

Illegal Cartel Sheds Light On Antitrust Importance

The discovery of a decade-long scheme involving suppliers of underground and submarine power cables should serve as a wake-up call.

By Jeffrey Blumenfeld, Kimberly E. Diamond & Eric Jesse

In April, the European Commission – Europe’s antitrust enforcement agency – determined that 11 of the world’s largest producers of high-voltage direct-current (HVDC) underground and subsea cables (six European companies, three Japanese companies and two Korean companies) had violated antitrust laws by operating as a cartel for at least a decade.

The commission found that the companies formed a cartel and agreed not to compete with each other by determining that the European and Asian producers would stay out of each other’s home territories and by dividing the balance of the global marketplace among themselves.

They put their illegal agreements into practice in a way that ensured that even though they were required to bid for projects, they could determine which company would win each bid. They did so either by agreeing on the prices they would bid (so that the predetermined winner would bid lower than the others) or by revealing to each other what they would bid, once again ensuring that the HVDC cable supplier designated by their illegal agreement to be the winner would submit the lowest bid and win the rights to the project.

By these clever but illegal schemes, the cartel members not only ensured that the agreed company would win

each project, but also hid their illegal agreement from detection, giving the appearance of bidding against each other while, in fact, not competing at all. And, of course, because they were jointly determining the “winning” bid price, rather than competing against each other, they dramatically increased the prices that each project paid.

Although the commission granted certain of these 11 companies full or partial immunity under a leniency notice for revealing the cartel’s existence or for cooperating with the investigation to prove the cartel’s existence, the commission fined the remaining cartel members approximately \$413.2 million.

Furthermore, the commission encouraged any person or firm impacted by the cartel’s anticompetitive behavior to seek damages against the cartel members. The commission’s rationale for these large fines – as well as its invitation to others to pursue remedies against these companies – was intended to be punitive and to supplement the commission’s own cartel enforcement actions. According to the commission, the cartel members had engaged in serious antitrust violations for approximately 10 years, knowing what they were doing was illegal yet persisting in such behavior. Joaquin Almunia, the commission’s vice president in charge of competition and

policy, said they acted “cautiously and with great secrecy.”

The recently revealed HVDC cartel illustrates how serious economic consequences may result from anti-competitive practices, as well as why U.S. domestic policy regarding transparency and disclosure in the wind industry needs improvement.

HVDC cables have been deployed worldwide, connecting onshore and offshore wind farms to energy grids. Generally, these cables are used to transport high power loads over long distances in a controlled manner with minimal power loss. Although HVDC cables have been used commercially since the 1950s, recent technological improvements in HVDC cables have enabled them to become an attractive option for subsea energy transmission, particularly for large offshore wind farms and island nations.

For at least the last several years, there has been a movement among offshore wind farms away from using medium-voltage cables toward using HVDC cables as interarray cables, which connect individual turbines within a given offshore wind farm to one another. HVDC cables are also used across long subsea distances to connect offshore power transmission substations for offshore wind farms to the shore, called “landfall,” where the

HVDC cables are then connected to the mainland energy grid.

Europacable, which represents 85% of the European wire and cable industry, notes that HVDC cable systems are highly reliable and rarely require repair. Therefore, HVDC cables have extremely low operations and maintenance (O&M) costs.

Onshore transmission projects, particularly large-megawatt ones and projects requiring higher power loads to be transported across longer distances over land, are also benefiting from HVDC cables' attractive O&M characteristics, as well as their reliability, transport efficiency and power load capacity. For instance, HVDC underground cables can carry medium and high power (100 MW to 1,000 MW) over distances of 50 km and greater. Accordingly, HVDC underground cables are also increasingly being used as so-called electricity highways.

Because each HVDC subsea cable system is unique, each project has a tailor-made system to fit the project's particular requirements, including turbine number. If the cable is intended for offshore, variables such as distance from shore and water depth are also factored. Due to this custom manufacturing, the National Renewable Energy Laboratory has stated that "extensive electrical and cost data on specific cable sizes and types are not readily available," noting that cost data varies significantly between cable manufacturers. This inability to make "apples to apples" comparisons between and among projects – this lack of transparency – makes it much easier for suppliers to succeed in forming and operating cartels, because their customers and law enforcement agencies will have a much harder time detecting the illegal conduct.

Supply chain implications

For at least the last three years, the number of HVDC subsea cable suppliers has been limited.

Given the very small number of subsea cable suppliers in the global

marketplace – and given the amount of continued growth of the global offshore wind industry – international consultancy GL Garrad Hassan estimated several years ago that in 2016, demand for HVDC subsea cables would catch up to and then significantly outpace the supply capacity of all subsea cable producers combined. Specifically, a shortage of manufacturing capacity for these cables would occur, causing demand to exceed supply by almost a two-to-one ratio by 2020, with approximately 10,000 miles (about 16,093,440 meters) of cable for offshore wind and interconnections needed at that time.

This revelation is staggering in its implications for new projects, both in terms of the extended lead times for the cable and in terms of the likely impact on the price of those cables. Considering that the lead time for bringing new subsea cable capacity online is approximately three to four years, new projects are likely to face long delays. The impact on pricing is likely to be equally severe: The main drivers of cost reduction in cable prices are, as always, competition and volume production, and a lack of competition and insufficient supply to satisfy demand likely would end any short-term cost reduction in the HVDC cable marketplace and potentially drive prices up. Together, these effects will likely create a serious and potentially devastating bottleneck in wind farm project development over the next few years.

Impact on consumers

In the U.S., as in most of the world, anticompetitive conduct that hurts competition and consumers is illegal. The Sherman Act, a federal statute prohibiting agreements and conspiracies that restrain trade or commerce, governs antitrust violations and unlawful conduct. For example, it is unlawful for competitors to agree, expressly or implicitly, to fix prices or allocate markets or customers among themselves.

Such agreements decrease or eliminate competition because sellers of a product no longer need to compete on the basis of product price or quality. The aim and effect of these illegal cartels is to drive prices up directly, as well as to decrease output. As a remedy to rectify these harms, U.S. policy has long encouraged and permitted purchasers of the particular product to sue the conspirators to recover the damage done to them by the illegal anticompetitive conduct; European policy now also permits and encourages such private legal actions to recover damages.

For instance, because the HVDC cable cartel divided the worldwide market and customers among themselves, U.S. purchasers of HVDC underground or subsea cables may have been hurt by the following: decreased competition among cable sellers, fewer choices of suppliers from which cables could be purchased, artificially increased prices for the product purchased and, potentially, a poorer-quality product than a competitive market would have yielded. Accordingly, such purchasers should consider remedies available to them as a result of this experience.

The discovery of the HVDC cartel should be viewed both as a warning as to how little has been understood about the true conduct of the suppliers – and, therefore, about the market for this key part of the wind industry – and as a building block that can help strengthen the U.S. wind sector by encouraging it to adopt policies and implement measures that will improve the industry's overall competitiveness and affordability. **SP**

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