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PRESS RELEASE

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Mergers: Commission fines Marine Harvest € 20 million for taking control of Morpol without prior EU merger clearance

The European Commission has imposed a fine of € 20 million on salmon farmer and processor Marine Harvest ASA for acquiring its rival Morpol ASA, both of Norway, without having received prior authorisation under the EU Merger Regulation. The Commission concluded that Marine Harvest should have been aware of its obligations to notify and await clearance from the Commission before proceeding with the acquisition.

Under the EU Merger Regulation, mergers and acquisitions with an EU dimension (in particular because they meet certain turnover thresholds) must be notified to and authorised by the Commission before they are implemented. This so-called "standstill obligation" is a cornerstone of the EU merger control system, as it allows the Commission to identify whether the concentration raises competition concerns and, if the companies do not submit commitments that address them, to prohibit the transaction and prevent it from taking place. This prior scrutiny is a key safeguard that protects direct customers and final consumers from the harm that anticompetitive mergers could create – through higher prices, lower product quality, or fewer incentives to innovate.

By acquiring a 48.5% stake in Morpol on 18 December 2012, Marine Harvest had acquired de facto sole control over Morpol. Indeed, the Commission's investigation found that following this transaction Marine Harvest enjoyed a stable majority at the shareholders' meetings, because of the wide dispersion of the remaining shares and previous attendance rates at these meetings.

Marine Harvest implemented the acquisition eight months before the formal notification to the Commission took place, and over nine months before the Commission authorised it, in breach of Articles 4(1) and 7(1) of the EU Merger Regulation.

This decision only relates to the breach of the standstill obligation, which constitutes a serious infringement of the merger control rules. The decision has no impact on the Commission's authorisation of the transaction in September 2013 subject to conditions (see IP/13/896), because the infringement does not alter the Commission's analysis of the market.

Contacts :

Antoine Colombani (+32 2 297 45 13)

Marisa Gonzalez Iglesias (+32 2 295 19 25)

For the public: **Europe Direct** by phone **00 800 6 7 8 9 10 11** or by e-mail

The infringement

The early implementation of a concentration affects the structure of the market and may make it considerably more difficult for the Commission to restore effective competition where necessary. In order to avoid any permanent and irreparable damage to effective competition, companies are obliged to give prior notification of concentrations exceeding certain turnover thresholds, and not to implement these concentrations before having received clearance from the Commission. This is the so-called "standstill obligation".

Any infringement of these obligations is serious, since it undermines the very essence of EU merger control. This has been confirmed by the EU Court of Justice in its Electrabel judgment of 3 July 2014 (C-84/13P).

The fine

According to the Merger Regulation, the Commission can impose fines of up to 10% of the aggregated turnover of companies which intentionally or negligently infringe the notification requirement and the standstill obligation.

In setting the amount of a fine, the Commission takes into account the gravity and duration (in this case, over nine months) of the infringement, as well as mitigating and aggravating circumstances.

Marine Harvest is a large European company with wide previous experience and familiarity with EU merger control rules. The Commission therefore concluded that Marine Harvest should have been aware of its obligations to notify the acquisition of Morpol and obtain clearance before closing the transaction, and that its failure to comply with these obligations amounts to negligent conduct.

The Commission also considered that the infringement was particularly serious because the transaction, as originally implemented, had raised serious doubts as to its compatibility with the internal market, and was only cleared by the Commission after the submission of significant remedies (see IP/13/896). In these circumstances, the implementation of the transaction before its conditional clearance could have given rise to competition problems.

The Commission has also considered the existence of mitigating circumstances, and in particular the fact that Marine Harvest has not exercised its voting rights in Morpol after having acquired control over it. Moreover, the Commission attached particular importance to the fact that Marine Harvest informed the Commission through pre-notification contacts shortly after the closing of the transaction.

On the basis of these factors, the Commission has concluded that an overall fine of € 20 million is both proportionate and adequate to ensure sufficient deterrence.

The Marine Harvest/Morpol Merger Case

On 30 September 2013, the Commission cleared, subject to conditions, the proposed acquisition of Morpol, the largest salmon processor in the European Economic Area (EEA), by the leading EEA salmon farmer Marine Harvest (see IP/13/896).

The proposed transaction, as originally notified, would have combined two of the largest farmers and primary processors of Scottish salmon. The merged entity would have had high market shares and its competitors would have been unable to exert a sufficient constraint on it. The acquisition would likely have led to price increases which could have ultimately harmed consumers.

Marine Harvest committed to divest the largest part of Morpol's salmon farming operations in Scotland, based in Shetland and the Orkneys. This addressed the Commission's competition concerns (see IP/13/896).