

CLIENT ALERT

European Commission imposes Euro 20 million fine for early implementation of a merger ('Gun-jumping')

Jun.12.2009

On 10 June, the European Commission imposed a Euro 20 million fine on the Belgian electricity producer Electrabel for implementing a notifiable merger without having received prior approval under the EC Merger Regulation ('ECMR').

The issue came to light when Electrabel notified its acquisition of CNR, a French electricity company, to the Commission in March 2008. The Commission cleared the acquisition, without an in-depth investigation of the substantive competition issues, in April 2008. However, it continued to investigate the date on which Electrabel first acquired control of CNR. Ultimately, it concluded that control had first been acquired in December 2003, when Electrabel acquired a tranche of shares from a third electricity producer, EDF of France. Although Electrabel's shareholding in CNR remained just below 50%, it obtained an effective majority of votes at CNR's shareholders' meetings based on past attendance rates. In addition, Electrabel became the only industrial shareholder in CNR and took over from EDF the operational management of CNR power plants and the marketing of its electricity. The Commission concluded this was sufficient to give Electrabel *de facto* control of CNR and, as a result, to trigger a filing requirement under the ECMR.

This is by far the largest fine imposed by the Commission for 'gun-jumping'. In principle, implementation of a merger subject to mandatory notification under the ECMR without first obtaining clearance from the Commission may expose the companies involved to fines of up to 10% of total worldwide group turnover. However, such fines have historically been extremely rare and relatively small. The Commission has only imposed such fines on two previous occasions, the last one in 1999, and the previous highest fine was Euro 219,000 for failure to notify and putting into effect of three transactions in breach of Article 7 ECMR.

The fine appears to be another signal that the Commission is taking an increasingly hard line on gun-jumping issues. In December 2007, the Commission conducted its first ever 'dawn raids' under the ECMR on two PVC manufacturers in the UK suspected of gun jumping.

[Click for the Commission's press release announcing the fine.](#)

[Click for a set of FAQs issued by the Commission in relation to the fine.](#)

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

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