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COMMISSION GETS VERY TOUGH ON INFORMATION SUPPLIED IN COMPETITION CASES

On 12 July 2000, the Commission imposed a fine totaling € 950,000 on Mitsubishi for having supplied incomplete information during the Commission's investigation into the Ahlström/Kvaerner chemical pulping joint venture. The fine is by far the largest procedural fine imposed by the Commission and is the first imposed on a third party. The Commission stressed its determination to obtain complete and accurate information from third parties, as well as the notifying parties, during the course of its merger investigations.¹

During the Ahlström/Kvaerner proceedings, the Commission requested information from Mitsubishi pursuant to Article 11 of the Merger Regulation,² which empowers the Commission to request from third parties all information that may be necessary for its assessment of whether a given merger creates a dominant position. Despite subsequent repeated requests, including a formal request adopted pursuant to Article 11(5) of the Merger Regulation, the Commission found that Mitsubishi supplied incomplete information about its recovery boilers business, one of the markets where the Commission had expressed concerns in an in-depth investigation of Ahlström/Kvaerner.

The Commission imposed two types of fines on Mitsubishi. The first, a maximum fine of € 50,000, pursuant to Article 14(1)(c) of the Merger Regulation,³ for failing to comply with the Commission formal request for information. The remaining € 900,000 fine was imposed pursuant to Article 15(1) of the Merger Regulation, which allows for a maximum daily fine of € 25,000, and represented a daily fine of € 15,000 from the date when the

¹ Commission Press Release IP/00/764, 12 July 2000.

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 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.

formal request for information was taken, 10 July 1999, until 8 September 1999, when the Commission closed its merger probe.

The size of the fine is unprecedented and follows other recent procedural fines in Commission competition proceedings against:

?? Deutsche Post, KLM, Anheuser-Busch and Scottish & Newcastle for having supplied incorrect or misleading information to the Commission;⁴

?? Sanofi and Synthelabo for filing an incomplete notification in relation to their merger;⁵

?? A.P. Møller for failing to notify and putting into effect three concentrations without authorization;⁶ and

?? Samsung Electronics for failing to notify in due time and for putting into effect a concentration without authorization.⁷

These precedents over the last 1½ years suggest that the Commission is focusing on ensuring compliance with its procedural rules on obtaining accurate, reliable and timely information.

The Commission is currently reviewing whether to propose to the Council that the amounts for infringements of competition procedural rules be increased.

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⁴ Commission Press Release IP/99/985, 14 December 1999. Deutsche Post was fined €100,000, KLM €40,000 and Anheuser-Busch and Scottish & Newcastle €3,000 each.

⁵ Commission Press Release IP/99/591, 28 July 1999. Sanofi and Synthelabo were fined €50,000 each.

⁶ Commission Press Release IP/99/100, 10 February 1999. A.P. Møller was fined €219,000.

⁷ Commission Press Release IP/98/166, 18 December 1998. Samsung was fined ECU 33,000.