



Czech Republic: The Czech Competition Authority fines waste management companies for bid rigging

The Czech Competition Authority fined four companies active in the area of waste management for bid rigging. The amount of the fines imposed was significantly reduced as a result of the successful application for a settlement, as well as a successful application for leniency. The present case is a sign of the Authority's determination to take decisive action against bid-rigging practices.

On 19 December 2012 the Czech Competition Authority (the "**Authority**") imposed on four companies active in the area of waste management (some of them are also active in the market of road maintenance) a total fine of CZK 96,579 million (approximately EUR 3,825,000). The companies A.S.A., spol. s r.o. ("**ASA**"), van Gansewinkel, a.s. ("**van Gansewinkel**"), SITA CZ a.s. ("**SITA**") and AVE CZ odpadové hospodářství s.r.o. ("**AVE**") had been found guilty of bid rigging. Even though the decision of the Authority was first-instance one, it has already come into force in view of the fact that the companies admitted their anti-competitive conduct and have no intention of challenging the decision before a court. The amount of the fine imposed was subsequently significantly reduced as a result of the successful application (by all of the companies) for a settlement, as well as a successful application for leniency (by two of the companies).

The administrative proceedings against the bid-rigging cartel

The disclosed cartel constitutes the biggest case of a nation-wide bid-rigging cartel to date in the Czech Republic. The Authority identified the cartel on the basis of the investigations it carried out upon its own initiative; it launched the proceedings against the companies in 2010 (except in the case of AVE, which was added to the proceedings in 2011). Within its investigation, the Authority (as the public body responsible for the protection of competition and overseeing public procurement), found that AVE and ASA during the period between 2007 and 2011 (and SITA and van Gansewinkel during the period between 2008 and 2010) had been participating in bid-rigging activities.

In particular, the companies, by means of concluding anti-competitive agreements and sharing information, coordinated their tender offers in public procurement proceedings by, for example, (i) submitting "cover bids" that conferred a significant advantage on one of the bidders while giving the false impression of strong competition among bidders, or (ii) not participating in a particular tender that they would ordinarily have participated in.

During a dawn raid of the companies' premises the Authority gathered sufficient evidence demonstrating that the companies had maintained business agreements that had gradually morphed into the anticompetitive coordination of their behaviour towards their customers. It is also worth noting that the prohibited agreements distorting the competition were not concluded among all participants at the same time; on the contrary, there were six different bilateral agreements related to particular customers and public tenders in the area of waste management (and, in the case of ASA and AVE, also in the area of road maintenance).

In addition to imposing fines, the Authority prohibited in its decision the performance of the concluded cartel agreements. In the course of the proceedings, some of the companies co-operated with the Authority by providing it with information and evidence effectively disclosing the cartel in order to be eligible for leniency. As a result of the successful application, the fines were reduced by up to 50 per cent in the case of ASA and 30 per cent in the case of AVE. In addition, all parties to the proceedings



applied for a settlement under which they acknowledged the disclosed facts and the Authority's legal assessment of the prohibited behaviour. Accordingly, the fines were decreased by an additional 20 per cent. The final amounts of the fines on each cartel participant were set as follows: A.S.A., spol. s r.o. – CZK 24,289,000; van Gansewinkel, a.s. – CZK 10,870,000; SITA CZ a.s. – CZK 19,753,000; and AVE CZ odpadové hospodářství s.r.o. – CZK 41,667,000.

Authority's focus on bid-rigging

Bid-rigging is an anti-competitive practice that usually leads to price-fixing and market-sharing between the tender participants. As a result of such anti-competitive activities, a public body seeking bids suffers damage due to a lack of genuine competition for the tender. Bid-rigging is prohibited under Czech law and is punishable by the Authority by means of a fine. According to a recent amendment to the Czech Competition Act, cartel members may also be banned by the Authority from participating in public tenders (the so called "blacklist"). The number of bid-rigging cases is continuously increasing and the present case is a sign of the Authority's determination to take decisive action to eliminate such practices.

In addition, bid-rigging may constitute a crime under the Czech Criminal Code; however, this is not applicable to companies as legal persons.

Source: *Suzana Hakobjan, Tomáš Čihula*, The Czech Competition Authority fines waste management companies for bid rigging (ASA, van Gansewinkel, SITA, AVE), 19 December 2012, e-Competitions, N°50289, www.concurrences.com

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