



Decision CPC: 72/2022

Case Number: 8.13.020.15

**THE CONTROL OF CONCENTRATIONS BETWEEN ENTERPRISES LAW  
No. 83(I)/2014**

**Notification of a concentration regarding the acquisition of the share capital of  
Altamira Asset Management (Cyprus) Ltd by Altamira Asset Management S.A.**

Commission for the Protection of Competition:

Mrs. Loukia Christodoulou	Chairperson
Mr. Andreas Karydis	Member
Mr. Panayiotis Oustas	Member
Mr. Aristos Aristeidou Palouzas	Member
Mr. Polynikis-Panagiotis Charalambides	Member

Date of Decision: 9<sup>th</sup> of November 2022

**SUMMARY OF THE DECISION**

The proceedings pertained to the investigation of whether Altamira Asset Management S.A. (hereinafter “Altamira”) failed to provide information regarding an intra-group agreement with doValue for the provision of Non-Performing Loan (hereinafter the “NPLs”) management services, within the context of the notification regarding the acquisition of the share capital of Altamira Asset Management (Cyprus) Ltd by Altamira S.A., which constitutes a violation of Section 40(1)(c) of the Control of Concentrations between Undertakings Law 83(I)/14 (hereinafter the “Law”).

According to the aforementioned provisions: *“40.(1) The Commission may impose the following administrative sanctions on the participants in the concentration or on an undertaking or undertakings or associations of undertakings, natural or legal persons or private entities infringing or omitting to comply with the following*

*provisions of this Law: (c) an administrative fine not exceeding fifty thousand (50.000) euros in case of omission to provide information pursuant to an obligation imposed by any provision of this Law.”*

The undertakings participating in the merger are as follows:

Altamira Asset Management S.A.

Altamira is a company duly registered under the laws of Spain, providing debt recovery and property management services for the purpose of consolidating assets under management. The assets managed by Altamira for third parties are mainly non-performing assets, which include Non-Performing Loans (hereinafter the “NPLs”) of all types as well as real estate assets acquired as collateral for non-performing credit facilities (REO).

Altamira is listed on the Milan Stock Exchange and a member of the doValue group of companies, subject to the exclusive control of doValue SpA. The latter is an affiliate of SoftBank Group Corp..

Altamira operates in Cyprus through its subsidiary Altamira Asset Management (Cyprus) Ltd (hereinafter “Altamira Cyprus”), a limited liability company duly registered under the laws of the Republic of Cyprus. Altamira also owns 6% of the share capital of doValue Cyprus Ltd (hereinafter “doValue Cyprus”), while the remaining 94% belongs to doValue SpA (hereinafter “doValue SpA”).

In view of the above, and as stated by the parties, Altamira, Altamira Cyprus and doValue Cyprus are connected to each other through the doValue SpA group.

The notification was filed with the Service of the Commission for the Protection of Competition (hereinafter the “Service”) on 1/7/2020, by Altamira, in accordance with the provisions of article 10 of the Law. The notification related to a concentration by way of which Altamira, already holding 51% of the shares of Altamira Cyprus, would acquire the remaining 49% from the Cooperative Asset Management Company Ltd, thus becoming the sole shareholder of Altamira Cyprus.

By its decision no. 28/2020, dated 17/7/2020, the Commission declared the concentration compatible with the operation of competition in the market on the basis of Section 22 of the Law.

However, on 28/7/2020, the Commission, sent requests to doValue SpA for explanations in respect to a press release announcing that the Italian group doValue

had concluded an agreement of cooperation for the management of the Bank's portfolio in Cyprus.

Through information provided by doValue S.p.A. on 21/8/2020 and 26/8/2020, in the context of notification no.8.13.019.46, in respect to a press release titled "*Altamira: Premiere with 30 properties from the Alpha Bank portfolio*", it came to the Commission's attention that doValue Cyprus and Altamira had entered into an agreement for the provision of services by the latter to the former in respect to its NPL portfolio, information that was not previously mentioned at any point in the context of said notification.

The Commission thus concluded that it prima facie ensued that Altamira had failed to provide the relevant information in the course of notification no. 8.13.020.15, i.e., that there was an intra-group agreement with doValue for the provision of NPL management services, which would have prompted the estimation of the total market share of Altamira Cyprus in the market of NPL management in Cyprus.

As a result, on 23/2/2022 the Commission issued a statement of objections (hereinafter "SO") regarding the suspected violation arising from the withholding of required information, pointing out that Section 40(1)(c) and/or Section 45 of the Law may be applicable.

The SO was followed by the parties' access to the administrative file, submission of written representations and appearance before the Commission in the course of oral proceedings.

The Commission, in its session dated 31/5/2022, found that a violation of the Law had taken place and that Section 40(1)(c) thereof was applicable. As pointed out in its decision, Altamira violated the Law by omitting to state its activity relating to the provision of services to doValue, in breach of its obligation under par. 1(ii) of Annex III of the Law which provides that the notifying party is required to state "[...] *in relation to every participating undertaking [...] (ii) the nature of the commercial activity in which the undertaking is engaged*".

The Commission hence unanimously decided to proceed on the basis of Article 40(4) of the Law and notify Altamira of its intention to impose an administrative fine, setting out the reasons why it intends to do so and giving it the right to submit written representations on the amount of the fine.

Altamira submitted its written representations on 27/10/2022.

In view of the evidence before it, the Commission noted the following:

## **THE PARTIES' ARGUMENTS**

The parties *inter alia* argued that the principle of legality was violated and that the investigation carried out was insufficient and/or not duly performed.

In its evaluation of the arguments laid out by the parties, the Commission noted that the SO concerned its *prima facie* conclusions reached on the basis of information that came to its knowledge after the issue of its decision on notification no. 8.13.020.15. The Commission added that said information essentially related to intra-group relationships and actions, as described by do Value S.p.A., and emphasized that Altamira itself in its submissions dated 16/3/2020 referred to “intragroup agreements” while also adding that Altamira, Altamira Cyprus and doValue Cyprus through the doValue Spa group belong to the same single economic unit. The Commission clarified that Section 42 of the Law does not pose any restrictions on the use of data obtained following a relevant request for information.

The Commission explained that a Statement of Objections is issued after a provisional view that there has been an infringement and does not prescribe the final outcome of a case. It simply records its *prima facie* position on the basis of which relevant documents are communicated to the notifying part, granting it the right to access the administrative file and submit written and oral representations, thus ensuring its rights of defense.

The Commission unanimously rejected the parties' arguments.

In addition to its procedural objections, Altamira also claimed that the conditions for application of Section 40(1)(c) of the Law were not met, arguing that any omission identified by the Commission in the Notification did not affect the assessment of the concentration. The notifying party argued that it would be unjust and disproportional under the circumstances as well as dangerous to legal certainty to apply Section 40(1)(c) for an alleged omission that neither ensues directly from the Law as illegal, nor was it done culpably, nor could it ever affect the judgment of the Commission, as crystallized in its Decision no. 28/2020.

## **THE COMMISSION'S POSITION**

Having taken into consideration the legal obligations of the notifying parties and assessed the evidence before it, the Commission unanimously concluded that there was a violation of the Law ensuing from the fact that Altamira did not state in its notification the services it provides to doValue and thus did not fulfil its obligation

under par. 1 of Annex III of the Law to record “the nature of the commercial activity in which the undertaking is engaged”.

As a result, on 28/9/2022 the Commission, acting on the basis of Section 40(4) of the Law, notified Altamira of its intention to impose an administrative fine.

On 10/27/2022, Altamira submitted its written representations, that may be summarized as follows:

- any administrative fine imposed should be of a symbolic nature.
- the violation attributed to Altamira is of minor importance.
- The violation was not fraudulently committed.
- any high fines should be imposed on fraudulent offenders and therefore not on Altamira.
- the information Altamira failed to disclose to the Commission was not essential for the assessment of the concentration.
- the violation attributed to Altamira is of a technical nature and not essential for the assessment and final judgment of the Commission.
- Altamira’s cooperation with the Service at all stages of the process was exemplary.
- A fine of a symbolic nature imposed on Altamira adequately serves the Commission’s penalty policy and deterrent effect thereof.

Focusing on the provisions of the Law pertaining to the imposition of administrative fines, the Commission further considered the gravity and duration of the infringement.

In assessing the gravity of the violation, the Commission considers the type of the violation and takes into account the particular circumstances of each case.

As noted by the Commission, according to the provisions of Appendix III of the Law, which explicitly set out the information that must be recorded in the Notification of a concentration, the notifying party is liable to declare, in respect to each participating undertaking, “*the nature of the commercial activity in which the undertaking is engaged*”.

As further stressed by the Commission, the notification constitutes the basis for merger investigations as is the only source of information in respect to a proposed merger. Failure to provide required information creates the risk for the Commission of not investigating important aspects in the course of assessing the impact of the proposed concentration on competition, hence resulting in a final decision based on inaccurate data.

It therefore ensues that, any company seeking approval of a concentration is responsible and has an obligation to provide this information as the exact activities that are part of the concentration are known only to the company itself. The Commission and its Service are not responsible, nor are they, for the purposes of applying the Law, required to know or be aware at any point in time of the exact operations of a particular enterprise and the market sectors in which it operates.

In the case at hand, the aforementioned information came to the attention of the Service, and by extension, of the Commission, after the concentration regarding the acquisition of share capital of Altamira Asset Management (Cyprus) Ltd by Altamira Asset Management S.A. (file no. 8.13.020.15) had been approved. As already mentioned, the knowledge in question came from relevant press releases on the basis of which specific questions were sent out and from the answers to which, specific data, records and information that were not recorded at the time of the notification, came to the knowledge of the Service / Commission.

While Altamira argued that the omitted information was immaterial to the assessment of the merger, it did not however provide any documentation in support of its argument.

The information constituting the subject matter of this procedure, i.e. *“the nature of the commercial activity in which the undertaking is engaged”*, is specific, clear and required in every merger notification, something that Altamira is aware of as a company with experience in merger notifications.

On the basis of the information before it, the Commission unanimously concluded that the established violation constituted a serious violation of the Law.

#### Duration of the infringement

The Commission unanimously concluded that the infringement was limited in time since it took place once at the point of submitting the notification.

#### Mitigating Circumstances

In the course of its assessment pertaining to the procedure for the imposition of the fine, the Commission also took into consideration certain mitigating circumstances submitted by Altamira:

- With regard to Altamira’s position that it never attempted to conceal the information in relation to the services it provides to doValue on the basis of their intragroup agreements, the Commission pointed out that it has found no

evidence that there was any such attempt but neither has it found the existence of fraud.

- The Commission accepted Altamira's submission that it cooperated with the Service and responded positively, providing all the requested information, as well as in the course of the procedure before the Commission.
- The present is the first violation of the Law by the notifying party.
- The notifying party constitutes a large company which has previously notified other concentrations to the Commission and was aware of the provisions of national legislation. In any case, a company notifying a concentration is liable of being aware of the provisions of applicable legislation, as the case may be.

For the reasons explained above, the Commission unanimously:

1. Decided that Altamira had violated the Law by omitting to state in the notification its activity relating to the provision of services to doValue, in breach of its obligation under par. 1(ii) of Annex III thereof which provides that the notifying party is required to state *"[...] in relation to every participating undertaking [...] (ii) the nature of the commercial activity in which the undertaking is engaged"*.
2. Imposed an administrative fine on Altamira in respect to the established violation of the Law, as above, in the amount of €25,000 (Twenty Five Thousand Euros).

Loukia Christodoulou, Chairperson of the Commission for the Protection of Competition

Members of the Commission for the Protection of Competition:

Andreas Karydis,

Panayiotis Oustas,

Aristos Aristeidou Palouzas

Polynikis-Panagiotis Charalambides