

WILMER, CUTLER & PICKERING

BRUSSELS LONDON BERLIN WASHINGTON BALTIMORE NEW YORK

11 January 2000

COMMISSION GETS TOUGH ON INFORMATION SUPPLIED IN COMPETITION CASES

On 14 December 1999, the Commission imposed four fines on companies which had supplied incorrect or misleading information to the Commission in competition proceedings.

The Commission adopted decisions imposing fines of €50,000 each on Deutsche Post, a fine of €40,000 on the Dutch airline KLM and a fine of €3,000 each on the brewers Anheuser-Busch and Scottish & Newcastle. In its press announcement the Commission indicates that the companies had either deliberately supplied incorrect information or been negligent in the provision of information. Competition Commissioner Mario Monti commented that "[t]hese decisions underline the Commission's determination to ensure that firms comply fully with their legal obligations. Firms which fail to do so - whether deliberately or through a failure to take proper care - should not expect to escape sanction in future"¹.

Under Article 14 of the Merger Regulation², the Commission can impose fines between €1,000 and €50,000 when a company provides intentionally or negligently incorrect or misleading information in a notification or in a response to a request for information. Under Article 15 of Regulation No 17³ - the general implementing regulation for procedures under Articles 81 and 82 of the EC Treaty concerning cartels and the abuse of a dominant position - the range of fines for the same infringements is from €100 to €5,000.

These decisions are important. The amounts in themselves are not huge but taken with other recent procedural fines - imposing fines of ECU 33,000 on Samsung Electronics for failing to notify and putting into effect a concentration without authorization⁴; €19,000 on A.P. Møller for failing to notify and putting into effect three concentrations without authorization⁵; and €50,000 each on Sanofi and Synthelabo for supplying incorrect information in relation to their merger⁶ - they suggest that companies dealing with the Commission must now be especially careful to comply with the procedural rules.

In addition, it should be noted that the Commission is at present considering proposing to the Council to increase the amounts for infringements of competition procedural rules.

WILMER, CUTLER & PICKERING

¹ Commission Press Release IP/99/985, 14 December 1999.

² Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (O.J. L 395, 30 December 1989, p. 1 and O.J. L 257, 21 September 1990, p. 13) as amended by Council Regulation (EC) No 1310/97 of 30 June 1997 (O.J. L 180, 9 July 1997, p. 1).

³ Regulation No 17 of the Council of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (O.J. No 13, 21 February 1962, p. 204/62) as amended.

⁴ Case IV/M.920 - Samsung/AST, Commission decision of 18 February 1998 (O.J. No. L 225/12, 26 August 1998).

⁵ Case IV/M.969 - A.P. Møller, Commission decision of 10 February 1999 (O.J. No. L 183/29, 16 July 1999).

⁶ Case IV/M.1397 - Sanofi/Synthelabo, Commission Press Release IP/99/591, 28 Jul 1999.