

Competition - Switzerland

Commission Opens Investigation into Roadworks Sector

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On June 8 2009 the Competition Commission initiated an investigation into the roadworks market in the cantons of Zurich and Aargau. The subjects of the investigation are undertakings that are active in the roadworks and civil engineering sectors. Following a complaint, the commission discovered evidence which pointed to market sharing in the way that tenders (including tender prices) for roadworks contracts are submitted and suggested that roadworks contracts were being awarded on a rotational basis. The commission has conducted dawn raids as part of the evidence-gathering process.

Among other things, the 2003 amendments to the Competition Act empowered the commission to order searches of premises and seize documents and data. These amendments also introduced direct penalties for extreme cases of competition restriction. The commission's investigatory powers are limited to searches of premises, seizure of documents and data, and examination of parties and witnesses. Under the amendments, the commission is permitted to conduct dawn raids in order to gather evidence of infringements that are subject to first-time infringement fines.

The case is also significant in that it evokes the well-established principle that private law restrictions of competition in relation to public procurement (eg, agreements between tenderers) fall within the commission's jurisdiction.

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