

CLIENT ALERT

Merger Control: Misleading the Regulator in Merger Review Costs Kingspan €40 million

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On October 8, 2026, the European Commission (Commission) fined building materials manufacturer Kingspan EUR 40 million for providing misleading information during its review of Kingspan's proposed acquisition of competitor Trimo, a transaction ultimately abandoned in 2022.

The decision is a clear reminder that, in EU merger control submissions, the accuracy of information provided to the Commission, or any other competition authority, is critical and that procedural obligations remain enforceable even after a transaction has been abandoned.

Under the EU Merger Regulation (EUMR), companies must provide accurate, complete and non-misleading information, both in their merger notifications and in response to the Commission's requests for information. Under Article 14(1) EUMR, providing incorrect or misleading information, whether intentionally or negligently, may result in fines of up to 1% of the company's aggregate turnover. The Commission considers such conduct a serious infringement, as it can obstruct merger investigations and undermine its ability to properly assess the potential anticompetitive effects of the transaction.

The infringement

Following Kingspan's notification of its proposed acquisition of Trimo, another manufacturer of mineral fiber sandwich panels used for building construction, the Commission opened an in-depth investigation into suspected competition concerns.

Although the parties ultimately withdrew the notification and abandoned the transaction in April 2022, the Commission subsequently launched a separate investigation into the accuracy of the information provided by Kingspan during the merger review. In March 2024, it issued a Statement of Objections alleging six instances of incorrect or misleading information provided by the company during the review process. Two of the initial objections were ultimately dropped by the Commission, so that the decision from October 8, 2026, retains four distinct infringements.

The infringements concerned key information relevant to the Commission's competitive assessment of the proposed transaction, including:

- Product penetration rates: misleading information about how Kingspan monitored the use of mineral fiber sandwich panels compared to other products;
- Bidding data: incorrect and/or misleading statements regarding the availability of records of won and lost tenders;
- Internal governance and strategy: incorrect information about board members' involvement in the proposed transaction, other potential acquisitions, industry trends and business strategy; and
- Research and development: incorrect and/or misleading information concerning Kingspan's R&D activities regarding mineral fiber sandwich panels.

The Commission found that Kingspan could not have been unaware of its obligations under the EUMR and had therefore acted at least negligently, notably by denying the existence of key documents, misrepresenting facts or claiming that it could not provide information that only Kingspan was able to provide.

Considering that this conduct obstructed its investigation and impaired its ability to properly evaluate the transaction, the Commission imposed a fine of EUR 10 million for each infringement, for a total of EUR 40 million.

Lessons for companies involved in M&A deals

This is the fourth time that the Commission has imposed fines for providing incorrect or misleading information under the EUMR, following Facebook/WhatsApp in 2017 (EUR 110 million), GE/LM Wind in 2019 (EUR 52 million) and Sigma-Aldrich in 2021 (EUR 7.5 million). Another investigation on the same grounds is currently pending.

These decisions underline the need for companies to adopt best practices for information management to mitigate their exposure to significant fines:

- Take merger control seriously from day one. Anticipate information requirements and ensure that all submissions to the Commission are accurate and complete.
- Respond fully and diligently to information requests. Provide all requested information and documents and carefully verify any claim that documents do not exist or information is unavailable, as even negligence may result in a risk of fines.
- Pay particular attention to internal documents. When working on a transaction, assume that emails, board materials, strategic presentations and internal notes may be requested by competition authorities. Keep them accurate, consistent and measured in tone. Check with antitrust lawyer in case of any doubt.
- Keep the story consistent. Ensure that statements to the Commission are consistent with internal documents and maintain rigorous document management throughout the process.

The full decision is expected to be published in due course. It is subject to appeal by Kingspan to the EU General Court.

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