9 May 2007 Secondary Schools in the Ile-de-France region

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The Conseil de la concurrence penalizes 12 companies member of public buildings and works sector groups to 47.3 million euros for general agreement

>Version française

In a ruling dated 27 February 2007, the Paris Court of appeal confirmed the criminal penalties handed down on October 26th 2006 by the Paris county court against leaders of the companies Bouygues Bâtiment, CBC Ile-de-France, Dumez Ile-de-France, Fougerolle, GTM, Nord France, SAEP, SCGPM and SPIE. The leaders were sentenced on the basis of Article L.420-1 of the code de commerce for having "fraudulently taken (...) a personal and decisive role in the elaboration, the orgranisation and the implementation of an agreement having the object or likely to have the effect to prevent, to restrict or to distort competition on the market".

On the basis of corroborating statements collected during the criminal proceedings, the Conseil de la concurrence, which submitted a referral ex-officio but which had also received several complaints from the Ile-de-France regional council (Conseil régional), has penalized the companies, which have taken part in the agreement.

Between 1989 and 1996, 14 companies, some of which are the result of a restructuring of several companies and belong to six groups from the public buildings and works sector active in France during the period concerned participated in a general and continuous agreement with the aim to share 88 public markets for a total of 10 billion French francs.

A case with an exceptional complexity and scope

In 1990, the Conseil régional d'Ile-de-France launched a broad programme to renovate school public buildings. The poor state of the buildings led the local authorities to allocate 241 public works markets for a total cost of 23.3 billion French francs, i.e. the highest amount ever involved by public authorities for this type of operation. The 88 markets concerned were part of the deal.

The high number of the markets concerned and the existence of criminal proceedings led to a particularly long and complex investigation.

The companies divided up the markets among them during meetings before the takeover bids

. Information exchanges and market sharing

The corroborating statements of the company leaders concerned showed that from 1989, even before the launch of the first set of markets, the companies gathered together and agreed on the principle of sharing all the future markets. They confirmed that the seven sets of public markets launched by the Ile-de-France region led to other meetings to share the markets, direct contacts between companies and information exchanges.
The participants to the general agreement belonged to the groups, which attended the meetings and launched the principle.

. The agreement operated during 7 years under the aegis of Patrimoine Ingénierie, assistant of the contracting authority

The operating mode was always the same and allowed the agreement to operate over the long term.
First, the companies were pre-selected by a hidden committee in which Patrimoine Ingénierie had notably the role to enforce the rule of market sharing between SMEs and company groups (1/3; 2/3), which was supported by Ile-de-France regional council.

Second, according to the agreed sharing plan, each pre-selected company managed either to obtain the allocation of the market through unveiling to its "competitors" the markets it had selected and communicating its prices, or to renounce the allocation in offering a deliberately overestimated price (cover bid).

The good operating of the general sharing of markets was ensured by Patrimoine Ingénierie, which gave information beforehand to the companies on future operations, and afterwards ensured that the pre-selected company obtained the market.

The Conseil stressed that the general agreement caused a particularly serious damage to the economy…

The Conseil stressed the extreme seriousness of the companies' behaviour. In implementing such practices, some of the most important public buildings and works companies deliberately infringed competition rules and managed to make unduly margins, which are much higher than the ones usually observed in the sector.
The Conseil underlined the fact that the general agreement caused a particularly serious damage to the economy, as a result of the signal sent by the major companies to other companies of the sector.

… which justifies exemplary penalties

Given these elements, the Conseil de la concurrence imposed on the companies of the sector penalties which account for 5% of their turnover – i.e. the maximum amount authorized by the legislation applicable(1) at the time, except for two companies for lack of turnover at the time of budget balance.

The Conseil therefore imposed on the companies the following penalties :
· Bouygues SA : 3, 213, 000 euros ;
· Bouygues Bâtiment Ile-de-France SA : 20, 765, 000 euros ;
· Gespace France SA : 242, 100 euros ;
· Entreprise de Travaux Publics André et Max Brezillon : 13, 338, 000 euros ;
· Compagnie Générale de Bâtiment et de construction (CBC) SA : 9, 200 euros ;

· Société Industrielle de Constructions Rapides (Sicra) SNC : 516, 300 euros ;
· Fougerolle SAS : 7, 600 euros ;
· Spie-SCGPM : 7, 341, 000 euros ;
· Vinci Construction : 270, 200 euros ;
· Eiffage Construction : 527, 500 euros ;
· Spie SA, formerly Amec SA : 1, 078, 000 euros ;
· Nord France Boutonnat SARL : 6, 300 euros.

(1) Since that date, the New Regulation Act (NRE) modified the provisions of article L. 464-2 of the code de commerce : the penalty threshold was raised from 5% of the company's last turnover to 10% of the company's or group's turnover. In the present case, the former threshold applies.

> Decision 07-D-15 of 9 May 2007 relative to practices implemented in public markets relative to Ile-de-France secondary schools



> See decision of the Paris Court of Appeal (3rd July 2008)

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