



FRANCE - MERGERS

The French Competition Authority fines Altice/Numericable Group for non-compliance with some of its commitments

⌚ Decision of the French Competition Authority 16-D-07, April 19, 2016

The French Competition Authority (the "FCA") fined Altice/Numericable Group EUR 15 million for its failure to comply with one of the commitments agreed upon with the FCA in the context of the FCA's approval of the acquisition of SFR. Altice/Numericable Group agreed to divest the mobile phone activities of its subsidiary Outremer Telecom ("OMT") in La Réunion and Mayotte. Altice/Numericable Group further agreed to ensure that the economic viability, the market value and the competitiveness of the activities to be sold would not be altered during the period preceding the sale.¹

As the FCA reiterated in the present decision, it imposed these conditions in order to (i) avoid an excessive market power gain for Altice/Numericable Group on the mobile telephony market in the Indian Ocean, (ii) ensure that the acquisition would not affect the competition dynamics of the market, and (iii) safeguard the pricing position of OMT.

The FCA blames Altice/Numericable Group for increasing OMT's mobile services prices prior to its sale to Telecom Réunion Mayotte – the subsidiary of Iliad and the Hiridjee Group – and therefore for not respecting its commitment to making its best efforts to avoid any risks of loss of competitiveness of the activities to be sold.

After the entry into force of the commitments, OMT implemented various price increases in both its new subscription offers and its existing subscriptions, increases ranging from 17% to 60%. The FCA noted that these price increases led to a cancellation rate three times higher than the average cancellation rate one year earlier. The FCA further observed that the decrease in pricing competitiveness triggered a deterioration in OMT's commercial image among customers. The FCA was not convinced by the argument made by the parties about the improvement of the quality and the diversity of the services offered by OMT. The FCA noted that the main characteristic of OMT was its aggressive price packages and not a "high end" strategic position, which actually defines its competitors.

¹ Decision of the FCA n°14-DCC-160, October 30, 2016 relating to the sole control of SFR by Altice Group (the "transaction Numericable/SFR").

The FCA concluded that the practices implemented by Altice/Numericable Group were violations of a serious nature. The FCA mentioned two aggravating factors: first, the fact that the FCA was not informed of the planning or implementation of the price increases, and, second, that Altice/Numericable Group did not comply with its commitment to refrain from interfering with and being involved in the management of the activities to be sold.

Even though the maximum legal penalty to which Altice/Numericable Group was subject was more than EUR 600 million, the EUR 15 million fine imposed by the FCA appears to be quite high. However, this fine cannot be compared to the one imposed in 2011 on Canal Plus Group for failing to respect several of its commitments, which was followed by a withdrawal of the decision authorizing the merger.²

² Decision of the FCA n°11-D-12, September 20, 2011 relating to the compliance with the commitment provided in the decision authorizing the acquisition of TPS and CanalSatellite by Vivendi Universal and Canal Plus Group (fined up to EUR 30 million).