

22 March 2006: The Drapo software case

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34 building and civil engineering companies have been fined a total of 48 million euros by the Conseil de la Concurrence for engaging in widespread anti-competitive agreements involving public procurement contracts in the Ile-de-France (Greater Paris) area

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The Conseil de la Concurrence has imposed fines totalling 48 million euros on 34 companies for entering into prior agreements over the allocation of a large number of public calls for tender in the Ile-de-France (Greater Paris) area. The Conseil began proceedings ex officio following criminal prosecution of several individuals which started in 1994, but which was halted in November 2002 when the cases against the accused were dismissed.

The Conseil de la Concurrence found that from the end of 1991 through to 1997, these major building and civil engineering companies (along with their subsidiaries) entered into bid-rigging agreements covering public procurement contracts in the Ile-de-France area, and that many other companies were brought into the process. The Conseil's findings were based on papers and documents passed on to it by the investigating magistrate; in particular the inquiry report carried out by the Director General of Competition, Consumer Affairs and Fraud Control (DGCCRF), which was based on letters rogatory.

In all, these actions distorted the tendering processes for around forty contracts, among which the Eole and Meteor urban rail and metro projects for French State Railways (SNCF) and the Greater Paris transport authority (RATP).

Bids for all major public procurement contracts for the Ile-de-France area were divided up by the companies through “pooling agreements”.

Through this general agreement, the major companies divided up upcoming work projects between their subsidiaries during “pooling” meetings in which the companies' managers discussed their desired future public work projects.

The documents seized during the inquiry identified ten such “pooling meetings”. At these meetings, bids were shared out on a geographical basis (the five départements 78, 92, 93, 94 and 95), by project type (Eole and Meteor), by contracting authority (SNCF, RATP, the City of Paris and organizations involved in highway and water and waste services such as the Syndicat Interdépartemental pour l'Assainissement de l'Agglomération Parisienne and the Direction Départementale de l'Equipelement) and by the type of work involved (such as surface concrete).

The market sharing arrangements operated over a long period and were based on a particularly sophisticated allocation system. It gave rise to regular meetings between the companies, which were designed to organise the sharing out of tender bids and to ensure compliance with the prospective allocations. It was implemented through regular exchanges of information and by a process involving cover bids.

Adherence to the formula devised for sharing out the bids was achieved through accounting operations concerning loans and payments in arrears for each company and by a system of compensatory measures which involved cash payments, awarding official or covert sub-contracts as well as by setting up undeclared partnerships.

Very serious practices...

Through setting up such agreements, the building and civil engineering companies concerned knowingly broke competition rules. The bidding process meant that the contracting authorities were misled through not being able to gain from bids which would have enabled them to award contracts on a best price basis.

The Conseil made the point that the widespread nature of these agreements

caused particularly serious economic damage because it affected a fast-expanding sector covering a large geographical area. It also found that the amounts were high (around 1 billion euros) for the contracts affected by these agreements.

... requiring fines that should be exemplary in nature

Taking these factors into account, the Conseil has imposed fines of 5% of their turnover on the major companies of the sector. This is the maximum allowed by the legislation that was in force at the time (1) . For the remaining companies, the fines range from 1% to 4% of their turnover.

The largest fines are set out as follows:

- **Bouygues and its current subsidiaries:**

- **Bouygues** 3,400,000 euros
- Colas IDFN 4,000,000 euros
- Screg IDF Normandie 1,800,000 euros
- Sacer Paris Nord-Est 1,300,000 euros

- **Eiffage and its current subsidiaries:**

- **Eiffage** 1,050,000 euros
- Eiffage Construction 1,000,000 euros
- Eiffage TP 4,300,000 euros
- Effiparc IDF 27,000 euros

- **Vinci and its current subsidiaries:**

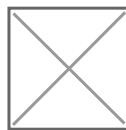
- **Vinci** 1,213,000 euros
 - Vinci Construction 127,000 euros
 - Chantiers Modernes 30,000 euros
 - Parengé 300,000 euros
 - TPI 760,000 euros
- Soletanche Bachy 5,600,000 euros

- Sade CGTH 5,400,000 euros
- Guintoli 4,000,000 euros
- Razel 4,000,000 euros
- Bec Frères 2,400,000 euros
- Demathieu et Bard 2,000,000 euros
- Spie Batignolle TPCI 1,600,000 euros
- Urbaine de Travaux 1,200,000 euros
- Nord France Eau et Environnement 137,000 euros
- Botte Fondations 600,000 euros
- Sefi Intrafor 560,000 euros
- Valentin 470,000 euros

The companies named have been fined either because they were themselves involved in these malpractices or because they have become successors in interest to the companies concerned

(1) The measures contained in article L.464-2 of the Code of Commercial Law (Code de Commerce) have since been altered by the New Economic Regulations Law (known as the loi NRE). The ceiling on fines has been raised from the previous figure of 5% of the company's latest turnover to 10% of the company's or group's worldwide turnover. In the case considered here, the limits imposed by the previous ceiling have been applied.

> Decision 06-D-07 of 21 March 2006 concerning practices in the public works sector in the Île-de-France area



> See decision of the Paris Court of Appeal dated 24th June 2008 and correcting decision dated 29th October 2008

> See decision of the Cour de cassation (Supreme court of appeals) dated 13th October 2009

> See decision of the Paris Court of Appeal dated 5th May 2011

> See decision of the Cour de cassation (Supreme Court of appeals) dated 15

th May 2012