

# JUSTICE NEWS

## Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

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### **Justice Department Requires Knorr and Wabtec to Terminate Unlawful Agreements Not to Compete for Employees**

#### **Settlement Prohibits Companies from Maintaining Employee “No-Poach” Agreements and Requires Cooperation in Ongoing Antitrust Division Investigation of Such Agreements**

The Department of Justice announced today that it has reached a settlement with Knorr-Bremse AG and Westinghouse Air Brake Technologies Corporation (Wabtec), two of the world’s largest rail equipment suppliers, to resolve a department lawsuit alleging that the companies had for years maintained unlawful agreements not to compete for each other’s employees. The lawsuit further alleges that the companies entered into similar “no-poach” agreements with rail equipment supplier Faiveley Transport S.A. before Faiveley was acquired by Wabtec in November 2016.

The Justice Department’s Antitrust Division filed a civil antitrust lawsuit today in the U.S. District Court for the District of Columbia to challenge Knorr and Wabtec’s no-poach agreements. At the same time, the department filed a proposed settlement that, if approved by the court, would resolve the department’s competitive concerns and restore competition for employees, to the benefit of U.S. workers.

“The unlawful no-poach agreements challenged today restrained competition for employees and deprived rail industry workers of important opportunities, information, and the ability to obtain better terms of employment,” said Assistant Attorney General Makan Delrahim of the Justice Department’s Antitrust Division. “Today’s settlement will restore competition for employees in the U.S. rail industry.”

“Today’s complaint is part of a broader investigation by the Antitrust Division into naked agreements not to compete for employees—generally referred to as no-poach agreements. As part of today’s settlement, Knorr and Wabtec are required to cooperate with the Antitrust Division in any investigation into additional no-poach agreements to which they may have been counterparties,” continued Assistant Attorney General Delrahim. The department has also agreed as part of the settlement that it will not bring further civil actions or criminal charges against Knorr or Wabtec in connection with any other potential no-poach agreements that the companies disclosed to the department prior to today’s lawsuit.

According to the department’s complaint, Knorr and Wabtec compete with each other to attract, hire, and retain various skilled employees, including project managers, engineers, executives, business unit heads, and corporate officers. The department’s complaint alleges that:

- Beginning no later than 2009, Knorr and Wabtec reached agreements not to solicit, recruit, hire without prior approval, or otherwise compete with one another for employees. For example, in a letter dated January 28, 2009, a director of Knorr Brake Company wrote to a senior executive at Wabtec’s headquarters, “[Y]ou and I both agreed that our practice of not targeting each other’s personnel is a prudent cause for both companies. As you so accurately put it, ‘we compete in the market.’”
- Beginning no later than 2011, Knorr Brake Company (a wholly-owned subsidiary of Knorr) and Faiveley Transport North America (the U.S. subsidiary of Faiveley before Faiveley was acquired by Wabtec) agreed to get the other’s permission before pursuing each other’s employees. For example, in October 2011, a senior executive at Knorr Brake Company explained that he had a discussion with an executive at Faiveley’s U.S. subsidiary that “resulted in an agreement between us that we do not poach each other’s employees. We agreed to talk if there was one trying to get a job[.]”
- Beginning no later than 2014, Wabtec Passenger Transit, a U.S. business unit of Wabtec, and Faiveley Transport North America similarly agreed not to hire each other’s employees without prior approval. For example, in an e-mail to his colleagues, a Wabtec Passenger Transit executive explained that a candidate for employment “is a good guy, but I don’t want to violate my own agreement with [Faiveley Transport North America].”

According to the complaint, the no-poach agreements between Knorr, Wabtec, and Faiveley restricted competition for U.S. rail industry workers, which limited their access to better job opportunities, restricted their mobility, and deprived them of competitively significant information that they could have used to negotiate for better terms of employment.

Under the antitrust laws, no-poach agreements that are naked (i.e., not reasonably necessary for a separate, legitimate business transaction or collaboration) eliminate competition in the same irredeemable way as agreements to fix product prices or allocate customers, which have traditionally been criminally investigated and prosecuted as hardcore cartel conduct. Beginning in October 2016, the department has made several announcements that it intends to bring criminal, felony charges against culpable companies and individuals who entered into these types of no-poach agreements. In an exercise of prosecutorial discretion, the department will pursue as civil violations no-poach agreements that were formed and terminated before those announcements were made. Knorr's and Wabtec's respective no-poach agreements were discovered by the Division and terminated by the parties before October 2016, prompting the Division to resolve its competition concerns through a civil action.

Under the terms of the proposed settlement, Wabtec and Knorr are prohibited from entering, maintaining, or enforcing no-poach agreements with any other companies, subject to limited exceptions. The settlement also requires Knorr and Wabtec to implement rigorous notification and compliance measures to preclude their entry into these types of anticompetitive agreements in the future.

The settlement includes several new provisions that are designed to improve the effectiveness of the decree and the Division's future ability to enforce it. For example, the parties have agreed that the Division may prove any alleged violations of the decree by a preponderance of the evidence, and that they will reimburse American taxpayers for the costs of investigating and enforcing any violations.

Knorr-Bremse AG is a privately-owned German company with its headquarters in Munich, Germany. Knorr is a global leader in the development, manufacture, and sale of rail and commercial vehicle equipment. In 2017, Knorr had annual revenues of approximately \$7.7 billion. Knorr Brake Company, a Delaware corporation with its headquarters in Westminster, Maryland, and New York Air Brake Corporation, a Delaware corporation with its headquarters in Watertown, New York, are wholly-owned subsidiaries of Knorr.

Westinghouse Air Brake Technologies Corporation (Wabtec), a Delaware corporation based in Wilmerding, Pennsylvania, is a global rail equipment supplier that provides a wide range of equipment used on passenger and freight trains. In 2017, Wabtec's worldwide revenues were \$3.88 billion. Wabtec Passenger Transit is a business unit of Wabtec based in Spartanburg, South Carolina.

Until its acquisition by Wabtec, Faiveley was a French société anonyme based in Gennevilliers, France. Faiveley was the world's third-largest rail equipment supplier behind Wabtec and Knorr and had revenues of approximately €1.2 billion in 2016. Faiveley Transport North America, a New York corporation headquartered in Greenville, South Carolina, was a wholly-owned subsidiary of Faiveley.

As required by the Tunney Act, the proposed settlement, along with the department's competitive impact statement, will be published in the Federal Register. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to Maribeth Petrizzi, Chief, Defense, Industrials, and Aerospace Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, N.W., Suite 8700, Washington, D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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**Attachment(s):**

[Download Competitive Impact Statement](#)

[Download Civil Cover Sheet](#)

[Download Complaint](#)

[Download Explanation of Consent Decree](#)

[Download Stipulation and Proposed Final Judgment](#)

**Topic(s):**

Antitrust

**Component(s):**

[Antitrust Division](#)

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