19 December 2007: Hospitals' grouped calls for tender for defibrillators

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The Conseil de la concurrence fines five defibrillator manufacturers for agreeing to boycott a nation-wide call for tender organised by 17 hospitals

>Version française

The Conseil de la concurrence issues a decision against five defibrillator manufacturers, among which the world's leaders in the sector, and imposing a €2.6 million fine for agreeing to boycott a nation-wide call for tender organised by 17 university hospitals for defibrillators supplies.

The fines are as follows :
- Biotronik France : €200 000 ;
- Guidant France : €400 000 ;
- ELA Medical France : €500 000 ;
- Medtronic France : €1.1 million;
- Saint Jude Medical France : €450, 000.

The five defibrillator suppliers consulted each other in order to boycott a nation-wide call for tender

In May 2001, the Montpellier hospital was appointed by the 16 other hospitals to launch a joint call for tender for the purchase of implantable defibrillators. This new purchase procedure was expected to lower prices charged to hospitals and improve services provided. No tender having been submitted on the deadline, the call for tender was declared unsuccessful.

Following a referral by the Ministry of economy, the investigation showed that the five suppliers met several times to discuss the behaviour they should adopt regarding this nation-wide call for tender and reached a joint decision to refuse to answer to the call for tender.

During these meetings, the manufacturers also agreed on the legal and technical arguments used to attempt to make their common behaviour appear as parallel behaviours adopted separately by each of them.

Horizontal agreements in the context of public procurement are harmful by their very nature

Horizontal agreements in the context of public procurement are harmful by their very nature, regardless of the importance of the affected market and the infringements' duration, because they have as their object to directly impede the competitive process.

In the case at hand, the infringement led to the failure of the first nation-wide call for tender for a grouped purchase of medical equipment. This failure impeded hospitals' ability to derive the benefits expected from a new type of call for tender, that is the rationalization of their purchasing practices and lower prices. It also led the relevant hospitals to forgo other similar tender procedures.

> Decision 07-D-49 of 19 December 2007, relative to practices implemented by Biotronik, Ela Medical, Guidant, Medtronic and Saint Jude Medical in hospital supply in implantable defibrillators



> See decision of the Paris Court of Appeal (8th April 2009)