

## Competition - Switzerland

### Commission Imposes Fines for Collusive Tendering in Electrical Equipment Sector

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On July 6 2009 the Competition Commission fined eight undertakings Sfr1.24 million for collusive tendering in relation to private and public tenders for electrical equipment in construction projects.

Following a complaint, the commission found signs of market sharing in the Bern region in the way that tenders (including tender prices) for electrical equipment in private and public construction projects were being submitted. It also found that the award of tenders for electrical equipment works was based on a rotation process. On January 31 2008 the commission launched an enquiry into these practices.

As part of the enquiry, the commission conducted dawn raids on the offices of principal market participants. The enquiry found that the undertakings concerned had participated in hardcore competition restrictions and, thus, were liable to a fine. The commission fixed these fines after considering the type, duration and gravity of the respective infraction. The fact that all of undertakings concerned discontinued their practice immediately after the enquiry's launch and applied for lenient treatment operated in mitigation. The commission also took into account the fact that the undertakings had agreed to reach an amicable settlement.

The commission has the power to fine undertakings up to 10% of their turnover in Switzerland for the past three years. However, pursuant to Article 49a(2) of the Competition Act, the commission operates a leniency programme, which applies to restrictive agreements that are subject to fines because they contain hardcore clauses that eliminate competition. Full immunity from fines is available for the first undertaking that reports its involvement in a qualified hardcore cartel and delivers information enabling the secretariat to start a regular investigation, provided that, among other things, the undertaking has not instigated the cartel activity. At any time during the procedure a fine reduction of up to 50% is available to an undertaking that does not qualify for full immunity, if and to the extent that it cooperates with the investigation and ends its involvement in the prohibited agreement at the time that evidence is provided.

This decision marks the first time that the commission has imposed fines for collusive tendering. The commission also confirmed the principle, already developed in a 2007 case, that the reaching of an amicable settlement does not rule out fines in respect of infringements that took place before the conclusion of that settlement.

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