

[Under the letterhead of the Romanian Competition Council]

Decision no. 03 of 11.02.2009

on the Competition Council's non-intervention in respect of the economic concentration operation achieved by PPF PARTNERS 1 FUND and the ENACHE GROUP through the acquisition of the indirect joint control over S.C. CONTINENTAL HOTELS S.A.

THE COMPETITION COUNCIL

Based on:

1. Decrees nos. 57/17.02.2004, 1087/06.09.2006 and 1089/06.09.2006 on the appointing of the members of the Plenum of the Competition Council;
2. Decree no. 830/04.09.2007 on the appointing of the Chairman of the Competition Council;
3. The Competition Law no. 21/1996, as republished in the Official Gazette of Romania, Part I, no. 742 of 16 August 2005;
4. The Regulation for the organization, operation and procedure of the Competition Council, published in the Official Gazette of Romania, Part I, no. 288 of 1 April 2004, as subsequently amended and supplemented;
5. The Regulation on the authorization of economic concentrations, published in the Official Gazette of Romania, Part I, no. 280 of 31 March 2004, as subsequently amended and supplemented;
6. The Guidelines on the calculation of the turnover in the cases of anti-competition behaviour provided under Art. 5 para. (1) of Competition Law no. 21/1996 and in the cases of economical concentration, published in the Official Gazette of Romania, Part I, no. 440 of 17 May 2004;
7. The Guidelines regarding the definition of the relevant market, in order to establish the substantial part of the market, published in the Official Gazette of Romania, Part I, no. 288 of 1 April 2004;
8. The Notification of the economic concentration, registered with the Competition Council under no. RS-90/23.12.2008 and on the supplementary information sent by the concerned parties through their legal representatives;
9. The documents existing in the file of case no. RS-90/23.12.2008;
10. The Letter no. AG-26/10.02.2009 of the Services Department, regarding the assessment of the notified economical concentration;

Having regard to the following:

1. On 23.12.2008, PPF PARTNERS 1 FUND (hereinafter referred to as PPF FUND) and the Enache group (hereinafter referred to, collectively, as the parties) submitted with the Competition Council, by legal representative, a notification regarding the intention to achieve the economic concentration further to the acquisition of the control over Moonbright Limited;
2. This operation is of interest to the Romanian competition authority because Continental Hotels S.A., a company which is active exclusively on the Romanian territory, is under the indirect joint control of the target company of the notified operation, *i.e.* Moonbright, and of the vehicle company of the Enache group, Crossbrook, incorporated in Cyprus;
3. PPF Partners 1 Fund L.P.¹ is an investment fund, established in October 2008 as a limited partnership. The General Partner of the Fund is PPF Partners 1 GP, a British law company, controlled, in its turn, by PPF Partners Limited. The latter was established as a joint venture, through the agreement concluded to such effect between PPF Group N.V. and [...], in which only PPF Group NV owns the sole control. Up to now, PPF FUND does not control, either directly or indirectly, any undertaking active on the Romanian market, but, a company within the group thereof holds several companies on the territory of Romania²;
4. The Enache group is a group of undertakings in which the interests, and the controlling rights, respectively, are held by Mr. Radu Petrica Enache and/or by Mr. Radu Daniel Enache. Crossbrook³, also a part of this group, is a vehicle undertaking alongside which the target, *i.e.* Moonbright, controls, indirectly, by means of S.C. CONTI HOTEL INVESTMENTS S.A.⁴, S.C. CONTINENTAL HOTELS S.A. (“COMPLEXUL HOTELIER CONTINENTAL”)⁵, a company established in order to coordinate the entire hotel chain operating under the name of “Continental” in Romania;
5. Moonbright is a company established and operating in accordance with the laws of Cyprus⁶, organized as a vehicle of the PPF Investment company;
6. By means of the Transfer Agreement concluded on 3 December 2008, between PPF Alpha and PPF Fund (hereinafter referred to as the “Agreement”), PPF Alpha assigns to PPF Fond the entire interest held by it in Moonbright;

¹ Registered headquarters – First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey, G71 6 HT, registered with the British Companies Registry under no. LP13251

² PPF Group N.V. holds, by means of PPF Property Limited (Cyprus), starting with 2007, control over several Romanian undertakings; they have not obtained any turnover, as they performed no commercial activity. The companies at issue are: Rural Capital S.R.L., Rural Dobrogea S.R.L., Rural Moldova S.R.L., Rural Oltenia S.R.L., Rural Capital Unu S.R.L., Rural Capital Doi S.R.L. and Bavaria Complex S.R.L.;

³ Registered headquarters: Julia House, 3, Themistokli Dervi Street, PC 1066, Nicosia, Cyprus; Registration number: registered with the Companies Registry under registration no. 189992;

⁴ Registered headquarters – 33 Muzeul Zambaccian St., apt. 7, 1st District, Bucharest, registered with the Bucharest Tribunal Trade Registry under no. J40/6082/2007, Sole Registration Code 21439786;

⁵ Registered headquarters – 60 Dorobantilor St., 1st District, Bucharest, Romania, registered with the Bucharest Tribunal Trade Registry under no. J40/1754/1999, Sole Registration Code 1559737;

⁶ Registered headquarters -18 Spyrou Kyprianou, Office 301, P.C. 1075, Nicosia, Cyprus;

7. Thus, pursuant to the complete take-over of Moonbright by the Fund, the latter shall indirectly hold an interest of [...] % in Conti Hotels, the remaining participation being held by Crossbrook Limited (hereinafter referred to as Crossbrook), a company incorporated in Cyprus⁷;
8. The acquisition of the indirect joint control by PPF FUND and the Enache group over S.C. CONTINENTAL HOTELS S.A. represents an economic concentration operation within the meaning of Art. 10 para. (2) letter b) of Law no. 21/1996, as republished (hereinafter referred to as the law);
9. THE ENACHE GROUP obtained, in 2007, in Romania, through its component undertakings⁸, a total turnover equal to the equivalent of EUR [...] ⁹;
10. PPF FUND was recently established, in October 2008, and, therefore, did not obtain any turnover by this date at the world level, and, consequently, in Romania as well. The entity finally purchasing the control, *i.e.* PPF Group N.V., obtained, at the world level, in 2007, a turnover amounting to EUR [...];
11. The company over which joint control is acquired, having effect over the Continental business, Moonbright, was incorporated as a financial vehicle and does not obtain its own turnover, but only by means of its controlled undertakings. Therefore, for the purposes of this analysis, the turnover of the purchased company shall refer to the turnover of Continental, quantified in 2007 to a value of EUR [...];
12. Pursuant to Art. 14 of the law, with reference to the *de minimis* threshold in case of economic concentrations, an economic concentration operation must be notified to the Competition Council if it cumulatively meets the following conditions:
 - The aggregate turnover of the involved undertakings exceeds the RON equivalent of EUR 10,000,000; and
 - There are at least two undertakings involved that obtain, each of them, on the territory of Romania, a turnover exceeding the RON equivalent of EUR 4,000,000;

⁷ Registered headquarters – Julia House, 3, Themistokli Dervi Street, PC 1066, Nicosia, Cyprus; registered with the Companies Registry under registration no. 189992;

⁸ SC RED CO 80 SRL – registered headquarters – 33 Muzeul Zambaccian St., entrance A, apt. 2, 1st District, Bucharest; registered with the Bucharest Tribunal Trade Registry Office under no. J40/24771/1994, Sole Registration Code 6642115; SC INTERNATIONAL CONSULT SRL - registered headquarters – 33 Muzeul Zambaccian St., apt. 2, 1st District, Bucharest; registered with the Bucharest Tribunal Trade Registry Office under no. J40/29298/1992, Sole Registration Code 3320158; S.C. RED COROLA PRODEXIM S.R.L. - registered headquarters – 33 Muzeul Zambaccian St., entrance A, apt. 2, 1st District, Bucharest; registered with the Bucharest Tribunal Trade Registry Office under no. J40/38/1992, Sole Registration Code 3379678; S.C. RED GROUP S.R.L. - registered headquarters – 33 Muzeul Zambaccian St., entrance A, Ground Floor, apt. 2, 1st District, Bucharest; registered with the Bucharest Tribunal Trade Registry Office under no. J40/7891/2003, Sole Registration Code 9771220; S.C. CONTI HOTELS INVESTMENTS S.A. - registered headquarters – 33 Muzeul Zambaccian St., apt. 7, 1st District, Bucharest; registered with the Bucharest Tribunal Trade Registry Office under no. J40/6082/2007, Sole Registration Code 21439786;

⁹ Calculated at the exchange rate communicated by the National Bank of Romania for December 28th, 2007 (EUR 1 = RON 3.6102)

13. Consequently, although the notified operation is an economic concentration operation, it does not cumulatively meet the conditions of the *de minimis* threshold provided under Art. 14 of the law, in order to be subject to the Competition Council's review. The economic concentration at issue should not have been notified to the Competition Council;
14. The geographical dimension of the relevant market and the identification of the product market were established in accordance with the services supplied by the entities controlled by the target company, finally by Continental, taking into account the areas where it operates, namely the Romanian market of hotel services and public food services;
15. Post closing, the shareholding structure of Conti Hotels, and, therefore, that of Continental, shall remain unchanged, as the notified transaction only envisages changes in respect of the Moonbright shareholding structure. As a consequence, the interest held by Moonbright in Conti Hotels shall not be modified further to the implementation of the transaction at issue, but shall remain unchanged, at a participation of [...] % of the share capital of Conti Hotels, and the remaining participation shall continue to be held by Crossbrook Limited. At the same time, the interest held by Conti Hotels in the share capital of Continental, representing [...] % thereof, shall remain unchanged, as well as the percents held by the minority shareholders in the share capital of Continental.

HEREBY DECIDES:

- Art. 1** Pursuant to the provisions of Art. 46 para. (1) letter a) of the Competition Law no. 21/1996, as republished, and the provisions of the Regulation regarding the authorization of the economic concentrations, this non-intervention decision is hereby issued, in respect of the economical concentration operation achieved by the acquisition of the indirect joint control by PPF FUND and the Enache group over S.C. CONTINENTAL HOTELS S.A., as the notified economical concentration operation does not fall under the scope of the law.
- Art. 2** The Decision of the Competition Council may be challenged, according to the provisions of Art. 47 para. (4) of Competition Law no. 21/1996, as republished, in the administrative litigation section, with the Bucharest Court of Appeals, within 30 days from its communication.
- Art. 3** This Decision shall become applicable from the date of its communication.
- Art. 4** The Competition Council's General Secretariat and the Services Department shall monitor the enforcement of this Decision.
- Art. 5** The Competition Council's General Secretariat shall immediately communicate this decision to:

PPF PARTNERS 1 FUND L.P.

First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey, GY1 6HJ

By attorney-in-fact:

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Gheorghe Oprescu

Chairman

Illegible signature

Round stamp applied:

Chairman, Competition Council

Romania