

# Beware of gun-jumping: the Commission shoots off record fines

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Only weeks after the European Court of Justice upheld the European Commission's highest ever fine imposed for gun-jumping, the Commission imposed the exact same fine amount in another gun-jumping case. Time will tell whether this record-setting EUR 20 million fine is now the benchmark for implementing a transaction prior to notifying and receiving the clearance of the Commission. In the meantime, companies can avoid the risk of paying a hefty fine by performing a multi-jurisdictional merger filing assessment to establish whether the Commission needs to be notified about a transaction prior to its implementation. Most merger control regimes worldwide have gun-jumping rules similar to the Commission's, with some of them even applying to non-controlling minority acquisitions. All the more reason for companies to keep a global perspective and obtain merger control clearance before implementing a transaction.

Currently, companies must notify and obtain the European Commission's prior clearance for any transaction which involves the acquisition of control and which meets the required thresholds. The Commission considers this prior scrutiny to be "the [cornerstone](#) of the EU merger control system", as it allows the Commission to identify whether the transaction "raises competition concerns and, if the companies do not submit commitments that address them, to prohibit the transaction".

In both gun-jumping cases a minority shareholding resulted in the acquisition of control and should thus have been notified and cleared prior to implementation. According to the Commission, the wide dispersion of remaining shares and previous attendance rates at shareholders' meetings led both [Electrabel](#) and [Marine Harvest](#) to gain sole control in their respective transactions. These cases serve as a clear reminder that even acquisitions of shareholdings below 50% may trigger the European Commission's merger filing obligations if they confer control over a company. Soon even the acquisition of certain non-controlling minority shareholdings may have to be notified to the Commission, as it is currently [seeking views](#) on extending the scope of the EU's merger regime to acquisitions of non-controlling minority shareholdings which could harm competition (see also our [In Context of 10 October 2013](#)).

It is therefore wise for companies to keep track of all acquisitions, including minority shareholdings, and to check for any applicable merger filing obligations around the globe before implementing them.

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