

CLIENT ALERT

European Antitrust Alert

Jan.26.2007

We would like to bring to your attention two important developments this week concerning anti-cartel enforcement in Europe.

Second highest ever EC cartel fine

The European Commission imposed the second largest ever single fine on a cartel (€751 million) in relation to a conspiracy by 11 European and Japanese companies to fix prices and rig procurement bids for gas-insulated switchgear (heavy electrical equipment used to regulate energy flows between power grids).

The Commission found that the companies were involved in the cartel which operated in European markets from 1988 to 2004. Siemens of Germany will have to pay the largest fine (a total fine of €418 million, including the €22 million fine imposed on the Austrian company VA Tech that it acquired after the infringement). ABB, which was also implicated, was granted immunity from fines since it made a formal leniency application, thereby alerting the Commission to the existence of the cartel in the first place. The other companies fined were Mitsubishi Electric Corporation (€119m), Alstom (€65m), Areva (€53m), Hitachi (€52m), Schneider (€8.1m), Fuji (€3.7m) and Japan AE Power Systems (€1.35m).

The size of the penalty was not affected by the new guideline rules introduced by the EC in September 2006 as the formal cartel investigation started prior to that date. In fact, the new guidelines threaten to significantly increase the size of fines for long running cartels.

Siemens has already stated that it will appeal the Commission decision. The other companies fined by the Commission are likely to follow suit.

[European Commission Press Release](#)

UK court upholds ruling in favor of extradition of executive to the U.S.

The second development concerns the enforcement of the U.S. request to extradite Ian Norris, the former chief executive of Morgan Crucible, to face price-fixing and obstruction of justice charges. Morgan Crucible, a UK-based company had agreed to pay \$11 million to settle Department of Justice charges concerning price-fixing of carbon products between 1990 and 2000. Mr. Norris is separately accused in the DOJ's investigation of having set up a task force to destroy sensitive papers summarizing meetings between Morgan Crucible and its competitors.

The UK Administrative Court has now upheld the fast-track extradition request.

The Administrative Court decision confirms an earlier lower court ruling and a decision by the UK Home Office that the U.S. request was justified. Defense lawyers for Mr. Norris have indicated that they would appeal to the UK House of Lords and the European Court of Human Rights in Strasbourg. In the view of the defense lawyers, the critical point is that the price-fixing

concerned should not be characterized as the old English common law offence of conspiracy to defraud (and thereby subject to extradition) but only as an offence under the UK Enterprise Act 2003. Since the alleged activities pre-dated the 2003 Act, he should not be extradited. They also argue that the extradition would be unjust or oppressive notably given the passage of time since the alleged conduct.

If the extradition is ultimately successful, it would be the first time that the UK-US extradition treaty, designed primarily to combat international terrorism, would have been used in relation to cartel charges.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.