

Competition: Commission fines members of gas insulated switchgear cartel over 750 million euros

The European Commission has fined eleven groups of companies a total of €750 712 500 for participating in a cartel for gas insulated switchgear projects, in violation of the EC Treaty's ban on restrictive business practices (Article 81). The companies are ABB, Alstom, Areva, Fuji Electric, Hitachi Japan AE Power Systems, Mitsubishi Electric Corporation, Schneider, Siemens, Toshiba and VA Tech. For most of the duration of the infringement, a former Alstom subsidiary, bought by Areva four months before the end of the cartel, is jointly and severally liable with Alstom for the infringement. The Areva group is liable for the infringement for the period after its purchase of the subsidiary, up to the end of the cartel four months later. Between 1988 and 2004, the companies rigged bids for procurement contracts, fixed prices, allocated projects to each other, shared markets and exchanged commercially important and confidential information. ABB received full immunity from fines under the Commission's leniency programme, as it was the first company to come forward with information about the cartel. The total fines imposed in this case (€ 750 712 500) make it the largest set of fines ever imposed on a single cartel, and the fine of € 396 562 500 on Siemens, Germany constitutes the largest ever fine that the Commission has imposed on a single company for a single cartel infringement.

Competition Commissioner Neelie Kroes said: "The Commission has put an end to a cartel which has cheated public utility companies and consumers for more than 16 years. The Commission has once more shown that it will not tolerate cartels in Europe and the damage that they do in any area of business. The case also demonstrates that the Commission can and will bring down such cartels even if the companies concerned use sophisticated technology to cover their tracks".

Gas insulated switchgear (GIS) is heavy electrical equipment used to control energy flows in electricity grids, and is the major component of turnkey power substations. Substations are auxiliary power stations where electrical current is converted from high to low voltage or the reverse. GIS is sold both as items of equipment to be integrated into a turnkey power substation and as an integral part of turnkey power substations. Sales of GIS normally include services such as transport, testing and insulation. Public utility companies and other clients usually organise tenders, trying to find the best GIS for their needs at the lowest price.

The investigation started with surprise inspections in May 2004, which were prompted by an application for immunity lodged by ABB under the 2002 Leniency Notice (see [IP/02/247](#) and [MEMO/02/23](#)).

The cartel

The Commission concluded that the companies had participated in an illegal cartel on the basis of numerous documents and corporate statements provided by the immunity applicant (including two detailed written agreements concluded in 1988), together with documents discovered by the Commission during on-site inspections. The Commission's file includes some 25 000 pages of documents which contain evidence spanning the entire period of the cartel.

From at least 1988, when a written agreement between the members was adopted, GIS suppliers informed each other of calls for tender for GIS and co-ordinated their bids in order to secure projects for the cartel members according to their respective cartel quotas. Alternatively, they would agree to respect minimum bidding prices. The companies agreed that the Japanese companies would not sell in Europe, and the European companies would not sell in Japan. European tenders were usually allocated according to the cartel rules and the European projects won by cartel members outside their home countries were counted into the agreed global cartel quotas. Thus the Japanese companies have also been fined, despite their nearly total absence from the market for GIS in Europe, because their agreement to abstain from bidding contributed directly to the restriction of competition on the EU market.

Members of the cartel met regularly at the management level to discuss strategic issues and at a lower level to divide projects and to prepare sham bids by the companies not supposed to win the tender, in order to leave an impression of genuine competition.

Members of the cartel took sophisticated measures to keep their communications secret. Code names were used for both companies and individuals. In the last years of the cartel they relied on anonymous e-mail addresses for communication and used encryption for sending messages. According to a message sent by one cartel organiser to another, it was strictly forbidden to have "access to your [e-mail] from your home personal computer or any computer that can be easily linked to you. This will jeopardize the whole [cartel] network safety. Absolutely prohibit e-mails sending from your company computer to any AMB [i.e. anonymous mailbox]. This will also put the whole network security at risk".

Fines

These practices are a very serious infringement of EC Treaty anti-trust rules. The fines take account of the size of the EEA market for the product, the duration of the cartel and the size of the firms involved. The Commission increased the fines by 50% for Siemens, Alstom and Areva for their leadership role as secretary of the cartel. The fine calculated for ABB was increased by 50% for being a repeat offender. However, in this case ABB benefits from full immunity from a fine that would otherwise have amounted to € 215 156 250.

It is Commission practice to address its decisions to all the legal entities responsible for the illegal behaviour. In line with established case law, if the parent company within a group exercises decisive influence over commercial behaviour of its subsidiaries, then both form part of the same economic undertaking. There is a presumption that a parent company exercises decisive influence over its wholly owned subsidiary. Legal responsibility for the infringement and the related fine can be imputed to both the subsidiary that actually participated in the cartel and the parent company or companies that exercised decisive influence over the commercial behaviour of that subsidiary at the relevant time."

Fines imposed and reductions granted by the Commission:

Name and location of company	Reduction (%)	Reduction (euros)	Fine * (euros)
ABB, Switzerland	100%	215 156 250	0
Alstom, France	–	–	65 025 000
Areva, France**	–	–	53 550 000
Fuji Electric, Japan	–	–	3 750 000
Hitachi, Japan	–	–	51 750 000
Japan AE Power Systems, Japan***	–	–	1 350 000
Mitsubishi Electric Corporation, Japan	–	–	118 575 000
Schneider, France	–	–	8 100 000
Siemens, Germany	–	–	396 562 500
Siemens, Austria****	–	–	22 050 000
Toshiba, Japan	–	–	90 900 000
TOTAL			750 712 500

(*) = fine imposed on the undertaking - some entities concerned are held jointly and severally liable for the whole or part of the fine imposed on other entities.

(**) "The amount of €65 025 000 attributed to Alstom, France is built up as follows: €11 475 000 for which Alstom is solely liable, covering the period before the existence of the Alstom subsidiary into which the business was incorporated in 1992, and €53 550 000, for which Alstom is jointly and severally liable with that subsidiary for the period of ownership of Alstom. This subsidiary was acquired by the Areva group towards the end of the infringement, in January 2004. The parent entities of the Areva group share a joint liability with that subsidiary for the period after its acquisition."

(***) Joint-venture of Fuji Electric, Hitachi and Meidensha, Japan

(****) Fine for the infringement committed by VA Tech, acquired by Siemens after the infringement

Action for damages

Any person or firm affected by anti-competitive behaviour as described in this case may bring the matter before the courts of the Member States and seek damages, submitting elements of the published decision as evidence that the behaviour took place and was illegal. Even though the Commission has fined the companies concerned, damages may be awarded without these being reduced on account of the Commission fine. A Green Paper on private enforcement has been published (see [IP/05/1634](#) and [MEMO/05/489](#)).

For more information on the Commission's action against cartels, see [MEMO/07/29](#).