

The Newscorp / Telepiu case

ACQUISITIONS (BROADCASTING): THE NEWSCORP / TELEPIU CASE

Subject: Acquisitions

Industry: Broadcasting; television
(Some implications for other sectors of the press and media)

Parties: Newscorp
Telepiu
Vivendi Universal
Telecom Italia
Stream

Source: Commission Statement IP/02/1782, dated 29 November 2002

(Note. Media acquisitions and mergers always have a certain sensitivity; and, in the present case, the Commission is troubled by two aspects of the proposed operations. The first concerns the effects on the Italian pay-TV market, in which the combined firms would have a near monopoly. The second concerns the wider market implications, given the participation of Telecom Italia and the possible effects on other media. Since the investigation is proving complex, the Commission needs more time. The reasons for proceeding to an "in-depth" or "second-stage" probe are confined to cases in which the Commission has serious doubts about a case: it would be wrong for this provision to be used solely to give the Commission further time to investigate.)

The Commission has decided to start a detailed investigation into the planned acquisition of the Italian pay-TV company Telepiù by the Australian company Newscorp, which it will then merge with Stream, its own pay-TV operation in Italy. The investigation will enable the Commission to carry out a further analysis of the impact of the merger in Italy and, in particular, to conclude whether the package of undertakings already submitted by Newscorp truly favours the emergence of new competitors in order to prevent a monopoly in the pay-TV market.

Telepiù was created in 1991 as an analogue pay-TV platform and since 1997 Vivendi Universal has wholly controlled it. Stream started operating as a satellite pay-TV platform in Italy in 1998. Since 2000, it has been jointly controlled by NewsCorp and Telecom Italia on a fifty-fifty basis supported by a shareholders' agreement. On October 16, 2001, Newscorp notified the Commission of an agreement under which it would acquire control of Telepiù, which would then be merged with Stream. The Italian telecommunications operator Telecom Italia would hold a 20% stake in the new combined entity.

The merger would create a near monopoly in Italy since Stream and Telepiù are currently the only providers of pay-TV in the country, although cable operator e.Biscom has recently started to provide video on demand services to its clients.

The operation also raises competition concerns regarding the acquisition of broadcasting rights for "premium" content such as blockbuster movies and football matches. The in-depth investigation will enable the Commission to assess carefully the impact of the merger in the marketplace before taking a final decision.

The proposed transaction constitutes the "mirror image" of a previously aborted deal between Telepiù's parent Vivendi and Newscorp which would have led to the acquisition of Stream by Vivendi. This inverted operation did not meet the turnover thresholds set in the Merger Regulation which determine the exclusive jurisdiction of the Commission over a deal. Instead it was notified to the Italian Authorities, which cleared it in May, 2001, subject to conditions. The deal was subsequently abandoned and the current operation was notified to the Commission because in this case it did meet the turnover thresholds.

In the course of the first-phase examination of the new case, the Commission received from Newscorp a package of undertakings identical to the ones imposed by the Italian Antitrust Authority as conditions for clearance. The comprehensive remedy package is aimed at creating the conditions for effective potential competition in the affected markets. However, the sheer complexity of the remedies proposed and the limited time available to carry out a proper assessment have made it impossible to conclude, in the short time available in first phase, whether they would be sufficient to remove, in a clear-cut manner, all competition concerns. Furthermore, extra time and investigation will also help shed additional light on the potential side-effects of the transaction on certain telecommunication-related markets (such as broadband Internet access). This has proved necessary in the light of the participation of Telecom Italia in the merged entity and the possible competitive concerns arising from such participation. ■

The Microsoft Cases

Readers may have seen reports in the press about Microsoft's agreement with a Commission Working Party to implement a comprehensive package of data protection measures, which will mean making substantial changes to the existing .NET Passport system. The most important result of the changes is that users will get much more information and choice as to which data they want to provide and under which conditions these data will be processed by Microsoft or the participating websites. The Commission is, however, at pains to point out that the task of the Working Party on Data Protection is not related to and has no influence on the Commission's ongoing competition case against Microsoft.

Source: Commission Statement IP/03/151, dated 30th January 2003