Statement by Commissioner Vestager on three Statements of Objections sent to Merck and Sigma-Aldrich, to General Electric, and to Canon for breaching EU merger procedural rules

Brussels, 6 July 2017

Today, the Commission has sent Statements of Objections in three separate cases to Merck and Sigma-Aldrich, to General Electric and to Canon. We suspect that those companies may not have met their procedural obligations when they notified mergers to us for approval.

Why does that matter?

Each year, the Commission deals with hundreds of mergers – more than 350 of them in 2016.

Our job is to make sure those mergers don't harm competition. Because competition keeps down prices for consumers, and gives them a wider choice of innovative products.

But we shouldn't get in the way of mergers, as long as they don't undermine competition. Which is why our rules guarantee that we will take our decisions according to a very strict timetable.

Today, we use our simplified merger procedure for over two thirds of cases. And we approve more than 90% of mergers in less than 25 days from the day that they're notified.

Like every competition case, our merger decisions are based on the evidence and the law. And each case ends with a public decision, which sets out the reasons for the conclusion we've reached.

But all of that only works when companies do their part.

That means they mustn't put a merger into effect before they have our approval. Because if they do "jump the gun", competition could be harmed beyond repair before we've even had a chance to look at the merger.

And companies have to give us full and accurate information, so we can take the right decisions. These decisions require a forward looking assessment. That includes an assessment of the impact on innovation, an increasingly important part of the economy. And it should be the companies themselves telling us about their future strategies.

Having the right information is in some ways particularly important in the relatively few mergers where we have to intervene. So when we clear a merger with conditions, our information on the remedies must also be sound. Otherwise, we can't be sure that the remedies protect competition and consumers.

Our work, of course, doesn't happen in isolation. We also engage with customers, suppliers, competitors and other third parties to gather additional information about transactions and understand the full picture. So we can compare information from many sources.

But that doesn't make it any less important that merging companies comply with their own obligations. That's why today's Statements of Objections send an important signal.

Let me say a few words about each of the three cases.

Merck – Sigma-Aldrich

The first case relates to a merger in 2015 between two life science companies, Merck and Sigma-Aldrich. We had concerns that the merger would reduce competition for certain lab chemicals. So we only approved the deal after the companies agreed to sell off part of that business.

Honeywell was the buyer of this business. It needed all the right assets to make it a viable competitor on the market. The Statement of Objections sent today to Merck and Sigma-Aldrich sets out our concern that the companies failed to tell us about an important research and development project. So it was not addressed in the commitments package.

Merck has in the meantime agreed to license the technology to Honeywell. This means that Honeywell now has the technology it should have received with the divested business. However, this happened almost one year after our decision and only because the Commission was made aware of the issue by a

third party.

General Electric – LM Wind

The second Statement of Objections, to General Electric, is also about a failure to give us full information about research and development plans.

In January 2017, GE notified its purchase of LM Wind, a company that makes blades for wind turbines. We've reached the preliminary conclusion that, in this notification, GE failed to tell us about the development of a specific product.

This mattered because in this industry, innovation is essential. Without the latest technology, you just can't compete. So in our assessment of competition, we had to know, not just what the companies were currently selling, but also what products they were developing that could affect competition in the future.

A month after notifying, GE withdrew its notification and submitted a new one eleven days later, which did include information about the product. With that information in hand, we had a full picture of the market for our decision. And on the basis of the correct information, we were able to approve the merger as it stood.

Canon – Toshiba Medical Systems

Today's third Statement of Objections sets out our preliminary view that Canon "jumped the gun" when it bought Toshiba Medical Systems in 2016 by implementing the merger before both notifying to, and obtaining approval from, the Commission.

Even before Canon notified the merger, it paid the full price for Toshiba Medical Systems. First, it paid for non-voting shares in the company. Second, it paid for options for voting shares that were held by an interim buyer. Once merger clearance was obtained, Canon exercised these options.

This sort of arrangement is known as "warehousing". And our preliminary view is that it let Canon effectively acquire Toshiba Medical Systems before it notified the deal to us.

Next steps

Today's Statements of Objections set out our preliminary views. The three companies involved now have the opportunity to respond. And we'll look carefully at their arguments before we take any decision.

None of today's procedural cases affect our approval of these mergers. The approvals will still be valid.

Merck has granted a license for the technology that should be with the divested business. GE eventually submitted the information we required. And Canon is a case about early implementation of a merger, not our assessment of it.

If we do find that the companies have broken the rules, then we could fine them.

In the cases of GE and Merck, if we conclude that they have failed to supply relevant information we can fine them up to 1% of their annual turnover.

And if Canon has broken the rules by jumping the gun, we could fine it up to 10% of its annual turnover.

Concluding remarks

Because our system of merger control only works when companies meet their obligations. If they put mergers into effect without waiting for our decision, or give us misleading information, that affects our ability to do our job properly – which is to make sure that markets work well for consumers.