Roadworks in the Seine-Maritime département

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The *Conseil de la concurrence* imposes fines totalling 33.6 million Euros on six building and civil engineering companies specializing in the supply of bituminous material.

Following a referral from the Minister of Economy, on 15th December 2005 the *Conseil* issued a decision in which it imposed penalties on several building and civil engineering companies, for engaging in a complex and continuous agreement during the awarding of public roadworks contracts in the Seine-Maritime *département*.

Between 1991 and the end of 1998, the companies concerned, which have since become subsidiaries of the Bouygues, Vinci and Eiffage groups, along with some smaller firms, entered into an agreement to share the tonnages of bituminous material to be spread on category 1 and 2 highways in the *département*.

Market for the supply of bituminous material in Seine-Maritime

To build roads, building and civil engineering companies use bituminous material, which is heavy and difficult to transport. The process by which the material is manufactured also results in a certain amount of pollution, and is subject to administrative authorization. The cost of manufacturing the material makes up approximately 80% of the total cost of roadworks, whilst the cost of transporting it is estimated at around 10%. The difficulties and costs of transporting bituminous material effectively restrict the pertinent market for this product to a radius of around 40km around the plant where it is manufactured. The plants in Seine-Maritime likely to be involved in the contracts concerned by

the referrals, between 1988 and 1998, were concentrated around Dieppe, Le Havre and Rouen.

The *Conseil* observed that, at the time of the offending practices, Seine-Maritime invested more than any other French *département* in highways.

Market sharing

The *Conseil de la concurrence* established that several building and civil engineering companies - which have since become Colas, Eurovia, Gagneraud Construction, Le Foll Travaux publics, Appia, Buquet - agreed on a scale for sharing the tonnages of bituminous material needed for roads in Seine-Maritime. That scale was then applied to all contracts with the State and the *département*'s General Council (*Conseil Général*).

The figures provided by the General Council prove that this market sharing scale, which allowed tonnages of bituminous material to be distributed between the parties to the agreement, was applied between 1992 and 1998, along with regular mutual checks on the application of the quotas and compensation mechanisms designed to ensure compliance. The *Conseil* also established that the offending companies regularly exchanged information on prices prior to submitting tenders. The system ended in 1999.

The public procurement agent deceived

The *Conseil* established that the manner in which the companies answered public calls for tender had an anticompetitive objective. The companies systematically submitted tenders in groupings, despite the fact that there was no economic or financial justification for the companies to group together in this way. The purpose of this approach was to allow the companies concerned to share the tonnages of bituminous material between them, according to the predetermined scale.

The *Conseil* demonstrated that the companies acted in a number of ways to prevent competitors from disrupting the agreement. The instigators of the

agreement financed lawsuits filed by several supposed environmental protection groups against the company Buquet. The aim was to prevent Buquet from building a bituminous material manufacturing plant that would enable it to compete with the parties to the agreement for public contracts in Seine-Maritime. When the lawsuits failed, the companies that were party to the agreement organized a meeting in September 1997, in order to include Buquet in the market sharing agreement. Buquet's actions helped to bring about the end of the agreement in 1999.

According to established case law, the *Conseil* considers that the deliberate and sustained deception of the public procurement agent during various calls for tender is a particularly serious practice.

Damage to the economy

The *Conseil* considers that the damage to the economy comes from the fact that this practice lasted for at least eight years and the prices applied during this entire period were substantially higher than those that would have resulted from free and undistorted competition.

Based on the theoretical scenario in which the least damage was caused to the economy, it appears that the Seine-Maritime General Council was overcharged by approximately 24.8 million Euros between 1992 and 1998 (162M FF), which equates to an average of 3.54 million Euros per year. In addition, the Rouen SRPJ (financial section) and the DGCCRF were given an official commission to compile reports on the case, in 2002 and 2004 respectively. According to these reports, the economic damage for the period 1988 - 1998 was evaluated at between 350 and 400 million FF for the General Council's contracts alone. Consequently, when the system came to an end in 1999, the average cost of a tonne of bituminous material fell by 30%.

The fines imposed by the Conseil

- company Colas Ile de France Normandie: 21,000,000 Euros
- company Eurovia Haute Normandie: 2,800,000 Euros
- company Gagneraud Construction: 6,500,000 Euros

- company Le Foll Travaux publics: 2,900,000 Euros
- company Appia Haute Normandie: 400,000 Euros
- operating company Buquet: 60,000 Euros

See the decision (05-D-69)