

CLIENT ALERT

European Commission Ramps up Procedural Penalties in Merger Cases with €52 Million Fine for Negligent Provision of Incorrect Information

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On April 8, the European Commission imposed a fine of €52 million on General Electric (GE) for providing incorrect information in relation to a merger that was ultimately cleared unconditionally in Phase I on the basis that it raised no concerns. This appears to be part of a concerted campaign by the Commission to massively increase procedural penalties in merger cases. In 2017, it fined Facebook €110 million for providing misleading information in relation to its acquisition of WhatsApp and, in 2018, Altice €125 million for gun jumping. The Commission has made it clear that more cases are in the pipeline.

In January 2017, GE notified its proposed acquisition of LM Wind to the Commission. The merger created a vertical link between GE's wind turbine operations and LM Wind's turbine blade production activities.

In its notification, GE stated that it did not have any higher power output wind turbine for offshore applications in development, beyond its existing 6 megawatt turbine. However, through information collected from a third party, the Commission found that GE was simultaneously offering a 12 megawatt offshore wind turbine to potential customers. After the Commission questioned this, GE withdrew its initial notification and re-notified the same acquisition in February 2017 including complete information on the 12 megawatt project. On March 20, 2017, the Commission approved the acquisition in Phase I without conditions on the basis that it would result in no significant reduction of competition.

In July 2017, the Commission initiated a formal investigation in to the information provided by GE in its first notification. It has now concluded that, since GE had indeed been offering a higher power output offshore turbine to customers, the statement in its notification was incorrect and that GE had been negligent in this regard.

The Commission acknowledges that the error did not result in significant damage or delay. Nonetheless it considered this a serious infringement since the breach prevented it from having all relevant information for its assessment and that GE should have been aware of both the relevance of the information and its legal obligations under the Merger Regulation. On that basis the Commission concluded that a €52 million was proportionate.

In announcing the fine, the Commission has made it clear that further investigations of procedural infringements are ongoing, mentioning two other live investigations, one involving providing incorrect or misleading information, and another involving breach of commitments. There is also an ongoing investigation involving gun jumping.

Until recently, procedural fines under the Merger Regulation were typically only in the hundreds of thousands of euro. Changes to the Merger Regulation in 2004 lifted a previous €50 thousand cap on procedural fines and allowed for fines of up to 1 percent of turnover. However, these new powers had not been much used.

The Commission press release is available [here](#). The full decision has not yet been released.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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