

## PRESS RELEASE

**The CNMC imposed fines of more than 127.8 million euros on the main security, signaling and communications systems companies of AVE's medium-distance and commuter network in Spain.**

- For 15 years, these companies made up a cartel that divvied up tenders called for by Adif, with a value of more than 4,100 million euros.
- The Commission fined 10 executives of the companies 483,000 euros for their responsibility in the acts.
- This fraud has directly impacted the public treasury since the companies raised the price paid by Adif in this type of contracts.
- The dismantling of several cartels in 2019 (railway electrification and electromechanical equipment) gave rise to this new penalty procedure.
- The total fines imposed in the previous procedure (2019) and in the one now ruled on stand at 245 million euros.

**Madrid, 1 October 2021.-** The CNMC has imposed fines totaling 127.3 million euros on Alstom, Bombardier, Cabs, Cobra, Nokia, Siemens Rail, Siemens S.A. and Thales, and 10 of their executives (483,000 euros) for their participation in a cartel. This is a single, ongoing violation, and it is prohibited by Articles 1 of Law 16/1989, 1 of Law 15/2007 of July 3, on the Defense of Competition ("LDC") and 101 of the Treaty on the Functioning of the European Union ("TFEU").

Specifically, the companies created a cartel that fraudulently divvied up at least 82 tenders from the Ministry of Development, from the Railway Infrastructure Manager (GIF) and, subsequently, from Adif, between 2002 and 2017, for construction, execution of work, supply, installation, commissioning and maintenance relating to the **security and communications installations of the AVE and conventional rail network.**

This type of installations is essential to control and manage rail traffic and communications and to protect the AVE (high speed) network as well as the conventional lines (medium-distance and commuter trains) of the Spanish rail network.

The practices of this cartel **have been especially detrimental** since, in some cases, the effects of the fraud were to last until 2040, because of the duration of some of the tenders that were divvied up by and awarded to the companies in the cartel.

### **Several cartels dismantled in 2019**

[In 2019, the CNMC fined 15 companies for 118 million euros for forming several](#)

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[cartels \(1S/DC/0598/16: railway electrification and electromechanics\)](#) which divvied up the public tenders for the **electrification of the AVE network and the conventional Spanish network** and its electromechanical equipment [\(press release\)](#).

The information collected during the investigation of that case, especially during the on-site inspections of some companies, alerted the CNMC to the possible existence of anti-competitive practices that would affect tenders called for **security, signaling and communications installations** (construction, execution of work, supply, installation, commissioning and maintenance, etc.) of the AVE and conventional network.

Consequently, the CNMC initiated new investigations and inspected the headquarters of Thales (May 2017). Later, after Siemens filed a [request for leniency](#) (June 2017), the CNMC ordered on-site inspections at the headquarters of Bombardier and Cafs (December 2017) [\(see press release\)](#). The investigation now ends with the ruling on this penalty procedure ([S/DC/0614/17: Rail security and communications](#)).

### **Modus operandi of the cartel**

The cartel arose in 2002 at the initiative of the two main companies in the sector in that market, Alcatel (from 2007, Thales) and Dimetronic (from 2013, Siemens Rail), with the aim of not competing and divvying up the tenders through the establishment of a joint venture ("UTE").

The two companies shared the amounts awarded (in the initial agreements it was set at 50%-50%, which was later adjusted to 55%-45%), as well as the signaling technology used in the projects. They were thus able to introduce their IT systems into the tenders of which they had won 50%, and they also ensured for themselves the maintenance contracts (and the respective renewals thereof). As of 2003, other companies joined the cartel: Siemens S.A. in 2003, NSN (now Nokia) in 2007, and Cobra in 2008.

### **Changes starting in 2011**

The entry of new companies into the market and the fact that Adif introduced changes in 2011 in its assessment of the economic component of tenders favored the presentation of offers with more competitive prices.

However, instead of maintaining the competitive tension that began in 2011, in practice, these erstwhile competitors agreed on how they would divvy up the tenders and they joined the cartel. In the case of Alstom and Bombardier, starting in 2014, and in the case of CAFS, starting in 2015.

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For the fulfillment of the agreements that had been adopted, the companies in the cartel decided which joint venture (UTE) – in which the companies in the cartel were investees – chose to win each tender, while other UTEs or, where appropriate, individually companies in the cartel presented support bids.

This type of agreements and coordinated practices reveal the use of the UTE as a regular instrument of the cartel, even though there was no real need to resort to this option and no efficiencies were transferred to the bidding party.

### **Effects of the cartel**

This is a very detrimental cartel that has had the actual effect of eliminating or at least significantly restricting competition in 82 tenders. During its 15-year existence, the companies were awarded tenders for a **total amount of 4,142 million euros**. In some cases, the awarded contracts are to continue to be performed until 2035, 2037, 2038 or 2040; hence their effects go beyond the duration of the cartel itself.

Likewise, the fact that these bids were called by Adif (and previously by the Ministry of Development and GIF) means that there is a financial loss for the Public Administration, with the consequent harm to consumers and taxpayers.

### **Fines on companies and executives**

Once the case had been prepared, the CNMC demonstrated the existence of a very serious violation of Article 1 of Law 15/2007, of July 3, on the Defence of Competition and of Article 101 of the Treaty on the Functioning of the European Union, infringement which consisted in the establishment of a cartel, and it imposed the following sanctions:

<b>Companies</b>	<b>Fine (euros)</b>
Alstom	22,000,000
Bombardier	3,686,582
Cafs	1,731,299
Cobra	30,000,000
Nokia	24,000,000
Siemens Rail	18,901,110
Siemens SA	10,000,000
Thales	17,029,041
<b>Total</b>	<b>127,348,032</b>

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<b>Executive</b>	<b>Fine (euros)</b>
Mr. Iñigo Balda Arana	41,000
Mr. Francisco Travieso Mateos	28,000
Mr. Miguel Ángel Martínez Anguita	50,000
Mr. Leopoldo Felipe Olea Muriel	43,000
Mr. Gonzalo Martínez Delgado	34,000
Mr. Jesús Guzmán Martín de los Santos	60,000
Mr. Jesús Sánchez Bargos	60,000
Mr. Fernando Ortega Díaz	60,000
Mr. Luis Fernández Jiménez	54,000
Mr. Miguel Ángel Moratalla Martínez	53,000
<b>Total</b>	<b>483,000</b>

In application of the [leniency programme](#) and taking into account the information provided by Siemens Rail and Siemens S.A., as well as by its manager, Mr. Gonzalo Martínez Delgado, a 50% reduction of the corresponding fines is established, which were set at the following amounts:

- Siemens Rail Automation, SAU: 9,450,555 euros
- Siemens S.A.: 5,000,000 euros
- Mr. Gonzalo Martínez Delgado: 17,000 euros

The CNMC reiterates that there is no administrative appeal against this Ruling. A contentious-administrative appeal may be filed in National Court within a period of two months from the day following notification.

Investigating **cartels and fraud in public procurement** is a priority in the CNMC's actions, given that cartels and fraud have especially serious consequences on consumers and on the proper functioning of the markets. For this reason, the CNMC has several [citizen collaboration channels](#).

In addition, the Commission has the [Leniency Programme](#), through which a company and/or an executive who has participated in a cartel can provide information about it, either in writing or verbally, at CNMC headquarters, in exchange for the **total lifting (or a reduction) of the fine** that would apply to them.

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