



ARTICLE

GUN-JUMPING: THE EUROPEAN COMMISSION HITS VERY HARD



Competition, Retail and Consumer Law Commercial and International Contracts | 26/04/18 |

Whether it be on a national^[1] or European^[2] level, the instructions are clear: the parties to a concentration are required to give notification to the competent authority of their transaction and cannot carry it out if such authority has not authorized it.

In November 2016, the French Competition Authority penalized Altice with a fine of 80 million euros^[3] for having carried out the merger between SFR and Numéricable before having been authorized to do so. This time it is the European Commission (the "Commission") that penalized Altice with a fine of 124.5 million euros for the same offence and for facts that are in part similar to those penalized in France.

Altice was reproached for having carried out the acquisition of the provider PT Portugal, "*before having been authorized to do so and, in part, before having given notification of the concentration*"^[4].

Yet, in February 2015, Altice had indeed given notification of its acquisition plan. Two months later, the Commission had authorized the transaction, provided that the group sell some of its assets in Portugal. An interim period then began, during which the two companies were to remain competitors and not exchange any sensitive information. However, the Commission noted that certain provisions of the purchase agreement had enabled Altice to exercise a decisive influence over PT Portugal and that, in certain cases, Altice effectively exercised the decisive influence, notably giving instructions to PT Portugal about marketing campaigns and by receiving commercially sensitive information about the target company without a confidentiality agreement.

For the Commission, Altice did not respect its obligation to provide notification or its obligation to suspend the transaction. The Commission pointed out that the penalty was also justified because Altice was necessarily aware of its obligations in terms of a concentration.

This decision once again confirms the strict course of action the competition authorities have recently given to themselves as regards the assessment of these offences^[5]. It was notably from this zero-tolerance angle that, in July 2017, the European Commission sent three separate statements of objections to Merck and Sigma-Aldrich, General Electric and Canon to inform them that they had violated the European Union's procedural rules in terms of concentrations. These cases are still being investigated.

For the Commissioner in charge of competition, "*[t]he fine imposed by the Commission on Altice today reflects the seriousness of the infringement and should deter other firms from breaking EU merger control rules*"^[4].

In a press release^[6], Altice stated that it "*fully disagrees*" with this decision and said that it would file an appeal before the European Court of Justice.

[1] Articles L. 430-3 and L. 430-4 of the French Commercial Code.

[2] Articles 4 (1) and 7 (1) of Regulation 139/2004 on concentrations.

[3] Decision 16-D-24 on the Altice Group's situation with respect to Article 430-8-II of the French Commercial Code.

[4] Press release of the European Commission: http://europa.eu/rapid/press-release_IP-18-3522_en.

[5] See our news flash "Inaccurate Information and Gun-Jumping: As with the Competition Authority, the European Commission Raises Its Voice in Controlling Concentrations".

[6] <http://altice.net/sites/default/files/pdf/20180424...>
