FINES (CHEMICAL PULPING): THE MITSUBISHI CASE

Subject: Fines
Investigations

Industry: Chemical pulping
Implications for all industries

Parties: Mitsubishi Heavy Industries

Source: Commission Statement IP/00/764, dated 12 July 2000

(Note. This case is a sharp reminder that even third parties must provide evidence to the Commission in the course of a Commission investigation, if required to do so; and that periodic penalty payments may be imposed instead of or – as in this case – in addition to fines.)

The Commission has decided to impose fines on Mitsubishi Heavy Industries for failing to supply information with regard to a joint venture last year between Kvaerner and Ahlström. This is the first time the Commission has fined a company other than a notifying party in merger proceedings. This is also the first time that a periodic penalty payment has been imposed on an undertaking in such proceedings. During the investigation into the Ahlström/Kvaerner chemical pulping joint venture, Mitsubishi was requested to supply information according to Article 11(5) of the Merger Regulation, which obliges third parties to assist the Commission in merger reviews to determine whether a given deal may create a dominant position. But despite repeated requests from the Commission, Mitsubishi supplied only incomplete information concerning its activities in the world-wide market for recovery boilers, one of the markets where the Commission had expressed concerns.

The Commission considers Mitsubishi's behaviour a very serious infringement of EU law since the information requested was necessary for the proper assessment of the Ahlström/Kvaerner operation. Following Mitsubishi's failure to supply the information requested, the Commission was forced to base its assessment of the markets for recovery boilers partly on estimates. Under Article 14(1)(c) of the Merger Regulation, the Commission may impose fines between € 1,000 and 50,000 on undertakings which, intentionally or negligently, supply incorrect information in response to the Commission's request for information or which fail to supply information within the period fixed by a decision pursuant to Article 11. In addition, under Article 15(1) of the Merger Regulation, the Commission may also impose periodic penalty payments of up to € 25,000 per day of delay calculated from the date when a formal request for information was taken in this case since July 10, 1999, until September 8, 1999, when the Commission closed its merger probe. Ahlström and Kvaerner withdrew the notification of their merger in the face of Commission objections.

The Commission has, therefore, decided to impose two types of fines on Mitsubishi. The first fine, € 50,000, for failing to comply with the Commission decision, pursuant to Article 14(1)(c) of the Merger Regulation. The Commission has also decided to impose a periodic penalty payment totalling € 900,000. In adopting this decision, the Commission stressed its determination to enforce the merger control rules in the European Union, which presupposes the supply of correct information by both merging parties and competitors requested to assist it in its task. Incorrect, misleading or incomplete information or the refusal to provide it can lead the Commission to take incorrect decisions, with potentially serious effects on European businesses and consumers.

The Ford / Land Rover Case

The Commission has cleared Ford Motor Company's acquisition of the British car company Land Rover from Germany's BMW. The deal poses no competition problems given Ford's small share in the British market for special utility four-wheel-drive passengers cars, or jeeps.

The only country in the European Economic Area where the combined share in this segment will exceed 20% is the United Kingdom; but the increment in market share is marginal in view of Ford's limited presence in the segment. The Commission's review indicates that the four-wheel-drive market segment is highly competitive: these competitors include Honda, Daimler Chrysler, Suzuki and Toyota. In view of the above the Commission has decided not to oppose the operation. Moreover, the Commission has approved certain ancillary restraints relating to supply agreements and licences.

Land Rover and BMW will continue to supply certain goods and services to each other for a transitional period of time. The objective of these supply agreements is to ensure, for a transitional period, the continuity of the Land Rover and BMW businesses, and as such they are directly related to and indispensable to the implementation of the concentration.

BMW will grant to Land Rover a non-exclusive royalty-free licence to use, in connection with Land Rover's business, intellectual property rights relating to technology used on both Land Rover and Rover (BMW) vehicles. Land Rover will grant to BMW a non-exclusive royalty-free licence to use, in connection with BMW's business, intellectual property rights relating to technology used on both Land Rover and a new special utility vehicle. These licences are directly related to and indispensable to the implementation of the concentration.

Source: Commission Statement IP/00/693, dated 30 June 2000.