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The Belgian Competition Authority imposed modest fine for gun-jumping

↗ Decision n°15-CC-79 of the Belgian Competition Authority, Cordeel-Imtech, December 23, 2015

On December 23, 2015, the Belgian Competition Authority (the "BCA") symbolically fined the Cordeel Group, a general contractor company, €5,000 for having implemented the acquisition of the Belgian activities of the Dutch Imtech Group prior to notifying it and obtaining clearance from the BCA.

Similar to EU law, Belgian law contains a standstill obligation forbidding companies from implementing a notifiable transaction until approval has been received from the BCA. The violation of this obligation ("*gun-jumping*") constitutes an infringement for which the BCA may impose a fine even if the transaction is cleared later. The present case shows that the risk is not purely hypothetical.

In August 2015, Cordeel acquired Imtech, a company on the verge of bankruptcy active in the installation of electronic and sanitary appliances. The operation was not notified to the BCA, disregarding the fact that it qualified as a notifiable concentration according to Belgian law.

After the implementation of the concentration, the BCA contacted Cordeel on its own initiative and informed it of the applicability of the merger control rules to the transaction and the infringement of the standstill obligation stemming from its early implementation.

Following the BCA's information, Cordeel requested a retroactive exemption from the standstill obligation. The BCA agreed to grant this exemption and lifted retroactively the suspensive effect of the notification in order to safeguard the legal certainty of the acts undertaken by the merged entity since the acquisition. This exemption prevents these acts from being challenged on the basis that they were adopted by the merged entity prior to the clearance of the transaction.

On November 10, 2015, the concentration was formally notified to the BCA under the standard procedure, allowing the BCA to adopt a single decision on both the concentration and the infringement of the standstill obligation.

On December 23, 2015, the transaction was unconditionally cleared as it did not raise any competition concerns. However, regarding the infringement of the standstill obligation, the BCA imposed a symbolic fine of €5,000 on the Cordeel Group. The moderate amount of the fine was due to the exceptional mitigating circumstances relating, *inter alia*, to the non-intentional nature of the infringement, the severe financial difficulties of Imtech, which was in a situation of imminent bankruptcy, the limited value of the transaction, its absence of harmful effects on competition as well as the limited duration of the infringement.