



**REPUBLIC OF ALBANIA**  
**-THE COMPETITION AUTHORITY-**  
**-THE COMPETITION COMMISSION-**

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**D E C I S I O N**

**Nr.87, Dated 22. 09. 2008**

**On**

**“On the authorization of the concentration realized through the acquisition of sole control by Deutsche Telekom AG over Hellenic Telecommunication Organization SA and, indirectly, over AMC sh.a.”**

The Competition Commission, on its meeting held on 22. 09. 2008, with the participation of:

- Mrs. Lindita Milo (Lati) Chairwoman
- Mr. Lush Përpali Deputy chairman
- Mrs. Servete Gruda Member
- Mr. Koço Broka Member

Discussed the following issue:

**Subject:** On the authorization of the concentration realized through the acquisition of sole control by Deutsche Telekom AG over Hellenic Telecommunication Organization SA (OTE).

**Legal basis:** Law No. 9121, dated 28.07.2003 “On Protection of Competition”, as amended, Article 24, letter “d”, Articles 2, 10-12, Chapter IV “Procedures for the control of concentrations”, Articles 53-56, the Regulation “On the implementation of the concentration procedures of the undertakings”, the Guideline “On the form of the notification of concentrations and Annex I – “Form on the notification of the concentration”.

Upon reviewing the the report presented by the Secretariat on the notified transaction, the Competition Commission

### **NOTED THAT:**

1. The notification of the concentration consisting on the acquisition of direct control by Deutsche Telekom AG (hereinafter referred as DT) over Hellenic Telecommunication Organization SA was submitted to the Competition Authority on 21 May 2008, in compliance with the legal deadlines.
2. The notified transaction is presented as acquisition of direct control of DT over O.T.E. through the purchase of 25%+1 of its shares.
3. In Albania, DT acquires indirect control over mobile telephony company Albanian Mobile Communication (AMC sh.a.), where the branch owned 100% by OTE, Cosmote Group owns 82% of the shares.
4. Pursuant to Articles 2, 10 and 12, paragraph 1 of the Law No. 9121, dated 28.07.2003 "On Protection of Competition", as amended, the Competition Authority has deemed that this transaction is subject to its review and assesment.

#### **I. Parties participating in the transaction**

5. **Deutsche Telekom AG**, the **buyer**, is a joint stock company that is created and functions in compliance with the Federal Law in the Republic of Germany, is registered at the Commercial Register of the Court in Bonn in January 1995, with headquarters at the following address: Friedrich-Ebert-Allee 140, 53113, Bonn, Germany.
6. **Hellenic Telecommunication Organization SA**, the **seller**, is a joint stock company that is created and functions in compliance with the law in the Republic of Greece, founded in 1949, with headquarters at the following address: n 99 Kifissias Avenue, Amaroussion 15181, Athens, Greece.
7. OTE operates in Southeastern Europe through its daughter companies controlled by her. OTE has a significant market share in fixed-line telephony (Greece, Serbia, Romania), as well as in the mobile telephony in Greece, Macedonia, Romania, Bulgaria and Albania.

#### **I.1. Parties related indirectly**

8. **Cosmote SA**<sup>(1)</sup>, is the main company of Cosmote Group, which is 100% owned by OTE. Cosmote Group operates in the Albanian market because it controls 82 % of the shares of AMC sh.a., and also is present in the regional markets such as in Bulgaria where it owns 100 % of

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<sup>1</sup> Filiali i zotëruar 100% nga OTE.

Globul company shares, in Romania, where owns 70 % of Cosmote company, and in Macedonia where it owns 100% of the shares of Cosmofon company.

9. **AMC SHA**, is a joint stock company that is created and functions in compliance with the Law in the Republic of Albania, registered on 27.11.1995, No. 12910, with headquarters in Tirana, and which operates in the sector of mobile telephony.
10. The market share occupied by AMC sha in the internal market for mobile telephony products is 51.5%<sup>2</sup>. At present, AMC sh.a. has approximately 1.195.000 subscribers<sup>3</sup> and offers its services in all the country, by means of GSM and GPRS technologies.

## II. The transaction

11. On the basis of the agreement signed on 14 May 2008 between Deutsche Telekom AG and the Republic of Greece, it follows that through the purchase of shares and voting rights, Deutsche Telekom AG shall exercise influencing control in the management of OTE Company.
12. After the realization of this transaction, the ownership and control structure shall be as follows.
  - a) DT owner of 25% + 1 of shares;
  - b) The Republic of Greece, owner of 25% + 1 of shares;
  - c) International Institutional Investor owner of 48% of shareholders' capital.
13. The ownership of both parties participating in the transaction (taken together) shall represent 50% of the shareholders capital. Pursuant to the Shareholders' Agreement, signed on 14 May, the total of the voting rights in the General Shareholders' Assembly shall be 50%+ 2 [voting rights]. In this context, DT and the Republic of Greece shall cooperate in relation with the drafting of OTE business policies, in compliance with the conditions stipulated under Articles 4-7 of the Shareholders Agreement.
14. DT acquires sole control over OTE, **not through the purchase of a "minority package control"**, but the purchase of voting rights, which include: decision-making rights, as a result of whose, DT is enabled to exercise determinant control on the commercial activity, the composition or the decisions of the managing bodies of OTE, as well as the the

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<sup>2</sup> According to the Notification Form and Decision No. 59 of the Competition Commission.

<sup>3</sup> According to the Notification Form.

direction of its commercial policy (such as decisionmaking on production, prices, sales, etc.).

15. DT owns a preferential voting right, which means that in case of ballot voting, DT has the right to exercise a determinant vote concerning the final decisions of the Managing Board.
16. While the right of preferential vote owned by the Republic of Greece includes vetoing rights, which mainly concern financial matters, the issue of the name, the trademark, the jurisdiction, etc., those rights do not, however, grant the Republic of Greece any determining influence over OTE, which means that it has over OTE SA sole negative control.
17. Through the realization of this transaction, DT aims at the following:
  - a) To improve competitiveness in the national market;
  - b) To extend the telephony communication market, mainly that of mobile telephony;
  - c) To extend further the internet and mobile telephony services.
18. Whilst OTE shall draw benefits from the technical expertise of its strategic partner, i.e. DT, and at the same time, by exploiting to the extent possible the group synergies, shall improve EBITDA margin, as well.

#### **IV. Turnover**

19. Total turnover in the international market of the parties participating in the transaction, in the year 2007 was XXXX billion Lek, divided as follows:
  - a) DT : XXX billion Euro = XXX billion Lek;
  - b) OTE : XXX billion Euro = XXX billion Lek.
20. Total turnover in the national market realized by AMC sh.a. in the year 2007 was: XXX billion Lek.

#### **V. THE RELEVANT MARKET:**

##### **V.I. The relevant product market**

21. In compliance with former decisions adopted by the European Commission and standard regulatory practice applied in relation to the provision of telecommunication services, as well as according to the definition made by the participating parties, relevant market shall be considered the market that comprises the goods/services of the

telecommunications industry, divided into mobile telephony products and fixed telephony products.

22. The participating parties offer their services on both subdivisions of the telephony market.

a)- DT provides a broad spectrum of services at the international level in the field of telecommunications and information technology. It operates along three segments: Mobile Communications, Broadband/Fixed Network and Business Customers, which comprise the provision of voice services (VoIP), data transmission, sms and mms, Internet services (ISP), broadband, roaming services, value added services, satellite and wireless communications, etc.

b- OTE ensures a broad spectrum of telecommunication products and services, to include local calls, long distance and international calls, high speed data communication, ADSL services (asymmetric digital subscriber line), broadband data transfer, network services inside and outside Greece, mobile telephony services (satellite and wireless communications), customer services, etc.

23. The products traded by the two parties participating in the transaction are the same and substitutable both from the supply and the demand side, in accordance with the market subdivision in the telecommunication industry.

#### **V. II. The geographical market:**

Given that the networks have a tendency to create a zone for extension/coverage at the national level, are regulated and have a unified legal and regulatory framework, the operators hold national licenses and the clients may easily change the service provider, by fulfilling their requests in a more cost-effective way, as relevant market shall be considered the national market<sup>(4)</sup> where are included all the fixed and mobile telephony services offered by the parties participating in the transaction.

24. But, since in the internal market in Albania the following applies:

I. DT is not present, neither directly or indirectly for any of its products/services; and

II. OTE is indirectly active in the product market only for mobile telephony services, through AMC sh.a. company.

25. The geographical market is determined to be the territory of the Republic of Albania.

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<sup>4</sup> Commission Decision of April 26, 2006, Case No. COMP/M.3916 - T-Mobile Austria/teleging; Commission Decision of May 25, 2005, Case No COMP/M.3776 – Vodafone/Oskar Mobile and Commission Decision of June 10, 2005, Case No. COMP/M.3806 - Telefónica/Cesky Telecom



## **VI. 1. Analiza e konkurrencës në tregun e brendshëm**

31. OTE është prezente në tregun e brendshëm, indirekt, për shërbimet e telefonisë së lëvizshme, nëpërmjet kontrollit të filialit kryesor Cosmote, tek shoqëria AMC ShA, që gëzon një pozicion dominant në tregun e telefonisë së lëvizshme dhe në veçanti në tregun e shërbimit me kartë të parapaguar.
32. The market share occupied by AMC sh.a. in the internal market for mobile telephony products is 51.5%. The only competitor of AMC sh.a. in the year 2007 is Vodafone Albania company, which occupies 48.5% of the market and offers the same services as AMC.
33. Pursuant to paragraph 51 of Decision No. 59, dated 09.11.2007 of the Competition Commission, AMC sh.a. and Vodafone Albania have dominant position in the market of mobile telephony.
34. The Telecommunications Regulatory Entity (today called AKEP), has declared, through Decisions No. 396 and 397, dated 18.09.2007, the operator AMC sh.a. as Operator with Significant Market Power (OSMP) in the market of call termination and the market of mobile telephony.
35. The third operator of mobile telephony, Eagle Mobile sha, is a company fully owned by Albtelekom sh.a.. Eagle Mobile sha started its operations on March 2008, and, based on the number of the subscribers, on June 2008 results to hold a very small market share<sup>(5)</sup>.
36. The Government of Albania has decided to start the procedures for granting a fourth operating license in the mobile telephony sector. This decision is made consistent with the objective to extend the mobile telephony market and increase of the potential for competition.
37. The transaction concerns the telecommunications industry, but its completion does not create overlapping of fixed-line or mobile telephony services, because the parties participating to it do not have any cross-participation in the geographical markets, also, with regard to the control in their branches or other companies. Furthermore, they do not have common clients. Therefore, the transaction does not result in a restriction of competition.

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<sup>5</sup> According to the business plan of Eagle Mobile company, the transformation of the same from a potential, to a real operator, requires that Eagle Mobile constructs its own network, thus putting itself in the position to really be able to compete with the two other market operators. So far, Eagle Mobile has achieved qualitative coverage of the inhabited areas and all the regional and national roads of Albania.

38. The transaction results in a change over the shares' ownership at OTE company, and does not have any impact on the market share that this company indirectly owns in Albania, and also does not create overlapping in the offering of services, and per consequence, does not strengthen the dominant position of AMC sh.a.

39. The transaction realizes the acquisition of influencing control by the strategic operator DT over OTE, through the change in the management policy, development of technology and information is expected to grow the competitiveness in the telephony market in general, and indirectly and in particular, in the mobile telephony market in Albania.

**FOR THE ABOVE REASONS:**

Pursuant to Article 24, letter "d", and Article 56, paragraph 1, of Law No. 9121, dated 28.07.2003 "On Protection of Competition", as amended, the Competition Commission,

**DECIDED:**

1. To authorize the concentration realized through the acquisition of sole control by Deutsche Telekom AG over Hellenic Telecommunication Organization SA and, indirectly, over AMC sh.a., through the control over 82% of its shares.
2. This decision enters into effect immediately.

**THE COMPETITION COMMISSION**

**Lush Përpali**  
(\_\_\_\_\_) **Deputy Chairman**

**Servete Gruda**  
(\_\_\_\_\_) **Member**

**Koço Broka**  
(\_\_\_\_\_) **Member**

**Lindita Milo (Lati)**  
**CHAIRWOMAN**