Class: UP/I 034-03/17-01/021
Reg.no. 580-09/84-2022-082
Zagreb, 28 April 2022

CCA vs. Agro-Vir d.o.o., Zagreb, Agrodalm d.o.o., Zagreb, Diljexport d.o.o., Zagreb and Marino-Lučko d.o.o. Lučko

- Decision on a prohibited agreement – cartel

Case summary:

In its infringement decision of 28 April 2022, the Croatian Competition Agency (CCA) found that in the period from 4 June 2012 to 1 January 2014 the undertakings Agro-Vir d.o.o., Agrodalm d.o.o. and Diljexport d.o.o., all from Zagreb, concluded a bid rigging agreement in the public procurement procedure covering 14 groups of food products (meats, pasta, rice, vegetables and fruit – fresh and frozen, eggs, sweets, grains, oil and butter etc.) for the public purchaser – a social care institution providing soup kitchen services "Dobri dom" of the City Zagreb by concluding a four-year frame agreement in the public procurement procedure carried out by the institution "Dobri dom" of the City of Zagreb in 2012.

The circumstantial evidence for the opening of the infringement proceeding at stake the CCA found in the preliminary market investigation – a market study in which the writing of the Ministry of the Interior, Police Directorate Zagreb, Criminal Investigations Sector of 5 October 2015 indicated possible illegal behaviour in the public procurement procedures involving several groups of food products carried out by the social care institution providing soup kitchen services "Dobri Dom" from Zageb within the meaning of competition rules and the falling under the powers of the CCA as a national competition authority. Following the request of the CCA 26 November 2015 the Ministry of the Interior provided additional information and data relating to the public procurement procedures concerned.

The results of the preliminary market investigation indicated that it was very likely that the bids made by Agro-Vir, Agrodalm, Diljexport, Trgoplod and Marino-Lučko in the public procurement procedures concerned, and particularly the subsequent bid suppression schemes with respect to the conclusion of annual agreements for 2013 and 2014, were not the result of competition between them, but, on the contrary, the result of their collusive behaviour.

The CCA found that the bidders concerned concluded a prohibited horizontal agreement (cartel) in the sense of Article 8 paragraph 1 items 1 and 3 of the Competition Act with the objective of prevention, restriction and distortion of competition, by fixing and coordinating the prices in their bids and by colluding on the allocation of individual contracts with the view to creating a designated winning bidder in the tendering procedure concerned.

The CCA also found that the undertaking Marino-Lučko d.o.o. from Lučko subsequently joined the collusive agreement concerned in the period from 1 January 2013 to 1 January 2014 and thereby concluded a prohibited horizontal agreement with the objective of prevention,

restriction and distortion of competition within the meaning of Article 8 paragraph 1 item 3 of the Competition Act.

For the hard-core restriction of competition rules the undertakings concerned were imposed a total fine in the amount of HRK 2,155 million (approx. EUR 280,000).

In the application of the relevant EU criteria, the CCA particularly found in the course of the investigation that the bid riggers practices, such as submitting tenders with identical or suspiciously similar quotes for the entire duration of the four-year frame agreement and almost identical bids for the conclusion of individual public procurement contracts for 2012, identical bids of different bidders within the same group of products, suspicious and courtesy tenders of the same bidder for individual years within the same group of products, sub-contracting and contract allocation in public procurement agreements and bid suppression schemes, taken together, were all solid indications of the existence of a hard-core restriction of competition and a bid-rigging cartel.

Material evidence of the suspected irregularities in the public procurement procedure concerned was collected in the surprise inspections of the premises of Agrodalm and Diljexport.

In this particular case, the CCA found that the bidders violated the provisions of Article 8 of the Competition Act. Concretely, the bidders concluded a bid-rigging cartel by fixing and coordinating the prices in their bids conspiring on the outcome of the public procurement procedure and colluding on the allocation of individual contracts with respect to a particular group of products and a particular year with the view to creating a designated winning bidder in the public procurement procedure based on the frame agreement for a particular group of products and a particular year.

The collusive bid rigging practices in the public procurement procedure concerned eliminated any risk of competition in the bidding procedure. Such collusive cartel practices that resulted in horizontal price fixing were considered likely to have anticompetitive effects, especially on the price, volume or quality of the products or services concerned and therefore it was not necessary to prove their actual effect on the market for the purpose of the application of Article 8 of the Competition Act.

In other words, the CCA found the prohibited agreement concerned contained restrictions of competition by object where the harmful nature of the agreement by its very nature had the potential of restricting competition where it was unnecessary to demonstrate any actual effects on the market. However, in this particular case, the CCA also found that the agreement concerned at the same time produced actual and significant anticompetitive effects relating to the subject matter of the prohibited agreement concerned.