

Final report of the Hearing Officer in Case COMP/38.899 — Gas Insulated Switchgear (GIS)

(Pursuant to Articles 15 and 16 of Commission Decision 2001/462/EC, ECSC of 23 May 2001 on the terms of reference of Hearing Officers in certain competition proceedings — OJ L 162, 19.6.2001, p. 21)

(2008/C 5/05)

The draft decision in the above mentioned case gives rise to the following observations.

The case was initiated following an application for immunity by the company ABB on 3 March 2004 under the Commission notice on immunity from fines and reduction of fines in cartel cases ⁽¹⁾ (the Leniency Notice). On 25 April 2004, the Commission granted ABB conditional immunity. Subsequently, on 11-12 May 2004 the Commission services carried out unannounced inspection at the premises of the undertakings Areva, Siemens, VA Tech, Hitachi and Japan AE Power Systems Corporation.

Subsequently, Areva, Siemens, VA Tech, Hitachi/Japan AE Power Systems Corporation, Mitsubishi and Fuji made submissions for immunity/reduction of fines under the Leniency Notice.

In the Statement of Objections, adopted on 20 April 2006, the Commission took the preliminary view that from at least 15 April 1988 to 11 May 2004 the 21 companies to which the Statement of Objections was addressed had participated in a single complex and continuous infringement of Article 81(1) EC and, from 1 January 1994, Article 53(1) of the EEA Agreement and announced its intention to adopt an infringement decision and to impose fines ⁽²⁾. According to the Commission the parties had agreed on market sharing, allocation of quotas, allocation of individual GIS-projects (bid-rigging), price-fixing, termination of license agreements with non-cartel members and exchanged sensitive commercial information. The cartel was world-wide in scope although certain territories were excluded, specifically US and Canada.

The addressees of the Statement of Objections were granted access to the file in the form of a CD-ROM. Oral statements, which had been made in the framework of the Leniency Notice, were made accessible at the Commission's premises. The parties were entitled to take notes, listen to tape recordings and/or read transcripts prepared by the Commission but were not permitted to make copies of the documents concerned.

Several parties requested an extension of the deadline to reply to the Statement of Objections, which I granted partially. All parties replied in due time.

At the request of the parties an oral hearing was held in accordance with Article 12 of Commission Regulation (EC) No 773/2004 on 18-19 July 2006. All parties except Mitsubishi Electric Corporation attended the hearing.

After the oral hearing the Commission services made available to the parties Fuji's leniency submission, which it had received on 12 July 2006 and parts of ABB's and Fuji's replies to the Statement of Objection and invited the parties to submit their comments. In addition, Hitachi and Fuji were granted access to each other's replies to the Statement of Objections but only in so far as they were relevant to the liability for the conduct of their joint venture, Japan AE Power Systems Corporation. Subsequently, Fuji and ABB provided additional information to the Commission services, which were made available to the other parties for comments.

In view of the new pieces of information received after the Statement of Objections several parties approached me and requested that a new round of full access to the file should be given, and that non-confidential version of other parties' replies to the Statement of Objections should be given to them.

⁽¹⁾ OJ C 45, 19.2.2002, p. 3.

⁽²⁾ As from 27 May 2006 one of the addressees of the Statement of Objections, VA Technologie AG, ceased to exist as a legal entity, as it had merged into Siemens Aktiengesellschaft Österreich. Therefore, on 21 June 2006, the Commission adopted an addendum to the SO according to which the latter replaced VA Technologie AG in the proceedings.

I took the view that the additional information received by the Commission after the Statement of Objections did not amount to a re-opening of the investigation that could warrant a new round of full access to the file. I also considered, in accordance with recent case law, that the parties have no general right of access to other parties' replies but only to information contained therein that may be inculpatory and relied upon in a final decision or have an exculpatory value⁽¹⁾. Nevertheless, I considered that the Commission had not sufficiently clarified which new information it intended to use in a potential final decision or which allegations this information was intended to support. I thus requested the Commission services to clarify to the parties the use it intended to make of the new information received, which it had made available to the parties.

Accordingly, by letter 14 November 2006, the Directorate-General for Competition wrote to the parties and identified those pieces of information that it had received in so far that these contained corroborating or incriminating elements that it intended to use in any final decision and clarified the use it intended to make of this information. The parties were granted a supplementary deadline of one week to make their views known.

Most parties considered that the deadline was too short to allow them to adequately exercise their right of defence and requested an extension.

After examining their request I decided to extend the deadline with one additional week. The parties' submissions have been considered and, where relevant, taken into account by the Commission in the final decision.

In light of the written replies to the Statement of Objections and subsequent correspondence, and the results of the hearing, notably the duration of the participation in the infringement, as described in the Statement of Objections, has been reduced for several parties, i.e. Areva T&D SA, Areva T&D AG, Nuova Magrini Galileo SpA in liquidation, Schneider Electric SA, Siemens AG Österreich (former VA Technologie AG and VA Tech T&D GmbH), VA Tech Transmission & Distribution GmbH & Co KEG, Siemens Transmission & Distribution Ltd (former VA Tech Transmission & Distribution Ltd) and Siemens Transmission & Distribution SA (former VA Tech Transmission & Distribution SA).

I consider that the parties' right to be heard has been respected in this case for all participants to the proceedings.

Also, in my opinion the draft decision relates only to objections in respect of which the parties have been afforded the opportunity to make known their views.

Brussels, 15 January 2007.

Serge DURANDE

⁽¹⁾ CFI judgment of 27 September 2006 in Case T-43/02, *Jungbunzlauer*.