

Decision no. 10 from 24.02.2009

related to the economic concentration realized by SC Orange Participations SA through the acquisition of sole control over SC Universal 2002 SRL

COMPETITION COUNCIL

On the basis of:

1. The Competition Law no. 21/1996, republished in the Official Journal of Romania, Part I, no. 742 from August 16, 2005 (hereinafter referred to as *law*);
2. The Decree no. 830 from September 4, 2007 regarding the appointment of the Competition Council's President, published in the Official Journal of Romania, no. 619 from September 7, 2007;
3. The Decree no. 1089 from September 6, 2006 regarding the appointment of a Vice-President of the Competition Council's Plenum, published in the Official Journal of Romania, Part I, no. 767 from September 8, 2006;
4. The Decree no. 1087 from September 6, 2006 regarding the appointment of a member of the Competition Council's Plenum, published in the Official Journal of Romania, Part I, no. 767 from September 8, 2006;
5. The Decree no. 57 from February 17, 2004 regarding the appointment of the members of the Competition Council's Plenum, published in the Official Journal of Romania, Part I, no.143 from February 17, 2004;
6. The Regulation from March 29, 2004 concerning the authorization of economic concentrations, published in the Official Journal of Romania, Part I, no. 280 from March 31, 2004, with subsequent amendment and completions (hereinafter referred to as *Regulation*);
7. The Regulation from March 26, 2004, on organization, functioning and procedure of the Competition Council, published in the Official Journal of Romania, Part I, no. 288 of April 01, 2004, with subsequent amendments and completions;
8. Guidelines from April 29, 2004, on calculation of turnover in the cases of anti-competitive practice provided for under the art. 5(1) of the Competition Law no. 21/1996 and in the economic concentrations cases, published in the Official Journal of Romania, Part I, no. 440/17.05.2004;
9. Guidelines from March 26, 2004, on relevant market definition with a view to determining the significant market share published in the Official Journal of Romania, Part I, no. 288/01.04.2004;
10. Guidelines from March 26, 2004, on the application of the provisions of art. 33¹ of the Competition Law no. 21/1996 regarding calculation of the authorization fee for economic concentrations, published in the Official Journal of Romania, Part I, no. 288/01.04.2004;
11. The Notification of the economic concentration submitted by Orange Participations SA, registered at the Competition Council under No. RS 91/24.12.2008 and effective as of 03.02.2009;
12. The Note of the Commission responsible with merger and antitrust No. AG41/20.02.2009.

¹ Art. 33 became art. 32 by republishing the Competition Law no. 21/1996;

Taking into account that:

1. Through the address registered at the Competition Council under No. RS 91/24.12.2008, Orange Participations SA² (hereinafter referred to as OPSA), submitted the notification on the economic concentration realized through the acquisition of sole control over SC Universal 2002 SRL³ (hereinafter referred to as Universal);

The notification became effective on 03.02.2009⁴;

2. OPSA's main object of activity is the research, development, maintenance, operational, management as well as selling operations for the entire system, equipment or services as in the Telecommunication, IT and Professional Services industries in France and outside the French territory. OPSA is currently held [...] by France Telecom Group⁵ (hereinafter referred to as FT Group). FT Group operates on the Romanian territory in the telecommunication industry through Orange România S.A.⁶ (hereinafter referred to as Orange), and Equant România S.A.⁷ (hereinafter referred to as Equant), with both companies being indirectly controlled by FT Group as follows: the indirect control of FT Group over Orange România S.A. is through Atlas Services Belgium⁸ (holding type structure), [...]. The FT Group indirect control over Equant România S.A. is through the France Telecom subsidiary Equant B.V. which controls EGN B.V.⁹ which in its turn holds shares, respectively exercises control over Equant România S.A.

3. Universal is a limited liability company whose main scope of business is retail sale of telecommunications equipment in specialized stores (NACE code 4742) having three shareholders, respectively Mr. Andrei Cotorobai with a 50% shareholding, Mr. Mihail Codreanu with a 35% shareholding and Mr. Aurelian Ionescu with a 15% shareholding. Until the transaction, the company was a dealer for Vodafone products and services. Universal has control (by a [...] shareholding) over SC AMG Mobile SRL¹⁰ (hereinafter referred to as AMG Mobile) and SC Express Communication SRL¹¹ (hereinafter referred to as Express Communication). The said companies are not subject to the economic concentration operation.

4. The notified operation is achieved by control changing over SC Universal 2002 SRL, from the joint control exercised by Mr. Andrei Cotorobai, Mr. Mihail Codreanu and Mr. Aurelian Ionescu to the sole control exercised by Orange Participations SA, through

² Orange Participations S.A., [...], established in 2000; a company organized and operating under the French law, registered in Paris, France, under RCS (Registre du Commerce et des Sociétés) no. 432 668 432. having registered address in 6 Place d'Alleray, 75015, Paris Cedex 15, France;

³ SC Universal 2002 SRL: Registered address: 99 Candiano Popescu street, sector 4, București, Commercial Registry number J40/6432/2002, Sole Fiscal Code 14771510. Universal main business object is Retail sale of telecommunications equipment in specialized stores (NACE code 4742);

⁴ Through the Competition Council address registered under No. DS 118/04.02.2009;

⁵ France Telecom SA - the parent company of the same titled group, registered under RCS (Registre du Commerce et des Sociétés) Paris no. 380129866, headquartered in 6 Place d'Alleray, 75015 Paris France;

⁶ Orange România S.A. Established and operating under the Romanian law, Commercial Registry no. J40/10178/1996 of 4.12.1996, having Sole Fiscal Code 9010105 and registered address in 51-53 Lascăr Catargiu Blvd., Sect 1, București, România. Main business object is "Wireless telecommunications activities – excluded those done by satellites" (NACE code 6120);

⁷ Equant România S.A. Established and operating under the Romanian law, Commercial Registry no. J40/9171/1993 from 30.03.1993, having Sole Fiscal Code 3751444 and registered address in 9-9A Dimitrie Pompei street, sector 2, București, România. Main business object is: "Wireless telecommunications activities – excluded those done by satellites" (NACE code 6120);

⁸ Atlas Services Belgium, the parent company of the same titled group, headquartered in 70 Boulevard Auguste Reyer, 1030 Bruxelles Belgium, RCS no. 598588. As notified, until now there is no evidence available to FT Group of the position of companies Atlas Services Belgium and EGN in the FT Group, respectively in the provided illustrations (attached as Annexes of notification);

⁹ EGN B.V. headquartered in 10 Heaqlhthrowstraat, 1043 CH Amsterdam, Holland, RCS no. 332067245;

¹⁰ S.C. AMG Mobile SRL: Registered address in 25 Regele Ferdinand street, postal code 3400, Cluj-Napoca, jud. Cluj, Commercial Registry of Cluj number J12/2330/2005, Sole Fiscal code 17709083. The company operated for one year only, as between March 2005 and March 2006;

¹¹ S.C. Express Communication S.R.L., with registered address in 4 Radulescu Motru street, building 1, entrance A, flat 4, sector 4, București, Commercial Registry of București no. J40/6402/2003, Sole Fiscal Code: 15428740. The Company carried on business until 2007 and, under the *Agreement*, with the shares held by the Universal shareholders to be third party transferred;

acquiring all of the Universal shares, based on „*Share Sale and Purchase Agreement*“ (hereinafter referred to as *Agreement*), [...];

5. The operation consisting in acquiring of the sole control over Universal by OPSA is an economic concentration in the meaning of Art. 10 par (2) letter b) from *Law* and, in the meaning of the *Regulation concerning the authorization of economic concentrations*;

6. Under art. 1 of the *European Council Regulation no. 139/2004 regarding the control of economic concentration between undertakings*, the proposed economic concentration is not subject to be notified to the European Commission, as the purchased party operates on the Romanian market only, and its turnover unfulfilled the threshold conditions in order to be notified at the European Commission. Moreover, the turnovers of undertakings involved in this economic concentration operation exceed the thresholds condition¹² stipulated in art. 14 of the *Law*, and therefore such operation has be notified and subject of the Competition Council control;

7. The relevant markets of product/service on which the economic concentration is carried out are the markets on which Universal develop its activities;

The relevant markets of the product/service are retail markets, respectively: the retail market for mobile telephony pre-paid products, the retail market for mobile telephony post-paid services and the retail market for mobile handsets and accessories;

The geographic markets corresponding to the retail activities are local markets comprising each particular place¹³ where Universal and the member companies of its group have operated (on the product/service relevant markets), namely: [...];

8. The relevant markets are growing, competitive and dynamic markets, without significant hedges for newcomers/competitors;

9. The notified economic concentration does not lead to the restriction, prevention or significant distortion of competition on the above identified relevant markets or on any part of those;

Pursuant to art.21 para.(2) of the Competition Law no. 21/1996, as republished, and to art. 8 para.(10) lett. b) of the *Regulation for the organization, operation and procedure of the Competition Council*,

DECIDES

Art.1 Pursuant the provisions of art. 46 par. (1) letter b) of the *law* and the provisions of the *Regulation on authorization of economic concentrations*, Competition Council authorizes the economic concentration consisting in acquiring the sole control over SC Universal 2002 SRL by SC Orange Participations SA, ascertaining that, although the

¹² Threshold calculated taking into account the official exchange rate of National Bank of Romania for the last working day from the year previous to the accomplishment of the operation, respectively year 2008;

¹³ Notification and consequently the analysis of the economic concentration operation were based on the restricted form of the geographic market. How much more so, a wider approach of the geographical market cannot pose any problems as to the economic concentration at hand;

notified economic concentration operation falls within the scope of the *Law*, there are no serious doubts as regards the compatibility with normal competitive environment.

Art.2 Pursuant the provisions of the Art.32 par.(1) of the Competition Law no. 21/1996, republished, SC Orange Participations SA shall pay the authorization fee of the notified economic concentration.

Art.3 The authorization fee, according to the provisions of the *Guidelines on application of the provisions of art. 33 of the Competition Law no. 21/1996, with subsequent modifications and completions, regarding the calculation of the authorization fee for economic concentrations*, calculated based on the turnover submitted through the address which was registered at the Competition Council under the no. RG 719 of 13.02.2009 is amounted at [...] lei.

Art.4 The amount of the authorization fee shall be paid within a term of maximum 30 days from the communication of the present Decision, to the State Budget, through a treasury payment order, with the mention: “for the authorization of the economic concentration”. A copy of the payment order shall be sent without delay to the Competition Council.

Art.5 Within a term of 5 days starting with the date of lodging of the Simplified Annual Financial Statements on 31.12.2008 to the territorial units of the Ministry of Public Finance, SC Orange Participations SA shall refer a copy of those Statements to the Competition Council, together with a statement on the turnovers related to the activities carried out by the parties involved on the relevant markets. The Competition Council shall reserve its right to recalculate the amount of the authorization fee, if the turnovers calculated on the basis of the final data are significantly different against the data taken into account for setting the fee provided for under the art.3 of the present Decision.

Art.6 The Competition Council’s Decision can be challenged, according to the provisions of the Art. 47 (4) of the Competition *Law*, within 30 days of its acknowledgement, at the Appeal Court of Bucharest, to the administrative section.

Art.7 The present decision enters into force at the date of its communication.

Art.8 The Service Directorate and the General Secretariat of the Competition Council shall supervise the enforcement of the present Decision.

Art.9 The present Decision will be communicated by the General Secretariat of the Competition Council to Orange Participation SA, through its legal representative: [...]

Gheorghe Oprescu
President