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Media relations  
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## **Press Release**

**regarding judgment B-645/2018 of 14 August 2023**

### **Cartel fine confirmed against a Graubünden construction company**

**The Federal Administrative Court confirms the sanction imposed by the Competition Commission on the construction company Foffa Conrad AG, and settles new questions relating to leniency applications.**

In autumn 2012, the Competition Commission (COMCO) opened an investigation in Engadin which was subsequently extended to the whole Canton of Graubünden and split into ten investigations. Between 2017 and 2019, the investigations were each concluded with a ruling. As part of these rulings, COMCO imposed sanctions inter alia against the construction company Foffa Conrad AG for participation in unlawful agreements restraining competition. In the present case, COMCO accused the company of “shielding” another undertaking in the context of a construction project by submitting a deliberately higher tender and thereby enabling the undertaking to be awarded the contract. Foffa Conrad AG filed an appeal with the Federal Administrative Court (FAC) against this ruling.

#### **Requirement of added value for establishing the facts**

The FAC first concluded that COMCO had adequately proven the violation of the Cartel Act. The Court also supported COMCO’s methodology in setting the level of the sanction based on the amount of the shielded company’s tender and the severity of the violation.

In its judgment, the Court focused on the interpretation of the leniency rules, also known as the Leniency Programme, contemplated in the Cartel Act. The appellant submitted in the COMCO investigation – as a leniency applicant – a voluntary report with supporting evidence. However, it subsequently disputed its participation in the competition-restraining agreement in question. The Court had to assess whether a reduction of the sanction (bonus) under the leniency programme can also be granted when the applicant submits grounds and justifications for its own exoneration, and presents other objections. The Court ruled that such arguments by an applicant in appeal proceedings do not automatically preclude application of the Leniency Programme. On the contrary, according to the Court, the decisive factor is the objective added value of the applicant’s contribution towards establishing the facts. Against this backdrop, the FAC dismisses the appeal and confirms the sanction imposed by COMCO.

This judgment may be appealed to the Federal Supreme Court.

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**About the Federal Administrative Court**

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 351 employees (296.1 FTE) and its 73 judges (65 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 6,500 judgments every year.