



Mergers: Commission alleges Merck and Sigma-Aldrich, General Electric, and Canon breached EU merger procedural rules

Brussels, 6 July 2017

The Commission has sent three separate Statements of Objections to Merck and Sigma-Aldrich, General Electric and Canon alleging they breached EU merger rules: General Electric, and Merck and Sigma-Aldrich by providing incorrect or misleading information; Canon by implementing a merger before notification and clearance.

The current investigations are limited to the assessment of breaches of the EU merger procedural rules and will not have an impact on the Commission decisions approving the three mergers, which will remain effective.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"We need companies to work with us to ensure fast and predictable merger control, to the benefit of both companies and consumers. But we can only do our job well if we can rely on cooperation from the companies concerned – they must obtain our approval before they implement their transactions and the information they supply us must be correct and complete."*

EU merger control provides a quick and efficient one-stop shop for companies. The large majority (over 90%) of all mergers notified to the Commission are cleared after an initial 25 day investigation (known as "phase I"), with over two thirds of them approved through a simplified procedure.

To be able to deliver accurate decisions within these very tight timelines, the EU merger control system is built on clear procedural rules that companies must fully respect.

EU merger rules require that merging companies notify transactions of Union dimension prior to their implementation and do not implement them until they have been notified to and cleared by the Commission ("the standstill obligation"). The standstill obligation prevents the potentially irreparable negative impact of transactions on the market, pending the outcome of the Commission's investigation. The Commission considers early implementation of transactions in breach of EU merger review procedural obligations to be a very serious infringement, as it undermines the effective functioning of the EU merger control system.

The Commission's merger assessment system also counts on companies providing complete and correct information. This is essential for the Commission to review mergers and takeovers in a timely and effective manner. Under the tight deadlines of a merger investigation, it is particularly important that the Commission can rely on the accuracy and completeness of the information provided.

The three Statements of Objections addressed by the Commission today to Merck and Sigma-Aldrich, to General Electric and to Canon relate to three separate cases concerning breaches of EU merger procedural rules.

Merck/Sigma-Aldrich

The Commission has informed the German company Merck KGaA and Sigma-Aldrich of its preliminary conclusion that the companies have provided incorrect or misleading information in the context of Merck's acquisition of Sigma-Aldrich. The Commission received the notification for the transaction on 21 April 2015 and cleared it on [15 June 2015](#), on condition that the parties divest certain Sigma-Aldrich assets to address concerns in relation to specific laboratory chemicals.

The Commission's preliminary conclusion is that Merck and Sigma-Aldrich failed to provide the Commission with important information about an innovation project with relevance for certain laboratory chemicals at the core of the Commission's analysis.

Had this project been correctly disclosed to the Commission, it would have had to be included in the remedy package. This is because the innovation at stake was closely linked to the divested business and had the potential to substantially increase its sales. By not including it, the viability and competitiveness of the divested business was impaired.

Merck has in the meantime agreed to license the relevant technology to Honeywell - the buyer of the divested business. As a result, Honeywell now has the technology it should have received with the divested business. However, this happened with a delay of almost one year and only because the Commission was subsequently made aware of the issue by a third party.

If the Commission were to conclude that Merck and Sigma-Aldrich intentionally or negligently supplied incorrect or misleading information, it could impose a fine of up to 1% of the companies' annual worldwide turnover.

General Electric/LM Wind

The Commission has informed the US company General Electric (GE) of its preliminary conclusion that the company provided incorrect or misleading information during the Commission's investigation of GE's planned acquisition of LM Wind. The transaction was first notified to the Commission on 11 January 2017. In today's Statement of Objections, the Commission takes the preliminary view that GE submitted incorrect or misleading information in this notification.

When reviewing GE's planned acquisition of LM Wind, the Commission had to carefully assess the competitive landscape and GE's position on the onshore and offshore wind turbine markets. GE failed to provide information to the Commission concerning its research and development activities and the development of a specific product.

The missing information had consequences not only for the Commission's assessment of GE's acquisition of LM Wind but also for the assessment of Siemens' acquisition of Gamesa. This was a separate transaction in the wind turbine market, which was investigated by the Commission at the same time. The information was necessary to properly assess, in both cases, the future position of GE and the competitive landscape on the markets for wind turbines.

On 2 February 2017, GE withdrew its notification of the merger with LM Wind. On 13 February 2017 GE re-notified the same transaction. This second notification included the information on the future project, which had not been in the original one. This allowed the Commission to have a full picture of the wind turbines market.

The Commission [cleared the re-notified GE – LM Wind transaction on 20 March 2017](#) and the Siemens – Gamesa transaction on [13 March 2017](#), in both cases without requiring commitments.

If the Commission were to conclude that GE intentionally or negligently supplied incorrect or misleading information by not informing the Commission of all relevant product developments, it could impose a fine of up to 1% of GE's annual worldwide turnover.

Canon/Toshiba Medical Systems Corporation

The Commission has informed the Japanese company Canon Inc. of its preliminary conclusion that the company breached the EU Merger Regulation by implementing its acquisition of Toshiba Medical Systems Corporation before both notifying to, and obtaining approval by, the Commission. The Commission received the notification for the transaction on 12 August 2016 and [cleared it on 19 September 2016](#).

The Commission's preliminary view is that Canon used a so-called "warehousing" two-step transaction structure involving an interim buyer, which essentially allowed it to acquire Toshiba Medical Systems prior to obtaining the relevant merger approvals.

As a first step, the interim buyer acquired 95% in the share capital of Toshiba Medical Systems for €800, whereas Canon paid €5.28 billion for both the remaining 5% and share options over the interim buyer's stake. This first step was carried out prior to notification to or approval by the Commission. As a second step, following approval of the merger by the Commission, the share options were exercised by Canon, acquiring 100% of the shares of Toshiba Medical Systems.

If the Commission were to conclude that Canon indeed implemented the transaction prior to its notification or prior to adoption of the clearance decision, it could impose a fine of up to 10% of Canon's annual worldwide turnover.

Background

Merger control statistics

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II). This deadline is extended to 35 working days in cases where remedies are submitted by the parties.

Since 2010, the Commission has dealt with an average of over 300 notifications per year. Over 95% of these cases are dealt within a Phase I investigation.

Other merger procedures cases

In May 2017, the Commission [fined Facebook €110 million](#) for providing incorrect or misleading information during the Commission's 2014 investigation under the EU Merger Regulation of Facebook's acquisition of WhatsApp. This decision had no impact on the Commission's October 2014 [approval](#) of the transaction under the EU Merger Regulation. Indeed, the clearance decision was based on a number of different elements going beyond those linked to the incorrect or missing information.

In May 2017, the Commission [sent Altice a Statement of Objections](#) alleging that the company breached the EU Merger Regulation by implementing its acquisition of telecommunications operator PT Portugal before notification or approval by the Commission. This investigation is ongoing.

Procedural background

A Statement of Objections is a formal step in an investigation, where the Commission informs the companies concerned in writing of the objections raised against them. The companies can then examine the documents in the Commission's file, reply in writing and request an oral hearing to present their comments on the case to representatives of the Commission and the national competition authorities.

There is no legal deadline to complete the inquiry. The duration of the investigation depends on a number of factors, including the complexity of each case, the extent to which the companies concerned co-operate with the Commission and the exercise of the rights of defence.

The obligation to notify the Commission of transactions prior to their implementation is laid out in Article 4(1) of the [EU Merger Regulation](#). The obligation not to implement a notifiable transaction either before its notification or before it has been declared compatible with the common market is laid down in Article 7(1) of the EU Merger Regulation. The ability of the Commission to impose fines in the event of a breach of Article 4(1) or 7(1) is laid out in Article 14(2) (a) and (b) of the EU Merger Regulation.

Companies have an obligation to provide correct information *inter alia* in a notification and other submissions made pursuant to Article 4 of the EU Merger Regulation and in response to requests made pursuant to Article 11(2) of the EU Merger Regulation. The ability of the Commission to impose fines where intentionally or negligently they supply incorrect or misleading information is laid out in Article 14(1) of the Merger Regulation.

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