



Decision CPC: 28/2021

Case No: 08.05.001.021.020

THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW

No. 83(I)/2014

Notification of a concentration regarding the acquisition by Digital Turbine, Inc. of part of the share capital of Fyber N.V., via Digital Turbine Luxembourg S.A.R.L.

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karidis	Member
Mr. Panayiotis Oustas	Member
Mr. Aristos Aristidou Palousas	Member
Mr. Polynikis-Panayiotis Charalambides	Member

Date of Decision: 12 May 2021

DECISION SUMMARY

The Commission for the Protection of Competition (hereinafter the “Commission”) received notification with regard to a proposed concentration on behalf of Digital Turbine, Inc. (hereinafter “Digital Turbine” or the “Acquirer”). The notification was filed on 7/4/2021, in accordance with Section 10 of Law 83(I)/14 regarding the Control of Concentrations between Enterprises (hereinafter the “Law”).

The concentration is based on the purchase of shares where, Digital Turbine, via its wholly owned subsidiary Digital Turbine Luxembourg S.A.R.L. shall acquire part of the share capital of Fyber N.V. (hereinafter “Fyber” or the “Target”) (hereinafter the “Transaction”).

Digital Turbine, Inc., is a public company duly registered under the laws of the United States of America (hereinafter “USA”). The company delivers a mobile services platform that works with mobile operators and third-party publishers to provide portal management user interface, content development and billing technology. The company delivers end-to-end products and solutions for mobile operators, application advertisers, device original equipment manufacturers (OEMs) and other third parties to enable them to monetize mobile content.

Digital Turbine Luxembourg S.A.R.L., is a company duly registered under the laws of Luxembourg and constitutes a wholly owned subsidiary of Digital Turbine. Neither the company nor its wholly owned subsidiary, Digital Turbine Germany GmbH, have any commercial activities.

Fyber N.V. (the Target), is a public limited liability company duly registered under the laws of the Netherlands and of the Federal Republic of Germany. Fyber is an advertising technology company, developing a next generation platform for the programmatic trading of ads, in a data-driven environment. Fyber’s technology platform provides an open-access platform for both digital advertisers and publishers with a global reach.

The details of the concentration are set forth in the Share Purchase Agreement (hereinafter the “Agreement”), by way of which Digital Turbine, via its wholly owned subsidiary Digital Turbine Luxembourg S.A.R.L., shall acquire part of the share capital of the Target, with a view to eventually acquire the total thereof.

The Commission, having taken into consideration the particulars of the proposed Transaction, concludes that the latter does not constitute a “concentration of major importance” within the meaning of Section 3(2)(a)(iii) of the Law. According to the said provision, the Law is applicable to transactions that constitute concentrations of major importance, that is, where at least 3.500.000 euros of the total turnover of all participating entities is realized within the Republic.

In view of the above, the Commission drew guidance from the Commission Consolidated Jurisdictional Notice¹ (hereinafter the “Notice”) which, inter alia, stipulates that turnover should be attributed to the place where the customer is located. The Commission, having also taken into consideration the reasoning followed by the European Commission in the BOEING/HUGHES case², ultimately finds that the proposed transaction does not meet the aforementioned criterium set forth by the Law, as the total turnover of all entities participating in the proposed Transaction that was actually realized within the Republic, falls below the stipulated threshold.

¹ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (2008/C 95/01).

² Case COMP/M.1879 - BOEING/HUGHES, dated 29/09/2000.

For its decision the Commission took into consideration the Parties' submission that the more appropriate method for allocation of the revenues should be based on end-users in Cyprus rather than to customers with invoiced addresses in Cyprus, in which case the thresholds under the Law are not met.

For clarification purposes, it is hereby noted that the services of Digital Turbine provided to publishers / application developers to install their applications on mobile smart phones are typically considered as rendered at the point of installation. In the Transaction under consideration, the actual loading of the applications, for which Digital Turbine billed companies in Cyprus, took place, for the most part, outside of the Republic. This means that the services were rendered, and the relevant turnover was realized, for the most part, outside of Cyprus. As a consequence, the revenues of the Acquirer realized from app installations that actually took place in Cyprus and thus allocated to Cyprus is below the threshold stipulated by the Law.

On the basis of the factual and legal circumstances of the case before it, the Commission unanimously decided that the concentration under consideration does not constitute a concentration of major importance.

In conclusion, the Commission, acting in accordance with section 22(1)(a) of the Law, unanimously decided that the notified concentration does not fall within the scope of the Law and/or the meaning of a concentration.

Loukia Christodoulou

Chairperson of the Commission for the Protection of Competition