



EUROPEAN COMMISSION
DG Competition

Case M.9152 - BC PARTNERS / UNITED GROUP

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 17/12/2018

***In electronic form on the EUR-Lex website under
document number 32018M9152***



EUROPEAN COMMISSION

Brussels, 17.12.2018
C(2018) 9046 final

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

To the notifying party

**Subject: Case M.9152 – BC Partners / United Group
Commission decision pursuant to Article 6(1)(b) of Council
Regulation No 139/2004¹ and Article 57 of the Agreement on the
European Economic Area²**

Dear Sir,

- (1) On 16 November 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which BC European Capital X ("BCEC X"), ultimately controlled by BC Partners LLP ("BC Partners", United Kingdom), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of United Group BV ("United Group", the Netherlands), by way of purchase of shares (the "Transaction").¹ BC Partners is referred to as the "Notifying Party". BC Partners and United Group are collectively referred to as "Parties".

1. THE PARTIES

- (2) BC Partners is a private equity firm, specialising in buyouts and acquisitions financing in Europe and the United States. BCEC X is one of the funds advised

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 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

by BC Partners. BCEC X holds a controlling interest in [...] portfolio companies, among which Intelsat SA ("Intelsat"), which is active in the provision of global voice, data, video and wholesale Internet communications services *via* satellites.

- (3) United Group is active in the provision of telecommunications and media services in South East Europe. In the EEA, United Group is active primarily in Slovenia and, to a lesser extent, Croatia.

2. THE OPERATION

- (4) The Transaction relates to the acquisition of sole control within the meaning of Article 3(1)(b) of the EUMR of United Group by BC Partners.
- (5) The Transaction will be implemented in accordance with a share purchase agreement of 27 September 2018 (the "SPA") between Adria Luxco as seller and BidCo BV ("BidCo") as buyer. BidCo is a newly set up special purpose vehicle ultimately controlled by BC Partners. Pursuant to the SPA, BidCo will acquire all outstanding shares in Adria TopCo BV ("Adria TopCo"), which in turns holds 100 % of the shares of United Group.
- (6) As a result of the Transaction, BC Partners will have indirect sole control over United Group. In fact, BC Partners will indirectly hold [...] % of the shares in Adria TopCo and, pursuant to a separate Equity Wrapper, will have the ability to appoint a majority of the board. The remaining shareholders of Adria TopCo will not have negative control over it, as none will be able to veto any strategic decision.

3. EU DIMENSION

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 millionⁱⁱ (BC Partners: EUR [...] million; United Group: EUR [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (BC Partners: EUR [...] million; United Group: EUR [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (8) The Transaction therefore has an EU dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Provision of Satellite Transponder Capacity

- (9) Satellite transmissions are used for the distribution of TV signals, telephony, and other communications. For the provision of their satellite TV services, broadcasters and retail TV distributors like United Group utilise satellite transponder services offered by companies like Intelsat: the television content is generally fed into an uplink antenna, which in turn is beamed up to a geostationary satellite; the signal is then beamed from the satellite down into the receiving customers' antennae.

4.1.1. *Product market definition*

- (10) The Notifying Party submits that the relevant market would be the market for the supply of satellite transponder capacity for the provision of direct-to-home (“DTH”) satellite TV services.
- (11) In its past decisional practice, the Commission identified a possible market for the provision of satellite transponder capacity used for distribution of TV signals, telephony and other communication services³. The Commission considered whether such market may include the provision of uplink services (transmission to the satellite), encoding, and various other technical services.
- (12) The information gathered during the market investigation indicated that, although video content is the main application of satellite transponder capacity, such capacity is also used for a broad variety of other services including notably government services, private networks, mobile services, aeronautical and maritime services.⁴
- (13) In light of the above, the Commission considers that there is no reason to depart from its previous approach, and that the relevant product market is the market for the supply of satellite transponder capacity, irrespective of the services they are provided for. However, the precise product market definition can be left open, as this would not change the outcome of the competitive assessment in this case.

4.1.2. *Geographic market definition*

- (14) The Notifying Party submits that the geographic scope of the market coincides with, at least, the footprint of a given satellite. Therefore, the Notifying Party submits that the scope of the market is at least Central and Eastern Europe, but could be wider (i.e., the whole Europe).
- (15) In the past, the Commission concluded that the geographic scope of the market for satellite transponder capacity only encompassed the Nordic countries, and not the EEA as a whole.⁵
- (16) The information gathered during the market investigation confirmed the regional scope of the supply of satellite transponder capacity. Indeed, the satellites covering Slovenia and Croatia have a supranational footprint, which also covers neighbouring states of Central and Eastern Europe. Their position is stronger or weaker as per territory, depending on the strength of the beam and on the number of dishes pointed towards them.⁶
- (17) In any event, the Commission considers that, for the purpose of this decision, the relevant geographic market for the supply of transponder capacity can be left

³ Commission decision of 13 October 1999 in case M.1439 *Telia / Telenor*, recital 266.

⁴ Replies to the Questionnaire to Intelsat's competitors, questions 2 and 3.

⁵ Commission decision of 13 October 1999 in case M.1439 *Telia / Telenor*, recital 284.

⁶ Replies to the Questionnaire to Intelsat's competitors, question 1; Replies to the Questionnaire to United Group's competitors, question 1a and 1b.

open (i.e., covering Central and Eastern Europe, or more broadly, encompassing Western, Central and Eastern Europe), as this would not change the outcome of the competitive assessment in this case.

4.2. Retail Distribution of TV services

4.2.1. Product market definition

- (18) The Notifying Party submits that the relevant market would be the market for the retail provision of Pay TV services encompassing (i) all distribution technologies, (ii) linear and non-linear content and (iii) basic and premium Pay TV. It further submits that the precise definition of the product market could be left open, as the Transaction would not give rise to competition concerns irrespective of the market definition.
- (19) In its past decisional practice, the Commission identified separate product markets for the retail provision of (i) FTA and (ii) Pay TV services.⁷ The Commission also considered whether retail Pay TV could be segmented further according to: (i) linear vs non-linear retail Pay TV services⁸; (ii) according to distribution technologies (e.g., cable, Over-The-Top, DTH satellite, Internet Protocol television “IPTV”, or terrestrial)⁹; and (iii) premium vs basic retail Pay TV services.¹⁰ In recent cases, the Commission left open the product market definition with regard to each of these potential sub-segments.¹¹
- (20) The results of the market investigation did not provide reasons to depart from the Commission’s previous approach in this case.¹² The Commission therefore considers that, for the purpose of the present decision, the relevant product market is the market for the retail distribution of Pay TV services, and that the question whether it should be further segmented can be left open, as this would not change the outcome of the competitive assessment in this case.

4.2.2. Geographic market definition

- (21) The Notifying Party submits that the precise definition of the geographic (i.e., national or broader) markets could be left open as the Transaction would not give rise to competition concerns irrespective of the market definition.
- (22) In its past decisional practice, the Commission considered, but ultimately left open, that the geographic market for the retail provision of TV services (and its

⁷ Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*, recital 99.

⁸ Commission decision of 7 April 2017 in case M.8354 *Fox/Sky*, recitals 98 and 99.

⁹ Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*, recital 103.

¹⁰ Commission decision of 24 February 2015 in case M.7194 *Liberty Global/Corelio/W&W/De Vijver Media*, recital 119.

¹¹ See i.a. Commission decision of 6 February 2018 in case M.8665 *Discovery/Scripps*, recitals 31 and 32.

¹² Replies to the Questionnaire to United Group's competitors, question 2.

possible sub-divisions) was either national or, at most, covering linguistically homogeneous areas.¹³

- (23) The results of the market investigation did not provide reasons to depart from the Commission's previous approach in this case.¹⁴
- (24) In particular, one respondent to the market investigation indicated that the geographic scope of the market could cover the Serbo-Croatian linguistic area, which encompasses Bosnia and Herzegovina, Croatia, FYROM, Montenegro, Serbia and part of Slovenia.
- (25) On the basis of the above, the Commission considers that, for the purpose of the present decision, the relevant geographic market for the retail distribution of Pay TV services is national or, at most, covering linguistically homogeneous areas. The precise geographic market definition can be left open, as the Transaction would not give rise to competition concerns under any alternative market definition.

5. COMPETITIVE ASSESSMENT

5.1. Affected markets

- (26) Intelsat and United Group are active at different levels of the satellite TV value chain: (i) Intelsat is a global provider of voice, data, video, and wholesale Internet communications services *via* satellite. Of particular relevance for this case is Intelsat's provision of satellite capacity for DTH services. (ii) United Group provides telecommunications and media services. In Slovenia, and to a lesser extent in Croatia, United Group is active as a retailer of Pay TV services, a wholesale distributor of Pay TV channels, and a producer of TV content. For its provision of retail TV services, United Group utilises both cable and satellite DTH technologies. Additionally, United Group is active as a provider of retail fixed Internet access, fixed telephony, and mobile telecommunications services.

5.1.1. Horizontal overlaps

- (27) The Transaction does not lead to any horizontal overlaps between the business activities of the portfolio companies of BC Partners and the business activities of United Group.

5.1.2. Vertical relationships

- (28) The Transaction gives rise to a possible vertical relationship between (i) Intelsat's satellite transponder capacity's activities and (ii) United Group's retail provision of TV distribution services in Slovenia and in Croatia.

13 Commission decision of 21 December 2010 in case M.5932 *News Corp/BSkyB*, recital 110.

14 Replies to the Questionnaire to United Group's competitors, question 2.

5.1.2.1. Vertical relationships in Slovenia

- (29) The Transaction gives rise to vertically affected markets, given that Intelsat is active in the upstream provision of satellite transponder capacity, and that United Group has a market share in excess of 30 % in the downstream retail market for the distribution of Pay TV services.
- (30) With regard to the upstream market for the provision of satellite transponder capacity, Intelsat has a market share of [0-5]% for 2017 in terms of value in Central and Eastern Europe, and of [0-5]% if considering a broader geographic market encompassing Western, Central and Eastern Europe.¹⁵
- (31) With regard to the downstream market for the retail provision of Pay TV services in Slovenia, United Group has a share of [30-40]% for 2017 in terms of volume.¹⁶ If considering possible sub-markets according to the distribution technology, United Group has a market share of [90-100]% of DTH satellite subscribers for Q2 2018.¹⁷ Other possible sub-markets, including other distribution technologies, and linear/non-linear services, are not affected by the Transaction.¹⁸
- (32) For the provision of its retail DTH satellite TV services in Slovenia, United Group currently utilises Eutelsat's satellite transponder capacity services.

5.1.2.2. Vertical relationships in Croatia

- (33) The Transaction does not give rise to vertically affected markets as regards Croatia, because United Group has a *de minimis* presence in the downstream market for the retail provision of Pay TV services in Croatia (below 5% for 2016 in terms of value)¹⁹ and Intelsat has a *de minimis* presence in the upstream market for the provision of satellite transponder capacity (below 5% for 2017 in terms of

¹⁵ Form CO, tables 2 and 3.

¹⁶ Form CO, table 5.

¹⁷ Form CO, table 6.

¹⁸ Other distribution technologies, such as cable TV or IPTV, would not be impacted by the merged entity's hypothetical customer or input foreclosure strategies. This is because IPTV (and generally cable) does not rely on satellite technology for the provision of TV services. In any case, as explained below, no United Group's competitor in Slovenia relies on Intelsat's satellite services. The Notifying Party submits it was not able to provide market shares for the possible sub-markets for linear and non-linear services. However, the Commission considers that the distinction between linear and non-linear services is not relevant in this case, since non-linear services generally cannot be provided via DTH satellite technology, and non-linear services represent a small share of the total market (only 8% of TV customers subscribe to Video-on-Demand "VOD" services in Slovenia).

¹⁹ Form CO, paragraph 66 and footnote 31. The Notifying Party explains that United Group is mainly active in Croatia as a TV broadcaster (Nova TV). United Group is active at retail level via Nova TV's Subscription VOD ("SVOD") service "OYO", which grossed approximately EUR [...] in 2016. The Commission considers that no vertically affected markets will arise, irrespective of the market definition, because SVOD cannot be provided via satellite DTH, and the vertical relationship between Intelsat and United Group would be purely hypothetical.

value for both geographic markets encompassing the whole Europe, or Central and Eastern Europe only).²⁰

- (34) In any case, the Transaction will not give rise to any anticompetitive effects in the Croatian market, for the following reasons: United Group's retail activities in Croatia are limited to non-linear VOD services, which do not rely on satellite DTH technology; furthermore, Intelsat [...] satellite transponder capacity to any of United Group's competitors in Croatia.²¹

5.1.2.3. Conclusion on vertical relationships

- (35) In the following sections, the Commission will analyse whether the Transaction is likely to produce anti-competitive effects in Slovenia, as a result of input foreclosure or customer foreclosure.²²

5.2. Input foreclosure

5.2.1. The Notifying Party's view

- (36) The Notifying Party submits that it is unlikely that the merged entity will foreclose United Group's competing providers of Pay TV services in Slovenia by refusing to supply Intelsat's satellite transponder capacity services, or offering them at worse conditions.
- (37) The Notifying Party claims that Intelsat does not have the ability to foreclose United Group's competitors, because Intelsat lacks market power on the upstream market for satellite transponder capacity, and because alternative providers will be active post-transaction in Central and Eastern Europe, namely RSCC, Eutelsat, and Gazprom²³. Moreover, the Notifying Party affirms that there would not be any competitor to foreclose, as competing providers of Pay TV in Slovenia do not rely on satellite technology.²⁴
- (38) In addition, the Notifying Party submits that Intelsat would not have the incentive to engage in full or partial input foreclosure either, because Intelsat's only

²⁰ See recital (30).

²¹ See reply to Request for Information No. 1 of 19 October 2018, question 11.

²² The Commission considers that the input and customer foreclosure analysis for the Slovenian market equally applies to the possible market comprising the retail TV provision of Serbo-Croatian language content (i.e., encompassing Members States like Croatia and parts of Slovenia, as well as non-EU countries like Bosnia and Herzegovina, FYROM, Montenegro and Serbia). As explained at paragraph (41) below, Intelsat cannot be considered an important provider of satellite transponder capacity, either in Central and Eastern Europe or in the whole Europe. Likewise, United Group as a whole cannot be considered an important customer for satellite transponder capacity, as evidenced by United Group's spend at paragraph (52). Therefore, the addition of United Group's South East European activities would not make any substantial difference for the Commission's assessment.

²³ Form CO, table 3.

²⁴ Form CO, paragraph 111.

purchaser of satellite transponder capacity in Slovenia is [...], a teleport and satellite services company that is not a competitor of United Group in the EEA.²⁵

5.2.2. *The Commission's assessment*

- (39) According to the Non-Horizontal Merger Guidelines, input foreclosure occurs where a merger is likely to raise the costs of downstream rivals by restricting their access to an important input.²⁶
- (40) The Commission considers that Intelsat has no ability to foreclose United Group's competing providers of Pay TV services in Slovenia by refusing to supply satellite transponder capacity or by offering them at worse conditions.
- (41) Intelsat has a market share comprised between [0-5]% and [0-5]% for 2017 in terms of value, depending on the geographic scope of the upstream market.²⁷ The Commission considers that, given this low market share, Intelsat has no market power in the upstream market for the provision of satellite transponder capacity.
- (42) In addition to its limited market share in the provision of satellite transponder capacity, Intelsat faces strong competitors in Central and Eastern Europe, such as RSCC and Eutelsat with market shares of respectively [20-30]% and [10-20]% for 2017 in terms of value.²⁸
- (43) Moreover, the information gathered during the market investigation confirmed that Intelsat is not an indispensable provider of satellite transponder capacity in Slovenia, either for the distribution of TV services or the supply of telecommunications services.²⁹
- (44) For completeness, during the course of the investigation, one respondent submitted that, post-Transaction, Intelsat would have the incentive to engage in input foreclosure, by discriminating against United Group's competitors in South East Europe. This would raise barriers to competitor's expansion and further entrench United Group's dominance.³⁰ However, for the above-mentioned reasons—and in particular the minimal market presence of Intelsat, the

²⁵ Form CO, paragraphs 102 and 112.

²⁶ Non-Horizontal Merger Guidelines, paragraph 34.

²⁷ See recital (30).

²⁸ Form CO, table 3.

²⁹ Replies to the Questionnaire to United Group's competitors, question 1.

³⁰ The Commission also received certain negative comments from non-EEA market players. The complainants allege that United Group employs various means in order to evade service of process by mail, and thus execution of final and binding decisions of a non-EEA National Competition Authority. The complainants ask the Commission to impose certain conditions as part of its final decision, including disclosure of one of United Group's entities' address, as well as proof of compliance with the above non-EEA decisions. The Commission notes that the complaints address non merger-specific issues. Therefore, the Commission will not address them further in the present decision.

Commission considers that Intelsat has no ability to engage in input foreclosure with regard to its provision of satellite transponder capacity services.

- (45) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to input foreclosure with regard to the markets for the provision of satellite transponder capacity and for the retail distribution of Pay TV services in Slovenia, or in the Serbo-Croatian language area.

5.3. Customer foreclosure

5.3.1. The Notifying Party's view

- (46) The Notifying Party submits that it is unlikely that the merged entity will foreclose Intelsat's competitors of satellite transponder capacity, by switching United Group's entire spend on satellite capacity to Intelsat.
- (47) The merged entity would not have the ability to engage in customer foreclosure, because United Group's activities do not represent a sufficient customer base. Indeed, the Notifying Party submits that providers of satellite transponder capacity have a customer base that goes beyond Slovenian customers.³¹
- (48) In addition, the Notifying Party submits that the merged entity would not have the incentive to engage in customer foreclosure either, because switching United Group's procurement of satellite transponder capacity from Eutelsat to Intelsat would be costly for United Group and disruptive for its customers. In fact, United Group's customers would lose access to several channels and incur antennae settings costs, which would entail an increase in churn.³² Likewise, United Group would have to incur costs for the construction of a new uplink station, and for the development of new software.³³

5.3.2. The Commission's assessment

- (49) For customer foreclosure to be a concern, it must be the case that the vertical merger involves a company that is an important customer with a significant degree of market power in the downstream market.³⁴
- (50) During the course of the investigation, one respondent submitted that, because of the Transaction, there could be a risk that the merged entity will prevent competing satellite services providers from supplying transponder capacity to the leading provider of DTH services in South East Europe.³⁵

³¹ Form CO, paragraph 113.

³² Form CO, paragraph 115.

³³ Form CO, paragraph 119.

³⁴ Non-Horizontal Merger Guidelines, paragraph 61.

³⁵ The same respondent added, without any substantiation, that the Transaction might incentivise United Group and Intelsat to access commercially sensitive information of rivals, giving them a significant competitive advantage. In particular, it submitted that United Group may be incentivised to disclose to Intelsat details of its current commercial relationship with Eutelsat. However, United

- (51) The Commission considers that United Group has no ability to foreclose Intelsat's competitors, because United Group cannot be considered an indispensable customer for satellite transponder capacity, irrespective of the geographic market definition.
- (52) While United Group has a share of [30-40]% for 2017 in terms of volume for the retail provision of Pay TV services in Slovenia, and a share of [90-100]% in the retail provision of Pay TV services *via* DTH satellite³⁶, the total spend on satellite transponder capacity of the entire group represents a negligible share of the upstream market's value ([0-5]% for Central and Eastern Europe in 2017³⁷, or [0-5]% for Western, Central and Eastern Europe)³⁸.
- (53) Moreover, the Commission observes that United Group cannot be considered an indispensable customer of Eutelsat (United Group's current provider of satellite transponder capacity) either. United Group's total spend on satellite transponder capacity represents a minor fraction of Eutelsat's turnover in either Central and Eastern Europe ([0-5]% in 2017)³⁹ or Western, Central and Eastern Europe ([0-5]% in 2017)⁴⁰.
- (54) The Commission further notes that alternative customers of satellite transponder capacity will remain active in the relevant market. As explained in paragraph (12), satellite transponder capacity is used for a large number of usages, which are not limited to the distribution of DTH signal, and which include the provision of telephony, aeronautical, maritime, and other communications services. For example, Eutelsat's website lists the following "key clients" for Central and Eastern Europe: Antik Telecom, DigitAlb, FreeSat, Hrvatski Telekom, OiV, Team:Media, Telekom Austria Group, and Tring Digital.
- (55) Last, the Commission notes that United Group is contractually bound to Eutelsat by a long-term contract that runs until [...], which will make it less likely that United Group will switch provider in the foreseeable future. In addition, the market investigation confirmed that switching provider is logistically costly and time consuming, because of the necessity to re-direct the dishes, and often to change the dish size and the equipment itself.⁴¹

Group confirmed that its current procurement agreements with Eutelsat contain confidentiality provisions, prohibiting the disclosure of any confidential information to third parties. Finally, Eutelsat itself did not raise such a concern during the market investigation. See, reply of Eutelsat to the Questionnaire to Intelsat's competitors. Therefore, the Commission considers it unlikely that post-transaction Intelsat will get access to commercially sensitive information of Eutelsat.

³⁶ See recital (31).

³⁷ Form CO, tables 3 and 4.

³⁸ Form CO, tables 2 and 4.

³⁹ Form CO, tables 3 and 4.

⁴⁰ Form CO, tables 2 and 4.

⁴¹ Replies to the Questionnaire to United Group's competitors, question 1c.

- (56) In light of the above, the Commission considers that the Transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to customer foreclosure with regard to the markets for the provision of satellite transponder capacity and for the retail distribution of Pay TV services in Slovenia, or in the Serbo-Croatian language area.

6. CONCLUSION

- (57) For the above reasons, the European 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 and Article 57 of the EEA Agreement.

For the Commission

(Signed)

Margrethe VESTAGER
Member of the Commission

i Publication in the Official Journal of the European Union No C 423, 23.11.2018, p. 24.

ii Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).