CONCENTRATIONS: THE MOLLER CASE

Subject: Concentrations
Fines

Industry: Implications for all industries

Parties: AP Moller

Source: Commission Statement IP/99/100, dated 10th February 1999

(Note. This second case involving a fine for failing to notify a concentration - the first being the Samsung case - emphasises the Commission's readiness to impose penalties in these circumstances.)

The Commission has decided to impose a total fine of € 219,000 on the Danish company AP Moller for failing to notify, and for putting into effect, three concentrations. In its decision the Commission has taken into account in particular the fact that both infringements lasted for a significant period, and that AP Moller should have been aware of its obligation to notify the respective transactions under the Merger Regulation. This is only the second time that the Commission has imposed a fine under the Merger Regulation since 1990.

The three transactions in question had previously been cleared by the Commission in accordance with the Merger Regulation. However, in its decisions the Commission noted that the transactions had been concluded and put into effect several months before they were notified and that it would therefore have to consider a possible application of Article 14 of the Merger Regulation. On completing its investigation, the Commission confirmed that AP Moller had clearly breached its obligation to notify the transactions in due time as well as its obligation not to implement them without the Commission's authorisation. The infringements lasted for a significant period of time. The relatively moderate amount of the fine can be explained mainly by the fact that AP Moller (i) recognised the breach; (ii) did no damage to competition; (iii) voluntarily informed the Commission of its failure to notify the transactions in question before the Commission discovered the infringements itself, and (iv) infringed its obligations at a time when the Commission had not yet adopted its first decision imposing fines under the Merger Regulation (that is, in the Samsung/AST case).

The Commission attaches great importance to the obligation of prior notification of concentrations which fall within the scope of the Merger Regulation. This requirement prevents companies from implementing a concentration before the Commission takes a final decision, thereby avoiding irreparable and permanent harm to competition. Indeed, the effectiveness of the merger control provisions would otherwise be undermined. Therefore, the Merger Regulation explicitly provides that fines can be imposed in cases where companies do not respect EU rules on notification of mergers and acquisitions, and the Commission will fully apply such measures where appropriate. □