

Fines for cartel in public procurement

According to the GVH's (Hungarian Competition Authority) decision ÉTER-1. Mérnöki és Tanácsadó Kft. (ÉTER-1), and AQUAPLUS Kútúró, Építő és Termálenergetikai Kft. (AQUAPLUS) negotiated their entering prices and offers on *public procurement procedures published by the local government of Komló*. The GVH reached the same conclusion in the case of ÉTER-1 and QUALIKO Műszaki Tervezési és Tanácsadói Iroda Bt. (QUALIKO) regarding the *public procurement procedure published by the Hungarian National Police Headquarters (ORFK)* and in the case of ÉTER-1, EUROLARES Gépészeti, Kereskedelmi és Szolgáltató Kft. (EUROLARES), RVI Magyarország Tanácsadó Kft. (RVI) and SCHNEIDER Investment Ipari Szolgáltató és Kereskedelmi Kft. (SCHNEIDER) regarding the *public procurements published by the county police departments*. For the infringements the GVH imposed a total fine of 148 390 000 HUF on the undertakings.

The local government of Komló published a public procurement for the implementation of solar energy production within the framework of KEOP (Környezet és Energia Operatív Program - Environment and Energy Operational Programme, one of the operational programmes intended to serve the overall objective, horizontal policies and the six thematic and territorial priorities of the New Hungary Development Plan – the National Strategic Reference Framework in EU terminology – applicable to the European Union's budget projection period between 2007 and 2013). The National Police Headquarters, the Budapest Police Department and the county police departments published public tenders for the energetic modernisation of their buildings. All of the public tenders were simplified procedures, without prior publication of a contract notice, in which the caller requested offers from at least three small or medium-sized enterprises that were found suitable based on a preliminary examination.

During dawn raids the GVH confiscated several e-mails and other documents as evidence of the infringements. Among the offers for the county police departments' tenders there were three where even the name on the offer was different from the entering undertaking's actual name. From this fact the GVH drew the conclusion that the project proposal was not made by the undertaking that entered it.

The **GVH concluded** the following:

- in the case of the public tender in Komló, ÉTER-1 and AQUAPLUS negotiated their entering prices for the tender of Kenderföld-Somági Elementary School and Kindergarten and the Communities' House of Komló;

- **ÉTER-1 and QUALIKO negotiated their entering prices and conditions in the tender of the Hungarian Police;**
- in the case of 5 county police departments' (RFKs) tenders ÉTER-1 and 3 other undertakings colluded to assist ÉTER-1 to win the tenders as follows:
- in the case of the tender published by the RFK of Bács-Kiskun County, ÉTER-1 negotiated its entering prices with RVI;
- in the case of the tender published by the RFK of Békés County, ÉTER-1 negotiated its entering prices with RVI;
- in the case of the tender published by the RFK of Csongrád County, ÉTER-1 negotiated its entering prices with RVI and EUROLARES;
- in the case of the tender published by the RFK of Komárom-Esztergom County, ÉTER-1 negotiated its entering prices with SCHNEIDER and EUROLARES;
- in the case of the tender published by the RFK of Fejér County, ÉTER-1 negotiated its entering prices with EUROLARES and RVI.

Consequently, the investigated undertakings had violated the prohibition of restrictive agreements for which the GVH imposed the following fines:

ÉTER-1	16 600 000 HUF	(approx. 54 000 EUR)
EUROLARES	14 400 000 HUF	(approx. 47 000 EUR)
RVI	9 800 000 HUF	(approx. 32 000 EUR)
QUALIKO	590 000 HUF	(approx. 2 000 EUR)
SCHNEIDER	30 600 000 HUF	(approx. 100 000 EUR)
AQUAPLUS	76 400 000 HUF	(approx. 248 000 EUR)

The GVH based the calculation of the basic amount of fine on three times the amount of the winning bid and considered aggravating and mitigating circumstances. The GVH took into account, among other things, the following facts:

- market sharing in a public procurement procedure is one of the most serious competition law infringements as it not only compromises the interest of the publisher of a tender but also severely damages the public interest;
- the undertakings under investigation had a significant combined market share having regard to the restricted procedures;

- the implemented market-sharing arrangement was successful, the market impact attributable to the practice of the undertakings under investigation had actually occurred, as ÉTER-1 won the tenders;
- in the case of the projects in Komló the contract between ÉTER-1 and the council of Komló did not enter into force, thus the tender did not have an actual market effect.

In the case of ÉTER-1 the GVH also considered the fact that the undertaking not only participated in the restrictive agreements but actively organised them.

Case number: **Vj-65/2012.**

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Hungarian Competition Authority

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