

**Summary for publication of Commission Decision**  
**of 24 January 2007**  
**relating to a proceeding under Article 81 of the Treaty establishing the European Community and**  
**Article 53 of the EEA Agreement**

(Case COMP/38.899 — Gas Insulated Switchgear)

(Notified under document number C(2006) 6762 final)

(Only the English, French, German and Italian versions are authentic)

(Text with EEA relevance)

(2008/C 5/07)

SUMMARY OF THE INFRINGEMENT

PROCEDURE

- (1) This Decision was addressed to ABB Ltd, Alstom (Société Anonyme), Areva SA, Areva T&D AG, Areva T&D Holding SA, Areva T&D SA, Fuji Electric Holdings Co., Ltd, Fuji Electric Systems Co., Ltd, Hitachi Ltd, Hitachi Europe Ltd, Japan AE Power Systems Corporation, Mitsubishi Electric Corporation, Nuova Magrini Galileo SpA, Schneider Electric SA, Siemens AG, Siemens Aktiengesellschaft Österreich, Siemens Transmission & Distribution Ltd, Siemens Transmission & Distribution SA, Toshiba Corporation and VA Tech Transmission & Distribution GmbH & Co KEG.
- (2) The above 20 legal entities (belonging to 10 undertakings, with some legal entities held liable as parent companies) infringed Article 81 of the EC Treaty and Article 53 of the EEA Agreement by participating in a single and continuous infringement between 15 April 1988 and 11 May 2004 in the Gas Insulated Switchgear industry.
- (3) Japanese and European providers of GIS coordinated the allocation of GIS projects worldwide, with the exception of notably the USA and Canada. They allocated projects according to agreed rules, thereby respecting quotas and price levels, while reserving some territories to certain producers.

- (5) The case was opened on the basis of the immunity application, lodged by the Swiss undertaking ABB on 3 March 2004 in accordance with the Leniency Notice <sup>(1)</sup>. ABB was granted conditional immunity from fines on 15 April 2004.
- (6) The Statement of Objections was sent on 20 April 2006, a supplementary SO was issued on 21 June 2006 and the Oral Hearing took place on 18-19 July 2006.
- (7) The Advisory Committee on Restrictive Practices and Dominant Positions met on 8 December 2006 and 19 January 2007 and issued a favourable opinion.

FACTS

- (8) The cartel had a complex structure. Firstly, there was a common understanding between the participants that the Japanese undertakings would not sell in Europe and the European undertakings would not sell in Japan. Secondly, projects outside defined European countries and Japan were divided on the basis of global quotas. A number of countries were excluded totally from the agreements, notably the USA and Canada. Thirdly, based upon the common understanding, the European undertakings discussed among themselves projects relating to European countries. These projects, however, were accounted for under the global quotas that had been agreed upon with the Japanese companies. Fourthly, certain European countries were designated 'home countries'. These 'home countries' were left to the home-producers and sales in the 'home countries' were not included (loaded) in the calculation of the global quotas.
- (9) The parties regularly met
  - to allocate GIS projects in accordance with the set quotas,
  - to agree upon the prices that the assigned undertaking could charge,

THE INDUSTRY

- (4) Gas Insulated Switchgear (GIS) is used to control energy flow in electricity grids. It is heavy electrical equipment, used as a major component for turnkey power substations. GIS is sold as a stand-alone product and as part of GIS based turnkey power substations. The product is specialised and, therefore, custom made. Clients normally specify their needs and ask potential suppliers to make a bid. The annual worldwide market value of GIS projects (stand-alone product, GIS based turnkey power stations and associated services) was approximately EUR 1 700-2 300 million during the years 2001-2003.

<sup>(1)</sup> OJ C 45, 19.2.2002, p. 3.

- to agree upon the prices that members of the cartel that were not to win the tender would bid in order to leave the impression of genuine competition, and
  - to agree upon the pricing parameters to respect when the parties could not agree amongst themselves to whom the project would be allocated.
- (10) The participants took elaborate measures to conceal their cartel activities. Not only did the cartelists prepare spurious bids in order to leave an impression of genuine competition, but they also used code names and increasingly sophisticated means of communication (e-mail from private accounts with encrypted messages; mobile telephones with encryption) to avoid detection.
- (11) The evidence provided by the immunity applicant in combination with the findings of the Commission inspection enables the Commission to establish that the infringement started at least as early as April 1988 and lasted until the day the Commission intervened, i.e. 11 May 2004.

#### 1. LEGAL ASSESSMENT

- (12) On the basis of the above, it is concluded that a single and continuous infringement of Article 81 of the EC Treaty and Article 53 of the EEA Agreement took place from 15 April 1988 until 11 May 2004.
- (13) All parent companies having actually exercised a decisive influence on the commercial conduct of their subsidiaries involved in the infringement are held jointly and severally liable with their subsidiaries for the infringement. This regards single parent companies (in particular of wholly owned subsidiaries), for which the presumption of control has not been rebutted. Moreover, it is also proposed to hold the cartel members who continued their involvement in the cartel by means of joint-ventures jointly and severally liable with the joint-ventures for the infringement committed by the latter, to the extent that the relevant companies exercised a decisive influence over the joint-ventures.

#### 2. FINES

##### Basic amount

###### Gravity

- (14) Regarding the gravity of the infringement, impact on the market and its geographic scope, the infringement must be qualified as very serious because of its very nature.

###### Differential treatment

- (15) As there is considerable disparity between each undertaking's weighting in terms of turnover in the cartelised

industry, we have applied differential treatment (groupings) to take account of each undertaking's weighting: this approach seeks to differentiate how each undertaking's relative importance in the market concerned damaged competition.

- (16) The undertakings have been divided into four categories according to their relative market size in the year 2003 (2001 for the parents of the Japanese joint-ventures).

###### Sufficient deterrence

- (17) In order to set the amount of the fine at a level which ensures that it has sufficient deterrent effect it is considered appropriate to apply a multiplier factor to the fines imposed, based on the size of the undertakings concerned. On this basis, the draft Decision proposes to multiply the fine for those undertakings with a particularly large size based on their worldwide turnover and to apply such multiplier to Siemens, Hitachi, Toshiba, Melco and ABB.

###### Duration

- (18) Individual percentage increases will be applied according to the duration of the infringement by each company as set out above.

##### Aggravating circumstances

###### Repeated infringements

- (19) At the time the infringement took place ABB had already been subject to a previous Commission prohibition decision for cartel activities. This justifies an increase in the basic amount of the fine to be imposed on it.

###### Role of leader

- (20) Siemens, Alstom and Areva have assumed the role of secretary of the European cartel members in subsequent periods. This justifies an increase in the basic amount to be imposed on these undertakings for leadership.

##### Attenuating circumstances

- (21) Several undertakings claimed attenuating circumstances such as: early termination of the infringement, a minor/passive role and the absence of an effective implementation of the practices. These claims are all rejected as being unfounded.

##### Application of the 10 % turnover limit

- (22) Where appropriate, the 10 % worldwide turnover limit of Article 23(2) of Regulation (EC) No 1/2003 will be applied to the fines calculated.

**Application of the 2002 Leniency Notice***Immunity*

(23) ABB was the first to inform the Commission of the existence of a cartel and the Commission has granted ABB conditional immunity from fines in accordance with point 15 of the Leniency Notice. ABB has co-operated fully, on a continuous basis and expeditiously throughout the Commission's administrative procedure and provided the Commission with all evidence available to it relating to the suspected infringement. ABB ended its involvement in the suspected infringement no later than the time at which it submitted evidence under the Leniency Notice and did not take steps to coerce other undertakings to participate in the infringement. Hence, ABB qualifies for a full immunity from fines.

*Point 23(b)*

(24) Areva, Siemens, VA Tech, Hitachi and Jaeps, Melco and Fuji made applications under the Leniency Notice.

(25) Pursuant to the Leniency Notice, the Commission examined the other submissions in the chronological order in which submissions were made in order to evaluate whether it constitutes significant added value within the meaning of point 21. It is concluded that these submissions did not contain significant added value within the meaning of the Leniency Notice in comparison to the information the Commission already had in its possession at that time from ABB, from the inspections carried out on 11-12 May 2004, and from the investigation carried out until the respective applications were made.

## DECISION

(26) The addressees of the Decision and the duration of their involvement were as follows:

- (a) ABB Ltd, from 15 April 1988 to 2 March 2004;
- (b) Alstom (Société Anonyme), from 15 April 1988 to 8 January 2004;
- (c) Areva SA, from 9 January 2004 until 11 May 2004;
- (d) Areva T&D AG from 22 December 2003 to 11 May 2004;
- (e) Areva T&D Holding SA, from 9 January 2004 until 11 May 2004;
- (f) Areva T&D SA, from 7 December 1992 to 11 May 2004;
- (g) Fuji Electric Holdings Co., Ltd, from 15 April 1988 to 11 May 2004;
- (h) Fuji Electric Systems Co, Ltd, from 15 April 1988 to 11 May 2004;
- (i) Hitachi Ltd, from 15 April 1988 to 31 December 1999, and from 2 July 2002 to 11 May 2004;

(j) Hitachi Europe Ltd, from 15 April 1988 to 31 December 1999, and from 2 July 2002 to 30 September 2002;

(k) Japan AE Power Systems Corporation, from 1 October 2002 to 11 May 2004;

(l) Mitsubishi Electric Corporation, from 15 April 1988 to 11 May 2004;

(m) Nuova Magrini Galileo SpA, from 15 April 1988 to 13 December 2000, and from 1 April 2002 to 11 May 2004;

(n) Schneider Electric SA, from 15 April 1988 to 13 December 2000;

(o) Siemens AG, from 15 April 1988 to 1 September 1999, and from 26 March 2002 to 11 May 2004;

(p) Siemens Aktiengesellschaft Österreich, from 20 September 1998 to 13 December 2000, and from 1 April 2002 to 11 May 2004;

(q) Siemens Transmission & Distribution Ltd, from 15 April 1988 to 13 December 2000, and from 1 April 2002 to 11 May 2004;

(r) Siemens Transmission & Distribution SA, from 15 April 1988 to 13 December 2000, and from 1 April 2002 to 11 May 2004;

(s) Toshiba Corporation, from 15 April 1988 to 11 May 2004;

(t) VA Tech Transmission & Distribution GmbH & Co KEG, from 20 September 1998 to 13 December 2000, and from 1 April 2002 to 11 May 2004.

(27) The fines imposed pursuant to Article 23(2) of Regulation (EC) No 1/2003 are as follows:

- (a) ABB Ltd: EUR 0;
- (b) Alstom (Société Anonyme): EUR 11 475 000;
- (c) Alstom (Société Anonyme), jointly and severally with Areva T&D SA: EUR 53 550 000. Of the amount of Areva T&D SA (EUR 53 550 000), Areva SA, Areva T&D Holding SA and Areva T&D AG jointly and severally with Areva T&D SA: EUR 25 500 000;
- (d) Fuji Electric Holdings Co., Ltd, jointly and severally with Fuji Electric Systems Co, Ltd: EUR 2 400 000;
- (e) Hitachi Ltd: EUR 50 400 000 of which jointly and severally with Hitachi Europe Ltd: EUR 48 375 000;
- (f) Japan AE Power Systems Corporation, jointly and severally with Fuji Electric Holdings Co., Ltd, Fuji Electric Systems Co., Ltd and Hitachi Ltd: EUR 1 350 000;
- (g) Mitsubishi Electric Corporation: EUR 113 925 000;
- (h) Mitsubishi Electric Corporation jointly and severally with Toshiba Corporation: EUR 4 650 000;
- (i) Toshiba Corporation: EUR 86 250 000;

- (j) Schneider Electric SA: EUR 3 600 000;
- (k) Schneider Electric SA, jointly and severally with Siemens Transmission & Distribution SA and Nuova Magrini Galileo SpA: EUR 4 500 000;
- (l) Siemens Transmission & Distribution Ltd: EUR 22 050 000, of which:
- (i) jointly and severally with Siemens Transmission & Distribution SA and Nuova Magrini Galileo SpA: EUR 17 550 000; and
- (ii) jointly and severally with Siemens Aktiengesellschaft Österreich and VA Tech Transmission & Distribution GmbH & Co KEG: EUR 12 600 000;
- (m) Siemens AG: EUR 396 562 500.
- (28) The undertakings listed above were ordered to immediately bring to an end the infringements referred to in that Article, insofar as they have not already done so and were ordered to refrain from repeating any act or conduct described above, and from any act or conduct having the same or similar object or effect.
-