European Commission - Press release

Mergers: Commission fines Canon €28 million for partially implementing its acquisition of Toshiba Medical Systems Corporation before notification and merger control approval

Brussels, 27 June 2019

The European Commission has fined Canon, the Japan-based imaging and optical products manufacturer, €28 million for implementing its acquisition of Toshiba Medical Systems Corporation (TMSC) before notification to and approval by the Commission, in breach of EU Merger control rules.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"Companies have to respect our competition rules and procedures. They are obliged to notify and wait for our approval before a merger can go ahead. Canon structured a transaction to circumvent these obligations when they acquired TMSC. This is a procedural breach of our merger review so we are fining Canon €28 million. Our merger assessment and decision-making depends on the Commission being sure that companies are not jumping the gun and implementing mergers without our approval*."

EU merger control provides a quick and efficient one-stop shop for companies.

To be able to deliver accurate decisions within 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 planned mergers of Union dimension for review by the Commission prior to their implementation *("the notification requirement")* and do not implement them until notified to and cleared by the Commission *("the standstill obligation")*. The notification requirement safeguards the Commission's ability to detect and investigate mergers. The standstill obligation prevents the potentially irreparable negative impact of transactions on the market, pending the outcome of the Commission's investigation.

On 12 August 2016, Canon notified the Commission of its plan to acquire Toshiba Medical Systems Corporation ("TMSC") from Toshiba. The transaction was unconditionally cleared by the Commission on 19 September 2016.

For the acquisition, Canon used a so-called "warehousing" two-step transaction structure involving an interim buyer.

As a **first step**, the interim buyer acquired 95% in the share capital of TMSC for €800, whereas Canon paid €5.28 billion for the remaining 5% of the shares 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, Canon exercised its share options, acquiring 100% of the shares of TMSC.

In July 2017, the Commission addressed a Statement of Objections to Canon detailing its concerns that, through the transaction structure put in place for its acquisition of TMSC, Canon had implemented the acquisition before notifying it to the Commission and obtaining approval under EU merger control rules.

In November 2018, the Commission addressed a Supplementary Statement of Objections to Canon, complementing the preliminary view taken in the Statement of Objections and reflecting developments in the case law.

In today's decision, the Commission confirms its preliminary view that **Canon breached the EU Merger Regulation and fines the company €28 million**.

In particular, the Commission has concluded that:

- The first and second steps in the transaction structure formed together a single notifiable merger. The first step contributed to the acquisition of final control over TMSC, which occurred with the second step. In fact, within the structure chosen by the companies, the first step was necessary for Canon to gain control over TMSC.
- By carrying out the first step, Canon partially implemented its acquisition of TMSC before both the notification and the Commission's approval. As a result, Canon breached the notification

requirement and standstill obligation.

Today's decision has **no impact on the Commission's decision to authorise the transaction** under the EU Merger Regulation. The assessment of the Commission at the time was independent of the facts reproached by the Commission to Canon in today's decision.

The fine

According to the EU Merger Regulation, the Commission can impose fines of up to 10% of the aggregated turnover of companies that intentionally or negligently, breach the notification and/or the standstill obligations.

In setting the amount of a fine, the Commission takes into account the nature, the gravity and duration of the infringement, as well as any mitigating and aggravating circumstances.

Canon breached both the notification requirement and the standstill obligation. The Commission considers that both these infringements are serious because they undermine the effective functioning of the EU merger control system.

Moreover, the Commission considers that Canon was aware of its obligations under the EU Merger Regulation. Therefore, Canon's breach of procedural obligations was, at least, negligent. The fact that the transaction was cleared unconditionally is also taken into account for the gravity of the infringements.

On the basis of these factors, the Commission concluded that an overall fine amount of €28 million is both proportionate and deterrent.

Background

Other merger procedural cases

In April 2019, the Commission imposed a €52 million fine on General Electric for initially providing incorrect information during the investigation of its planned acquisition of LM Wind. This decision had no impact on the Commission's approval of the transaction under EU merger rules, as this was based on rectified information from the second notification.

In February 2019, the Commission sent a Statement of Objections to Telefónica Deutschland alleging the company breached commitments it offered to secure the Commission's approval of its acquisition of E-Plus in 2014.This investigation is ongoing.

In April 2018, the Commission imposed a €124.5 million fine on Altice, the multinational cable and telecommunications company based in the Netherlands, for implementing its acquisition of the Portuguese telecommunications operator PT Portugal before notification or approval by the Commission.

In July 2017, the Commission sent a Statement of Objections to Merck and Sigma-Aldrich, alleging they breached EU merger rules by providing incorrect or misleading information in the context of their merger. This investigation is ongoing.

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

Procedural background

The obligation on companies to notify concentrations with Union dimension to the Commission prior to their implementation is laid out in Article 4(1) of the EU Merger Regulation. This obligation safeguards the Commission's ability to detect and investigate concentrations.

The standstill obligation, which is set out in Article 7(1) of the Merger Regulation, establishes that concentrations falling within the remit of the Merger Regulation may not be implemented prior to notification to or clearance by the Commission. This obligation prevents the potentially detrimental impact of transactions on the competitive structure of the market, pending the outcome of the Commission investigation.

The ability of the Commission to impose fines in the event of a breach of Articles 4(1) and/or 7(1) is laid out in Article 14(2)(a) and (b) of the EU Merger Regulation.

More information will be available on the competition website, in the Commission's public case register under the case number M.8179.

Press contacts:

Ricardo CARDOSO (+32 2 298 01 00)
Giulia ASTUTI (+32 2 295 53 44)

General public inquiries: Europe Direct by phone 00 800 67 89 10 11 or by email