

Bid rigging investigations on focus in Bulgaria

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After almost three years of investigation, the Bulgarian Commission for Protection of Competition ("**BCPC**") has issued a Statement of Objections against in total 24 Bulgarian undertakings for bid-rigging in public procurement procedures under the National Program for Energy Efficiency of Multifamily Residential Buildings ("**Energy Efficiency Program**"). The bid-rigging was considered a breach of Article 15 para. 1 of the Bulgarian Competition Protection Act ("**BCPA**"), i.e. a cartel between undertakings on the market of surveys for the establishment of technical characteristics and preparation of a technical passport of buildings under the Energy Efficiency Program.

The complaint

In 2016, following a complaint by the Mayor of Targovishte (Northeast Bulgaria), BCPC initiated proceedings for the establishment of a prohibited agreement and/or concerted practice under Art. 15 of the BCPA (corresponding to Art. 101 of the TFEU).

According to the mayor, 10 undertakings agreed to allocate the sites among themselves to be renovated under the Energy Efficiency Program. In addition, the companies coordinated their bids in advance by fixing the minimum prices for each site. The incriminating information was sent via email to one of the employees of Targovishte Municipality. The employee was a member of the Evaluation Committee of the public procurement procedure subject to the claimed bid-rigging. The anonymous e-mail contained a proposal for distribution of sites among the parties and a file containing email correspondence between the respective undertakings. Each undertaking individually and explicitly agreed with the proposed allocation of sites and consented to participate in the bids with the agreed minimum prices.

Dawn raid and leniency requests

After the decision for initiation of the proceedings, BCPC conducted dawn raids at the premises of three of the companies (VML - Consult LTD, Archcon Project LTD and Evidance Engineering LTD). Pecuniary sanctions and coercive administrative measures were imposed by the BCPC on VML - Consult LTD for obstruction of the inspection and refusal to cooperate (in violation of Art. 46 and Art. 50 of the BCPA)[1].

Following the dawn raids, BCPC found that there were coordinated actions between other undertakings in other public procurement procedures in Bulgaria under the Energy Efficiency Program. In addition, the BCPC found that it could reasonably be assumed that the conduct in question may have direct or indirect, actual or potential impact on the trade between the Member States of the European Union, since the Energy Efficiency Program was EU funded.

As a result, the BCPC expanded the subject matter of the proceedings so as to encompass possible infringements of Art. 101 of the TFEU and constituted as defendant undertakings and associations of undertakings, participants in other public procurement proceedings in the municipalities of Plovdiv and Gotse Delchev (Southwest Bulgaria).

Throughout the proceedings some of the undertakings have applied for leniency, submitting further information and evidence to facilitate the BCPC to build the case. So far, there is no public information regarding the approval/disapproval of the leniency requests.

As a result of the investigation and the information received by the companies, BCPC raised bid-rigging Statement of Objections against 24 undertakings by two separate acts[2] for breach of Art. 15 of the BCPA, i.e. prohibited horizontal agreements.

National bid-rigging practice until 2018

Until 2008, bid-rigging was not explicitly regulated as a type of infringement by BCPA. In 2008 by BCPA[3] bid-rigging was listed as a form of a prohibited agreement.

Since 2008, BCPC had the opportunity to investigate and sanction collusive tendering on several occasions. Due to difficulties in proving anti-competitive behaviour amounting to prohibited agreement and/or concerted practice, the first time when the BCPC disclosed a cartel in a public procurement procedure was in 2012[4] and record pecuniary sanctions in the amount of almost BGN 3,000,000 were imposed. Three tourist agencies - Astral Holidays JSC, Bulgarian VIP Travel LTD and Hornit LTD were sanctioned for breach of Art. 15 of the BCPA for rigging the public procurement procedure initiated by the Bulgarian Minister of Finance which related to the provision of airplane tickets for passengers and baggage for traveling in Bulgaria and abroad. The BCPC decision was partially annulled by the Supreme Administrative Court, but the breach finding remained in force.

The second and, for now, the last time BCPC imposed sanctions for the rigging of the public procurement procedure was in 2016[5]. Leon Tours - a Greek undertaking operating on the Bulgarian market and the Bulgarian based entity Europe 2020 LTD, each in separate proceedings, were sanctioned for collusive price-fixing of public procurement contracts for provision of touristic services to public bodies.

Conclusion

In the last days of 2018, by issuing Statements of Objections for breach of Art. 15 of BCPA against 24 companies, BCPC confirmed its previously announced intention to be more active in the investigation of bid-rigging than it was in the past 10 years.

This intensive approach aims to guarantee the transparent conduct of public tenders and to have a preventive effect over companies intending to coordinate prices and tenders. It occurs in a period of important ongoing public procurement proceedings, many of which involve EU financing, such as tenders for construction works in the transport (airports, railways, highways, etc.) and energy sectors (connectors for natural gas). All these proceedings have significant financial value and it is of a major importance that the BCPC shows that bid-rigging will not be tolerated.

[1] Bulgarian Commission for Protection of Competition Decision No.626/08.06.2017.

[2] Bulgarian Commission for Protection of Competition Order No.1412/13.12.2018; Bulgarian Commission for Protection of Competition Order No.1443/20.12.2018.

[3] Promulgated in the SG No 102, enforced on 2 December 2008.

[4] Bulgarian Commission for Protection of Competition Decision No.220/01.03.2012.

[5] Bulgarian Commission for Protection of Competition Decision No.1128/22.12.2016; Bulgarian Commission for Protection of Competition Decision No.1129/22.12.2016.