

PRESS RELEASE

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The Belgian Competition Authority imposes fines totalling 1 779 000 euros for a cartel in the context of a public contract

The Investigation and Prosecution Service of the Belgian Competition Authority (hereinafter “the Investigation and Prosecution Service”) sanctions a cartel between five companies in the context of a public contract launched by Infrabel and imposes fines amounting to 1 779 000 euros.

This public contract, in the form of a framework agreement, concerned a lot of compact stations for traction substations (allowing the conversion of alternating current to direct current) and a lot of compact stations for sectioning posts (allowing to isolate a part of a circuit or a network).

This cartel constitutes an infringement of article IV. 1 of the Code of Economic Law and article 101 of the Treaty on the Functioning of the European Union.

Undertakings concerned

The companies concerned are ABB Ltd and its subsidiary ABB SA, Siemens AG and its subsidiary Siemens SA, Karpimos SA and its subsidiary AEG Belgium SA, Schneider Electric SE and its subsidiary Schneider Electric Energy Belgium SA and Sécheron SA.

All the companies involved in the inquiry of the Investigation and Prosecution Service are party to the settlement.

What restrictive practices were at stake?

ABB SA, Siemens AG, AEG Belgium SA, Schneider Electric Energy Belgium SA and Sécheron SA have agreed to divide among each other the calls for tenders (“Request for Quotation, hereinafter RFQ”) launched by Infrabel in implementation of public contract 24C/125596.

For each RFQ, ABB SA, Siemens AG, AEG Belgium SA, Schneider Electric Energy Belgium SA and Sécheron SA have agreed which company would win which tender.

Specifically, these companies submitted price offers calculated in such a way that the RFQ was won by the company they had previously designated.

How long did these practices last?

The incriminated practices began in August 2010 for Sécheron SA and Siemens SA and in February 2011 for ABB SA, AEG Belgium SA and Schneider Electric Energy Belgium SA. Insofar as there is sometimes a significant time-lapse between the allocation of a RFQ and its actual implementation, the Investigation and Prosecution Service has decided to take account of the implementation of the contested RFQs until 30 June 2016, that is beyond the denunciation of the cartel.

The conduct of the investigation

In 2013, the Investigation and Prosecution Service initiated an ex officio investigation on the basis of information received under the leniency program. In August 2016, the Investigation and Prosecution Service notified its objections to all the companies involved. Discussions in view of a settlement began in September 2016.

The role of Infrabel's employees

Insofar as some employees of Infrabel, the Belgian railway infrastructure manager, have inappropriately disclosed to the companies information that facilitated the establishment and the functioning of the cartel, the Investigation and Prosecution Service recognized a mitigating circumstance for the sanctioned companies.

This decision of the Investigation and Prosecution Service shows how important it is for purchasers in charge of public contracts to be attentive to the prevention of collusion. It fits perfectly into the information campaign of the Belgian Competition Authority on this subject (see <http://www.abc-bma.be/fr/propos-de-nous/publications/collusion-dans-les-marches-publics-un-guide-pour-les-acheteurs-charges>).

A practice detected through the leniency program¹

The cartel was denounced to the Belgian Competition Authority by ABB under the leniency program. As a result, ABB enjoys a total exemption from fines in this case. Subsequently, Siemens and AEG also sought the benefit of the leniency program and were granted partial exemption from fines.

Four natural persons applied for-and were granted-immunity from prosecution.

Sanctions

As part of the settlement, the aforementioned undertakings accepted the infringement as mentioned in the decision as well as the fine applied to them. As a result they received a fine reduction of 10%.

¹http://www.abc-bma.be/sites/default/files/content/download/files/20160322_mb_lignes_directrices_clemence_clementierichtsnoeren.pdf

The details of the fines are as follows:

Undertakings	Leniency reduction	Amount in fine in euro (after 10% reduction for settlement)
ABB	100%	0
Siemens	50%	971 000
AEG	30%	357 000
Sécheron		19 000
Schneider		432 000

* For the sake of clarity, this table does not include increases / reductions for aggravating / mitigating circumstances

The settlement procedure

The settlement procedure is a new tool that the Code of Economic Law has granted to the Investigation and Prosecution Service to simplify and accelerate the closing of the infringement proceedings.

In this case, the proceedings could be completed 3 years after receipt of the complete immunity application.

The settlement decision cannot be appealed. The fines are therefore final. They are directly payable to the federal Treasury.

The decision of the Investigation and Prosecution Service is available on the website of the Belgian Competition Authority: <http://www.belgiancompetition.be/en>

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The Belgian Competition Authority (BCA) is an independent administrative authority that contributes to the definition and implementation of competition policy in Belgium. Concretely, the BCA pursues anti-competitive practices, such as cartels and abuses of a dominant position, and reviews the main merger operations. The BCA cooperates with the other competition authorities of the member states of the European Union and the European Commission within the European Competition Network (ECN)