

Fines imposed on cartel in public procurement

According to the GVH's (Hungarian Competition Authority) decision OTYS ÚTTECHNIKA Kft. (OTYS), ÚT-GARANTOR Kft. (ÚT-GARANTOR) and Kristály-Vár Építési, Kereskedelmi és Szolgáltató Kft. (Kristály-Vár) had agreed upon the winner of the public procurement published by the council of Nagylóc, and OTYS and ÚT-GARANTOR had also agreed on the public procurement of the council of Szécsényfelfalu before entering their bids. The GVH imposed a total fine of 43 560 000 HUF (approx. 137 000 EUR) on the three undertakings.

The council of Nagylóc published a public procurement ("Urban development related to water damages") on 25 June 2012 and the council of Szécsényfelfalu published a public procurement ("Urban reconstruction in flood-hit settlements") on 23 April 2012. The tenders were mainly for road construction and road reconstruction operations.

The GVH found that in the case of the tender of Nagylóc:

- OTYS prepared the offer of ÚT-GARANTOR and Kristály-Vár
- ÚT-GARANTOR and Kristály-Vár entered with the offer prepared by OTYS
- ÚT-GARANTOR and Kristály-Vár, in accordance with OTYS, refrained from entering a real, competitive offer

In the case of the Szécsényfelfalu tender the GVH concluded that OTYS and ÚT-GARANTOR had made contact before entering their bids to discuss documents that were needed for the general contract offer and that OTYS had entered a cover-bid in order to favour ÚT-GARANTOR. Consequently, the two undertakings were engaged in collusive market behaviour.

The undertakings under investigation violated the prohibition of restrictive agreements for which the GVH imposed the following fines:

ÚT-GARANTOR 18.650.000 HUF (approx. 59 000 EUR)

OTYS 18.650.000 HUF (approx. 59 500 EUR)

Kristály-Vár 6.260.000 HUF (approx. 20 000 EUR)

The GVH based the calculation of each fine on – as relevant turnover – three times the amount of the winning bid and considered aggravating and mitigating circumstances.

The GVH took into account, among other things, the fact that 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. Additionally, as the implemented market-sharing arrangement was successful, the market impact attributable to the practice of the undertakings under investigation had actually occurred.