

Competition - Switzerland

Competition Commission imposes fines for collusive tendering in construction sector

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On December 16 2011 the Competition Commission fined 17 road construction and civil engineering companies operating in the Canton of Aargau a total amount of approximately Sfr4 million for entering into price-fixing and customer allocation agreements.

This penalty comes as the result of an investigation launched in June 2009. The investigation confirmed suspicions that, between 2006 and 2009, the companies concerned participated in hundreds of illicit agreements to fix tender prices and allocate customers and projects.

The commission set the fines on the basis of the turnover of the companies involved, considering the type, duration and gravity of the infringement. Seven companies qualified for the leniency programme; one qualified for full immunity.

Under Swiss law, the Competition Commission has the power to fine companies up to 10% of their turnover for the past three years. However, the commission operates a leniency programme which applies to restrictive agreements that are prohibited and subject to fines because they contain dedicated clauses that eliminate competition. Full immunity from fines is available for the first company that reports its involvement in a qualified cartel and delivers information enabling the authority to begin an investigation. In addition, an applicant for full immunity must maintain complete, continuous and prompt cooperation with the investigating authority and cease participation in the prohibited activity. Full immunity is not available to companies which have coerced other parties to participate in cartel activity or have instigated cartel activity.

Alternatively, a reduction in fines by up to 50% is available at any time in the procedure to a party that does not qualify for full immunity, if and to the extent that the applicant cooperates with an investigation and ends its involvement in the prohibited agreement at the time that evidence is provided.

The Competition Commission considers combating tender (bidding) cartels, which constitute a particularly harmful infringement of the Competition Act, a priority. The commission has initiated cooperation with local authorities in charge of tender procedures in order to increase awareness of compliance with competition law.

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