

CRACKDOWN ON BID-RIGGING IN BELGIAN RAILWAY/POWER SECTOR

10 MAY 2017 • ARTICLE



The Belgian Competition Authority (the “BCA”) has broken up a cartel between five energy firms for manipulating bids in a public contract issued by Belgium’s railway infrastructure manager, Infrabel. All five companies could face follow-on damages claims, which should act as a stark reminder of the importance of having robust competition compliance measures in place.

In this case, four companies (Siemens, AEG Belgium, Sécheron and Schneider) were fined a total of €1.78m, while leniency applicant ABB avoided a financial penalty. Siemens and AEG, which also sought leniency, were granted 50% and 30% discounts respectively.

The BCA found that the five companies co-ordinated their bids for tenders for traction substation plants (which convert electric power for the supply of railways, trams and trolleybuses) and for compact stations for sectioning posts that enable the isolation of a part of a circuit or network.

The five power companies had agreed to divide among each other the calls for tenders launched by Infrabel by submitting price offers calculated at such a level that the tender was won by one of the pre-designated parties.

The agency found that the anti-competitive practices began in August 2010 for Sécheron and Siemens and in February 2011 for the other three companies. The BCA launched an ex officio investigation in 2013 based on information provided by the leniency applicant ABB. The BCA notified its objections to the companies in August 2016, with settlement discussions beginning in September 2016.

The BCA’s press release emphasises how important it is for purchasers in charge of public contracts to be aware of the possibility of collusion and to take steps to prevent its occurrence. The statement also highlights the fact that the settlement procedure is a new tool that has been given to the BCA by the Code of Economic Law.

This new procedure is open to all kinds of antitrust cases, including dominance investigations. As was the case with this particular infringement, parties to an investigation are able to admit to the infringement and receive a reduction of the fine of 10%. It is intended to simplify and accelerate the closing of infringement proceedings. The settlement decision cannot be appealed, meaning that the fines imposed are final and directly payable to the Belgian Federal Treasury.

The five companies all now face the prospect of follow-on damages claims to recover losses caused by the cartel.

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The case reinforces the importance of having a strong compliance culture – including competition law compliance – backed up by active measures to monitor the effectiveness of the compliance programme and ensure all employees are aware of their legal responsibilities.

This article was authored by Jeremy Robinson, a former regulatory and public law partner in our London office.

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