

<b>Case number:</b>	<b>Vj-074/2004/58</b>
<b>Short title</b> (party, conduct, type of case):	Construm Építőipari Fővállalkozó Kft./ Royal Bau Építőipari Kivitelező Rt. – public procurement bidding for building block of flats – restrictive agreement, concerted practice
<b>Type of case:</b>	Restrictive agreement      Horizontal
<b>Date:</b>	December 16, 2004, Budapest

## V j - 0 7 4 / 2 0 0 4 / 5 8

“Construm - Royal Bau”  
(market sharing cartel)

## s u m m a r y

**The Competition Council of the Hungarian Competition Authority established that the agreement concluded between Construm Építőipari Fővállalkozó Kft. and Royal Bau Kivitelező Rt. in a public procurement procedure restricted competition. Therefore, the Competition Council imposed a fine of HUF 16,5 million (ca. EUR 66 thousand) on Construm, but did not fined, in compliance with the leniency policy of the Hungarian Competition Authority, Royal Bau.**

### I. Background of the proceedings

On 6 June 2004 the Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter: GVH) initiated proceedings to establish whether Construm and Royal Bau infringed Article 11 (1) and Article 11 (2) point (d) of the Hungarian Competition Act. It was suspected that the undertakings reached an agreement with the aim of dividing the market in a public procurement. The GVH's Cartel Group carried out a dawn raid without previous notice at Royal Bau's branch establishment and at Construm's office on 6 June 2004.

### II. The public procurement in Terézváros

The local government of Terézváros invited bids in a public procurement procedure for building a specific block of flats. It announced that the building may be built by the undertaking submitting the best tender. Until the closing date five undertakings, among others Construm and Royal Bau, submitted their applications.

### III. Cooperation between Construm and Royal Bau

According to Royal Bau, Construm's managing director got into contact with it in order to negotiate about the common winning of the public procurement procedure. Also, Construm proposed a cooperation plan. Royal Bau also revealed, that they carried out a price coordination, but Construm denied these facts. Furthermore, an agreement dated 1 February 2001 was reached between them, but Construm disputed that date, because, according to its view, it was March, when Royal Bau concluded the contract with the local government.

The Competition Council carried out a dawn raid at Construm and obtained a CD-ROM containing a backup-copy from one of its computers. An e-mail was also found in a computer which was sent from Construm to Royal Bau on 1 February 2002 containing the cooperation agreement in question. Furthermore, it was proved that these documents were made by Construm's computer, but Construm denied these facts again.

- 1.) According to Point No 1 of the cooperation agreement, the contracting parties are Construm and Royal Bau.
- 2.) Point No 2 lays down the aim of the agreement in which the parties declare their intentions to cooperate in the building of those block of freehold flats. The cooperation should have extended to the whole project from the time of the conclusion of the contract to its total realisation.
- 3.) The parties agreed that both of them would start on the negotiatory part of the public procurement procedure with the following conditions:
  - Construm would submit a better offer than that of Royal Bau, thus likely to win the public procurement.
  - If the order of results were Construm followed by Royal Bau, then Construm would withdraw its offer.
  - If there would be no point in doing so because another offer would be better than that of Royal Bau, Construm would conclude the contract.
- 4.) Point No 3. contained general principles, among others about the confidentiality of the agreement.
- 5.) Moreover, a managing council was set up for the effective and close cooperation in which the distribution of votes was 50-50 %.
- 6.) Furthermore, according to another provision of the contract, the party which would infringe the agreement must pay a HUF 10 million penalty to the other party.
- 7.) On 30 May another agreement was reached concerning a common bank account.

#### **IV. Decision of the Competition Council**

Royal Bau informed the Hungarian Competition Authority about the agreement on sharing the market.

The Competition Council found that, by concluding the above agreement, Construm and Royal Bau infringed Article 11 para 1. of the Competition Act.

The Competition Council imposed a fine of HUF 16,5 million (ca. 66.000 EURO) on Construm, but did not fined, in compliance with the Leniency Policy of the Hungarian Competition Authority, Royal Bau.