

St. Gallen, 1 September 2015

Judgment B-3119/2015 of 27 August 2015:

Compagnie de Saint-Gobain S.A. not subject to a bid obligation

The Federal Administrative Court (FAC) has rejected the complaint filed by William H. Gates III and Melinda French Gates as Trustees of the Bill & Melinda Gates Foundation Trust as well as by Cascade Investment, L.L.C., against the appeal decision rendered by FINMA's Takeover Committee on 4 May 2015.

The FAC noted that the opt-out clause set forth in Art. 5 of the Articles of Association of Sika AG is not open to interpretation and the acquisition of Schenker-Winkler Holding AG (SWH), and therefore of the Sika brands and bearer shares by Saint-Gobain, are not subject to a bid obligation. With this judgment, the FAC confirms the decision made by FINMA's Takeover Committee upholding the initial decision rendered by FINMA's Takeover Board (TOB).

With [Decision 598/01](#) of 1 April 2015, the TOB responded to the request made by William H. Gates III and Melinda French Gates (as Trustees of the Bill & Melinda Gates Foundation Trust) and by Cascade Investment, L.L.C., explaining that the opt-out clause set forth in Art. 5 of the Articles of Association of Sika AG applied to the planned transaction between the Burkard family and SWH, on the one hand, and Compagnie de Saint-Gobain S.A., on the other. The TOB further explained that Compagnie de Saint-Gobain S.A., and at any rate with the joint agreement of the parties acting with it, are under no obligation to make an open purchase offer to Sika AG shareholders. In its [Decision of 4 May 2015](#), FINMA's Takeover Committee rejected the appeal filed by one of the complainants against the TOB's initial decision.

The judgment is final and may not be appealed before the Federal Supreme Court.

The Swiss Federal Administrative Court

The Federal Administrative Court renders judgment in cases of appeal against decrees issued by Swiss federal authorities. In certain matters the court is also authorized to examine decisions rendered by cantonal authorities and issue judgments on complaints filed against cantonal decisions. Where the Federal Administrative Court is lower instance court, its judgments can be appealed before the Federal Supreme Court. Based in St. Gallen, the Federal Administrative Court accommodates five divisions and a General Secretariat. Approximately 75 judges and 320 members of staff constitute the largest Swiss federal court.

Contact

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