European Commission: Decision in the MSG Media Service Case

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A decision concerning European concentration control was taken by the European Commission on the 9th November 1994 (pursuant to Council Regulation (EEC) Nr. 4064/89 of 21 December 1989 on the control of concentrations between undertakings, and especially pursuant to Art. 8 paragraph 3 and pursuant to the EEA Agreement, especially pursuant to Art. 57, paragraph 1 of this Agreement) which prohibited Bertelsmann AG, Taurus Beteiligungs GmbH & Co. KG (Kirch-Group) and Deutsche Bundespost Telekom from setting up a joint vemture as planned.

The Commission considers the intended Media Service GmbH (MSG) to be a concentrative joint venture as defined by art. 3 of the concentration regulation. In the view of the Commission the concentration meets the criteria of having a Communitywide effect and goes over the take-up threshold with an expected total turnover of more than 5 billion ECU.

The planned company was to supply administrative and technical services to digital pay-TV suppliers. With regard to competition legislation, the commission stated that the company would either take up a leader position or reinforce its leader position in three markets, each considered as being particularly open markets for the moment.

The first market - administrative and technical services for pay-TV and other TV communication services - is a new and growing market. The services to be provided include supplying decoders and ensuring access and subscriber management. The Commission is expecting the pay TV market to grow rapidly in line with the development of digital television.

The Commission decided that it was unlikely that new competitors would be able to enter the market because of the dominant position of Telekom in the cable TV networks and the involvement of Bertelsmann and the Kirch-Group in the pay-TV station Premiere and also in its wide-ranging program sources. The Commission sees the pay-TV market as an autonomous one and believes that this could also create or reinforce the market leader position of Bertelsmann and the Kirch-Group. The Commission also considers the present market position held by these two companies - which together with Canal Plus have run the only pay-TV station

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in existence until now - and the limited program resources available as a considerable competitive advantage in the quickly growing pay-TV market. The 1/3 share of Telekom did not help in convincing the Commission that this was an unbiased merger.

Finally the Commission believes the concentration will also reinforce the dominant position of Telekom in the cable television markets. It is expected that after the planned deregulation of basic telephone services in 1998, the cable TV market will also be deregulated. The MSG may only serve to strengthen Telekom's already dominant position on the market. The Commission once again referred to the programme resources controlled by Bertelsmann and Kirch and saw it as an obstacle to future free competition.

During the test case the MSG made a number of undertakings in an attempt to stop the Commission prohibiting the concentration. These included a transparent pricing policy and also, above all, building in a common interface (connections enabling the use of several different access control systems) allowing independent program suppliers to use the same decoder - but the undertakings did not persuade the Commission to give a positive answer. The undertakings were not considered to be enough by the Commission both because of the current company structure and also because the Commission had doubts as to the feasibility of such proposals. As for the proposal to create a common interface, it was considered that a market monopoly could still be achieved through the control of the cable networks. In the light of the obstacles to free competition expected by the Commission they were not convinced by the arguments of the different parties that the creation of MSG would promote the quick development of the digital television.

Entscheidung der Kommission der Europäischen Gemeinschaften in der Sache Nr. IV/M.469-MSG Media Service.

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Decision of the Commission of the European Communities in Case Nr. IV/M.469-MSG Media Service

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