

PROCEDURAL INFRINGEMENTS

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Different types of procedural violations (1/2)

1) Potential gun-jumping (fines up to 10% of global annual turnover)

- Transfer of legal title
- Acquiring the possibility to exercise decisive influence over the target or actually exercising decisive influence
 - ❑ for example, interfering in/approving the strategic decisions of the target
- Warehousing

Cases: Marine Harvest actually acquired controlling stake prior to notification – EUR 20m fine (Court judgment due 26 October 2017)

Ongoing cases: preliminary concerns, no decision taken yet:

- ❑ **Altice/PR Portugal** – actual implementation prior to clearance/notification (Statement of Objections adopted 17 May 2017)
- ❑ **Canon** - warehousing (Statement of Objections adopted 6 July 2017)



Different types of procedural violations (2/2)

2) Misleading or incorrect information (fines of up to 1% of global annual turnover)

- Intentional or negligent (both infringements but may affect size of fine)

Cases: Facebook

- In 2014 Facebook told Commission it was unable to establish reliable automated matching between Facebook users' accounts and WhatsApp users' accounts (both in Form CO and reply to a request for information)
- In 2016, WhatsApp announced updates to its terms of service and privacy policy, including the possibility of linking WhatsApp users' phone numbers with Facebook users' identities.
- We found that this technical possibility existed in 2014 and Facebook staff were aware of this possibility
- This infringement did not have an impact on the substantive assessment of the case
- Cooperated so mitigating factor in the fine amount: Fine EUR 110million (May 2017)

Ongoing cases: preliminary concerns, no decision taken yet:

- ❑ **Merck – SO on 6 July 2017:** withheld information re important innovation project of target in area of concern. Innovation project was closely linked to the divestment business. Now licensed to purchaser.
- ❑ **GE – SO on 6 July 2017:** incorrect/misleading information re R&D and specific product development. This information was relevant to the assessment of 2 ongoing cases (GE/LM Wind and Siemens/Gamesa).

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