



GAZDASÁGI
VERSENYHIVATAL

Worldwide cartel fined by both Commission and GVH

On 24 January 2007 the European Commission has fined ten undertakings a total of EUR 750 million for participating in a cartel for gas insulated switchgear (GIS) projects. For 16 years between 1988 and 2004 the cartel agreement of ABB, Alstom, Areva, Fuji, Hitachi Japan AE Power Systems, Mitsubishi Electric Corporation, Schneider, Siemens, Toshiba and VA Tech caused serious damage to public utility companies active in the electric energy sector, and after all to consumers. ABB received full immunity from a fine of EUR 215 million under the leniency programme in exchange for its cooperation, as it helped in revealing the cartel.

The European Commission completed the information obtained from ABB with evidence which was obtained in the course of surprise inspections. It was clarified during the inspections that 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 coordinated their bids in order to secure projects for the cartel members according to their respective cartel quotas. The companies agreed that the Japanese companies would not sell in Europe, and the European companies would not sell in Asia. Usually the European calls for tender were allocated between them as well. Members of the cartel met regularly at the management level to discuss strategic issues and to concert their bids for the various tenders. Members of the cartel took sophisticated measures to keep their communications secret. Code names and anonym e-mail addresses were used and they encrypted their e-mails as well. The members could access the emails on computers which could not be linked to their personality.

A proceeding in the case was also conducted in Hungary. The Hungarian Competition Authority (Gazdasági Versenyhivatal – GVH) fined the participants of the cartel a total of HUF 702 million (about Euro 2,8 million) in the proceeding which was initiated on a leniency application of ABB, because the participants bid-rigged Hungarian calls for tender too. The GVH closed its proceeding in December 2005, while the European Commission closed its investigation in January 2007. The reason for the difference, is that the GVH proceeds under time limits determined by the Competition Act, the Commission is not required, however, to observe such limits, so it can conduct its investigation for shorter or longer periods depending on the weight and complexity of the case.

Since Hungary's accession to the Union the GVH directly applies the competition rules of the EU. This takes place when it would initiate a proceeding under Hungarian competition law but the behaviour in question presumably affects trade between Member States. Of course if the unlawful behaviour affects other Member

States too they may also initiate proceedings. In this case, in accordance with the procedural rules, the authority which is better placed with regard to the procedure conducts the proceeding but parallel investigations are also possible. The European Commission conducts an investigation when the infringement affects trade between Member States to a significant extent, so for example if a cartel covers the whole or most part of the EU. If the Commission is conducting its investigation the authorities of the Member States must not initiate any proceeding for the same infringement.

This was the situation in GIS-cartel case too. However the GVH could not apply Community law since the infringement took place before the EU accession. On the other hand, the need for the GVH to initiate a proceeding under Hungarian law was not influenced by the fact that the Commission was conducting its inquiry under Community law. Although a worldwide cartel was discovered, the Commission's proceeding covered only the territory of that time's European Union. So the Commission did not examine the cartel's effect on the market of the subsequently accessed Member States. Therefore in the present case, though based on different laws, the European Commission and the GVH examined the same infringement with respect to different territories. But this kind of parallel investigations cannot happen any more after Hungary's accession to the EU.

[For a comparison see also press release IP/07/80 of 24 January 2007 of the European Commission.]

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