

PRESS RELEASE

The CNMC dismantles a cartel that altered the results of tenders for the maintenance and operation services of the State Road Network

- The cartel, involving 12 companies, was awarded 71 of the 101 Ministry of Development tenders between 2014 and 2018.
- The sanctioned companies systematically participated in all agreed tenders, restricting the number of tenders with low bids over a predetermined threshold that could be submitted by the cartel.
- The total fines amount to 61.28 million euros and a ban on government contracts has been activated.
- One of the companies involved in the cartel has availed itself of the **Clemency Programme**, meaning that the aggravating circumstance does not apply to it, and it will benefit from a 50% discount on the sanction imposed and will be exempt from the ban on government contracts.

Madrid, August 20, 2021.- The CNMC has fined 12 companies a total of **61.28 million euros** for an infringement involving **constituting a cartel** for altering tenders for road maintenance and operation services issued by the Ministry of Development (now the Ministry of Transport, Mobility and the Urban Agenda) between 2014 and 2018.

This is a very serious infringement prohibited by Article 1 of Law 15/2007 on the Defence of Competition and 101 of the Treaty on the Functioning of the European Union. ([S/0013/19](#)).

The companies sanctioned for being part of this cartel are Acciona Mantenimiento de Infraestructuras, SA (Acciona Mantenimiento) and jointly and severally its parent company Acciona, SA, Aceinsa Movilidad, SA (Aceinsa), Alvac, SA (Alvac), API Movilidad, SA (API) and jointly and severally its parent company ACS, Artistas de Construcción y Servicios, SA, Audeca, SLU (Audeca) and jointly and severally its parent company Elecnor, SA, Sociadada Anónima de Obras y Servicios Copasa (COPASA), Elsamex, SA (Elsamex), Elsan, SA (Elsan) and jointly and severally its parent company Obrascón Huarte Laín, SA, Ferroser Infraestructuras, SA (Ferroser) and jointly and severally its parent company Ferrovial Servicios, SA, Innovia Coptalia, SA (Innovia) and jointly and severally its parent company Copcisa Corp. SL, Mantenimiento de Infraestructuras, SA (Matinsa) and jointly and severally its parent company Fomento de Construcciones y Contratas, SA, Sacyr Conservación, SAU (Sacyr Conservación) and jointly and severally its parent company Sacyr, SA

Coordinated tender bids.

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The cartel operated through "coffee meetings" where the companies that formed part of the cartel periodically established the criteria for coordinating the financial bids to be submitted in the tenders issued by the Ministry of Development for the road maintenance services of the State Road Network.

The cartel organised the different tenders into groups for which common criteria for the submission of financial bids were agreed. The cartel **allocated a "pool" of points for each group of tenders which were used up by the companies according to the level of discounts on the contracting budget.** The higher the discounts they submitted in their respective financial bids, the more points were spent, applying a formula specifically designed by the cartel for each group of contracts.

This limited the number of contracts for which companies submitted high discounts in each group of bids, as the number of points in the pool was never sufficient to try to win all the contracts in each group.

This system incentivised each firm in the cartel to concentrate its chances of winning on a limited number of tenders, while submitting bids with little or no chance of being awarded in the remaining tenders, which effectively became cover bids.

The companies also agreed on the discount threshold for these cover bids and undertook to submit bids for all tenders in each group. In this way, they were able to alter the abnormality threshold (calculated on the basis of the bids submitted in each tender) and could ensure that truly competitive bids from companies outside the cartel were excluded from the bidding process.

The sophisticated system designed by the companies was adapted to the successive changes in the procurement documents introduced by the administration. The mechanics employed by the cartel were particularly complex, making it easy to monitor compliance while making it extremely difficult to detect.

70% of the Ministry of Development (Fomento) contracts (2014-2018).

The CNMC has been able to demonstrate that the cartel operated between February 2014 and December 2018, although conversations have been detected starting as early as 2009. The participating companies were **awarded 71 tenders out of a total of 101 issued by the Ministry of Development** related to the provision of services for maintaining and operating the State Road Network.

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The total amount awarded to companies in the cartel exceeded 530 million euros, representing 63% of the Ministry's total budget allocated for maintaining the State's road network, which illustrates the impact and scope of this cartel.

CNMC Investigation.

The CNMC received anonymous information in October 2017 warning of the possible existence of a cartel that was disrupting the market for the provision of road maintenance and operation services. Following inspections carried out in 2018, at several headquarters of the companies involved in the cartel ([press release](#)), in July 2019 sanctioning proceedings were initiated against 13 companies ([press release](#)), and in December 2020 Ferrovial Services was included in the same sanctioning proceedings ([press release](#)); ultimately, this latter entity was not sanctioned as a perpetrator, but rather as jointly and severally liable for the conduct of its subsidiary (Ferroser).

Fines and a ban on government contracts

The particular complexity and detriment of the cartel for the general interest have been considered by the CNMC as an aggravating factor when establishing the amount of fines. As a consequence of the proven infringement for constituting a cartel, the CNMC has imposed the following fines:

Companies	Final fine (€)
ACCIONA MANTENIMIENTO	2,339,737
ACEINSA*	3,211,296 *
ALVAC	5,863,720
API	11,781,900
AUDECA	2,638,824
COPASA	5,600,000
ELSAMEX	4,043,814
ELSAN	3,022,293
FERROSER	5,712,350
INNOVIA	3,350,371
MATINSA	8,541,202
SACYR CONSERVACIÓN	5,172,460
Total	61,277,967

With regard to the ban on entering into contracts with public administration, the anti-competitive conduct sanctioned has been prolonged beyond the date of entry into force of the ban on entering into contracts (22 October, 2015) and therefore this

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applies to the companies participating in the cartel. Accordingly, **the CNMC has decided to send the notification of this resolution to the State Contracting Board in order to initiate the procedure to establish the duration and scope of the sanctions imposed on the companies**, to determine the extent to which they can continue to bid in public procurement procedures.

The company Aceinsa has benefited from a 50% reduction of the total fine imposed as it has provided evidence that enabled the CNMC to detect and prove the existence of the cartel. Furthermore, the aggravating circumstance has not been applied to this company, given that its valuable collaboration through the clemency programme meant that it could not be considered to have established mechanisms to guarantee the performance of the conduct. The fine imposed on Aceinsa is therefore 1,605,648 euros. Furthermore, Aceinsa has not been included in the ban on contracts with the public administration.

The CNMC urges the Competition Directorate to monitor full compliance with this resolution and analyse the possible liability of the managers involved in the infringement declared in the resolution. Similarly, it should be recalled that an administrative appeal may be lodged against the resolution with the National High Court within two months of the day following its notification.

[\(S/0013/19\)](#).

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