



# European Commission fines Altice €125 million for gun-jumping

The European Commission (Commission) announced on 24 April 2018 its decision to fine multinational cable and telecoms company Altice €124.5 million for breaching the EU Merger Regulation by implementing its 2015 acquisition of a telecommunications operator, PT Portugal, before notification to, or approval by, the Commission (so-called “gun-jumping”). This is the highest fine imposed by an antitrust authority for gun-jumping. Altice has already confirmed that it will appeal the decision to the EU's General Court.

Whilst the non-confidential version of the decision is not yet public,

- the Commission has stated that certain provisions of the purchase agreement resulted in **Altice acquiring the legal right to exercise decisive influence** over PT Portugal, e.g. by granting Altice veto rights over decisions concerning PT Portugal's ordinary business; and
- the Commission has also stated that **Altice actually exercised decisive influence** over aspects of PT Portugal's business, e.g. by giving PT Portugal instructions on how to carry out a marketing campaign and by seeking and receiving detailed commercially sensitive information about PT Portugal outside the framework of any confidentiality agreement.

While most authorities allow buyers to take steps which are both reasonable and necessary to protect the value of their investment, drawing the line on what is appropriate in practice can be difficult and has been the subject of some uncertainty following recent decisions by other agencies.

Reading between the lines, the text of the Commission's press release seems to suggest that, consistent with generally recognised practice: (i) veto rights over decisions outside of the ordinary course of business may be acceptable; and (ii) commercially sensitive information can be exchanged provided an appropriate clean team structure is in place. This will need to be confirmed once the non-confidential version of the decision is released. It also remains to be seen what constitutes “non-ordinary course” in the Commission's view.

## Increasing enforcement risk in merger reviews

This is the latest example of recent enforcement action taken by antitrust authorities against merging parties for integration steps that are deemed to have gone beyond mere planning in the period between signing and closing. In 2014, the Danish competition authority found that EY had broken “gun-jumping” rules for requiring KPMG's Danish unit to terminate a material contract prior to closing (this case is currently with the EU courts, pending judgement); in 2016, the French competition authority fined Altice €80 million for various joint planning measures implemented prior to closing of its acquisition of SFR; and, in 2017, the Commission issued a statement of objections to Canon for the use of a “two-step” transaction structure for its acquisition of Toshiba's medical-equipment unit (following a fine of 300,000 yuan (€39,000) by China's MOFCOM).

The decision highlights once more that merging parties must manage their interactions between signing and closing particularly carefully in the current environment in order to avoid exposure to significant fines (of up to 10% of worldwide turnover).

More broadly, the decision is another signal from antitrust authorities that they intend to be stricter in future on companies that have broken rules during merger reviews. For further insights on managing increasing risk in merger reviews, please see our [briefing here](#).

If you would like to discuss these developments, please get in touch with a member of our [antitrust, competition and trade group](#).

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