and cultural barriers, regulatory systems etc. The same considerations apply equally in this case.

### Cable networks

33. The parties contend that the operation of cable TV networks in the UK does not form a relevant service market, and that there are no affected markets within the meaning of the Merger Regulation. They point out that the UK regime is based on local franchises in which not more than one licence is granted. Thus customers in a given franchise area could not obtain cable TV from anyone other than the franchise holder, and the cable operator is not able to build networks outside his area.
34. However, whether the market is defined as local, in which case there is no horizontal competition concern as there is only one franchisee in each given territory; or whether it is defined as national - which means assuming that programme suppliers operating in other franchised areas are supplying programmes to the areas in question - the question can be left open, because on either definition the present operation does not give rise to competition concerns.

### Fixed telecommunication networks and services

35. The parties argue that the fixed telecommunications in which they are involved can be divided into networks (lines) and services (calls), and that the relevant markets are national markets in each case. The definition can be left open as these are not affected markets under the Merger Regulation.

## **VI. COMPETITIVE ASSESSMENT OF THE CONCENTRATION**

36. Whether the transactions are carried out to the point envisaged by the second notification, or brought to a halt at the point envisaged in the first, the conclusion on compatibility with the common market is the same, as set out below.

### Pay Television

37. If pay television is considered as a national market, then taking satellite and cable together, the share of the parties concerned in the Bell Cablemedia/Videotron acquisition represents about 5% of the total market, based on the proportion of UK homes with pay TV to which the parties have access. If Cable & Wireless Communications is successfully created, the share of the parties concerned would still represent under 10% of the total market. In either case, BSkyB would continue to account for well over 50% of pay TV subscribers within the UK, and will remain dominant. This is therefore not an affected market within the meaning of the Merger Regulation and no competition concerns therefore arise.

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<sup>(2)</sup> IV/M.469 of 9 November, MSG Media Service.

### Cable networks

38. In the UK, individual cable companies are granted franchises for their own area, and are responsible for delivering programme services within that area. The parties do not directly compete with one another in the delivery of services. They add that there is no opportunity for their networks to be leased to third parties, and hence no competition to speak of.
39. If, on the other hand, the cable network is taken as a national market, the parties to the Bell Cable/Videotron acquisition would together account for about [ ]<sup>(3)</sup> of the homes connected by cable networks in the United Kingdom. If the Cable & Wireless joint venture is successfully created, the market share of the parties, which would then include Nynex Cablecomms, would rise to some [ ]<sup>(4)</sup>. As regards the position of competitors, TeleWest accounts for some [ ]<sup>(4)</sup> of the market share; other cable operators, such as General Cable and Comcast, have market shares of around [ ]<sup>(5)</sup>, and smaller cable operators such as Telecental, CableTel UK share the remainder. Therefore competition concerns do not arise in either case.

### Fixed telecommunications networks

40. The position in the UK is that BT has both a trunk network and local connections. Mercury has a network of trunk lines but no local networks with direct access to subscribers. The cable companies can offer local connections in their own areas.
41. The cable companies compete with BT at a local level to offer subscribers voice telephony services over their cable lines. This service is limited to the local area: calls to other areas have to be run through lines provided by alternative service providers, whether other local cable companies (where calls can be switched across boundaries), or by hiring services from one of the telecommunications operators. If the transactions include the acquisition of control over Mercury by Cable & Wireless Communications, then there is no competition between the cable companies and Mercury, as Mercury does not have local area networks, and the cable companies do not have trunk lines. It can be argued that the parties involved cannot be regarded as realistic competitors in fixed telephone network operation in the UK, given the barriers to entry (for example the scale of investment needed). In any event, as Mercury and the cable companies together account for less than 6% of the UK's exchange line numbers, and since BT is overwhelmingly dominant, (its market share being over [ ]<sup>(6)</sup> based on numbers of exchange lines) no competition problems arise.

### Fixed telecommunications services

42. If fixed telecommunications services are defined as a single market then, irrespective of the outcome, the market share of the parties concerned will not rise above 14%, and thus will not give rise to competition problems. (BT, the dominant operator has over [ ]<sup>(6)</sup> of the market share by revenue.) The parties contend that the market should not be subdivided, but provide figures to show that, even if this is done, then, irrespective of the outcome, the market shares of all BT competitors, when counted together, will in no case

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<sup>(3)</sup> Business secret : between 10 and 20%.

<sup>(4)</sup> Business secret : between 20 and 30%.

<sup>(5)</sup> Business secret : between 5 and 10%.

<sup>(6)</sup> Business secret.



exceed [ ]<sup>(7)</sup> of the total call revenue in the UK.. No competition concerns are therefore likely to arise.

## VII. ANCILLARY RESTRAINTS

43. The parties have submitted three restrictions which are considered ancillary to the concentration.
44. The first is an agreement restraining the sellers of the Videotron shareholding from carrying on business using the name for a period of two years from completion of the transaction. This provision would not have an effect on competition between the Member States. Likewise the sellers have accepted an obligation over the same two-year period not to carry on a business of a similar type to the business which is to be sold. These restrictions are necessary for the implementation of this concentration, in order to protect the goodwill transferred under the relevant share purchases.
45. The parties have also agreed to certain restrictions on the conduct of their businesses pending completion of the transaction, for example, to ensure that they will not enter into or agree to enter into any transaction which would require shareholder approval were they listed on the stock exchange. To the extent that these provisions can be viewed as restrictions, they can be regarded as ancillary, being necessary pre-completion restrictions to ensure that the values of the relevant businesses are maintained pending completion of the transaction.

## VIII. CONCLUSION

46. For the above reasons, the Commission has decided not to oppose the operation covered by the first notification and to declare it compatible with the common market and with the functioning of the EEA Agreement in so far as it is not superseded by the second set of transactions. It has likewise decided not to oppose the second 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,

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<sup>(7)</sup> Business secret : between 20 and 30%.