

## Fine imposed by the GVH concerning public procurements

**According to the decision of the GVH, Finella Investment Kft. (the successor of HTD Szaknévsor Kiadó Kft.), JRM Produkció Kft., LIGA TV Kft. (LIGA TV), “PUPU Produkció” Filmgyártó Kft., and Nostalgia-Design Kft. concerted their practices with the object of restricting competition in two public procurements launched by Médiaszolgáltatás-támogató és Vagyonkezelő Alap (Media Service Support and Asset Management Fund – MTVA). The GVH imposed a total fine of HUF 81,970,500 (approx. EUR 262,000) on the undertakings for the infringement.**

On 2 November 2013, MTVA issued a call for tenders and subsequently conducted two open public procurement procedures under EU procedural rules, one concerning a ‘*Framework Agreement on the rental of a HD television mobile broadcasting unit for the Media Service Support and Asset Management Fund for a period of 24 months with the occasional provision of human resources*’ and one relating to a ‘*Framework Agreement on the rental of a SD television mobile broadcasting unit for the Media Service Support and Asset Management Fund for a period of 24 months with the occasional provision of human resources*’. The subject matter of the tenders concerned the rental of mobile broadcasting vehicles applying SD and HD technology. These broadcasting vehicles are used for local broadcasting in sport, cultural (concerts, theatre plays) and other events.

As regards to MTVA’s 2013 framework agreements, it was established by the GVH that LIGA TV had initiated the coordination that took place in relation to the bids submitted by the above-mentioned undertakings with respect to their form and content. The undertakings concerted their practices (i.e., decided to take part in the tender, drafted, submitted their bids and later completed any missing elements of the bid) in favour of LIGA TV, which would have been a subcontractor of all the other participants of the tenders of MTVA. The undertakings aimed to exclude competitors from the second round of the tenders, in which only the first four placed undertakings from the first round of each of the tenders would be able to participate. They intended to win the first four places in the first round. As a result, LIGA TV could have won contracts to execute the tasks defined by the framework agreements.

During the unannounced inspections at the premises of the undertakings, the GVH seized many pieces of evidence supporting the finding of an infringement, which included, among other things, the notes of the executive director of LIGA TV as a primary piece of evidence of the restrictive practice.

When establishing the basic amount of the fine, the GVH took into account three times the value of the tenders as the amount of the relevant turnover, and then it assessed the aggravating and mitigating circumstances.

When defining the amount of the fine, the GVH took into account – among other things, – the following factors:

- coordination on the prices of bids in public procurement procedures amounts to one of the most severe competition law infringements with respect to not only the interests of the contracting authority but also society's interests which are supposed to be realised by the public procurement;
- the framework agreements were not implemented in the end and consequently did not have an actual effect on the market.

The GVH considered that LIGA TV played an active role as an instigator and organiser when conducting and coordinating infringing behaviours.

According to the decision of the GVH, it amounts to a severe restriction of competition, if in the first (qualification) round of a two-round public procurement procedure, a market participant undertakes to operate as a subcontractor to an extent of no more than 25% for tenderer undertakings which were previously not part of the market, but which could be personally linked by their directors to the subcontractor, and by this behaviour the subcontractor aims to exclude other market participants from the second (reopened tendering) round.

The GVH terminated the competition supervision proceeding against TVP Televíziós és videó műsorokat gyártó Kft.

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Hungarian Competition Authority

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