

# The Competition Council fines three construction companies for prohibited agreements in procurement organized by a private contracting entity

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On August 4, the Competition Council of Latvia (the CC) adopted [a decision](#), detecting a prohibited agreement between three construction companies on the conditions of participation in a private procurement in Latvia. Two of the three companies involved in the violation cooperated with the CC within the framework of the Leniency Program and both concluded settlements with the CC. A fine of 233,791 euros was imposed on the companies for the violation of the competition law.

The CC, based on the information provided by the European Union Funds Audit Department of the Ministry of Finance and the additional evidence obtained during the investigation, found a violation of the prohibition specified in the first part of Article 11 of the Competition Law in actions of three construction companies SIA "PK Serviss", SIA "KORO BŪVE" and SIA "TAVS LAIKMETS" in actions.

The violation took the form of a prohibited agreement within the framework of a project organized by the private contracting entity SIA "Lyngson" and co-financed by the European Union Structural Funds, with cartel participants exchanging information and agreeing on the terms of participation in the procurement. The detected violation affected the fair and legal use of the funds allocated by the European Union Structural Funds in the amount of 780,733.12 euros. As a result of the actions of the participants involved in the cartel, the contracting entity received coordinated offers, which were not prepared in conditions of true competition – the applicants exchanged commercially sensitive information about the costs of one unit, thus excluding competition in procurement between competitors.

## A pre-selected "winner" of the procurement

SIA "PK Serviss" had agreed with the contracting entity on a pre-arranged win in the specific procurement. Also, the construction companies agreed among themselves on the terms of participation in the procurement, by SIA "PK Serviss" preparing financial offers for both SIA "KORO BŪVE" and SIA "TAVS LAIKMETS", which were submitted as cover offers without a real desire to compete and win the procurement. These actions affected fair competition in the procurement in question.

## The role of the contracting entity in the prohibited agreement

During the investigation, the CC concluded that the contracting entity did not organize the procurement autonomously, because the contracting entity informed the negotiated winner of the procurement, SIA "PK Serviss", both about the potential bidders and also involved company in the preparation of the financial offer form in the procurement regulation annex.

The CC emphasizes that it is the responsibility of each contracting entity to ensure that there is a free competition in the procurement and that procurement-related processes are organized in a good faith and objectively, in accordance with the regulatory framework. As can be seen from the facts of the case, it is likely that this has not been observed in certain cases.

Also, the cartel member SIA "PK Serviss" advised the contracting entity SIA "Lyngson" on how to reject offers submitted by other applicants. The CC, evaluating the 2019 mutual e-mail correspondence between the contracting entity and SIA "PK Serviss" found during investigation, concluded that even after the conclusion of the procurement, there was active communication between the contracting entity and the applicant in order to hide possible inconsistencies within the framework of the audit initiated by the European Union Funds Audit Department of the Ministry of Finance. Although the CC did not establish the contracting entity's participation or support in the prohibited agreement found in the decision, at the same time, based on the information obtained as a result of the procedural activities and the initial concerns that the procurement was not conducted in accordance with legal norms, the CC cooperated with the law enforcement authorities, providing the information obtained during the investigation of the case. Taking into account the above, the European Prosecutor's Office started criminal proceedings, as a result of which the

contracting entity made a repayment of the co-financing received by the European Union in the amount of 780,733.12 euros.

## Penalties, Leniency Program applications and settlement

The CC imposed fines on the companies involved in the infringement, which were calculated as a percentage of the company's net turnover of the previous financial year.

Considering that SIA "TAVS LAIKMETS" cooperated with the institution within the framework of the Leniency Program and submitted all the information at its disposal, the company received a fine reduction of 50 %. Likewise, SIA "TAVS LAIKMETS" and SIA "PK Serviss" cooperated with the CC and concluded settlements. Thus, the legal dispute in the case was ended, the companies agreed to the facts established by the CC and undertook not to appeal the decision of the CC. As a result of the settlement, both parties received a fine reduction of 10 %.

*Cartel members' and fines imposed on them as a percentage of the previous financial year's turnover and in absolute terms (euro):*

Party involved	Amount of the fine (%) of the company's turnover	Final penalty (EUR)
SIA "PK Serviss"	2,25	99 492
SIA "KORO BŪVE"	2	128 394
SIA "TAVS LAIKMETS"	2	5 905

Ieva Šmite, Director of the Prohibited Agreements Department of the CC: "This cartel case serves as an example of the fact that procurement by a private contracting entity is subject to the same competition rules as any other procurement by a public contracting entity, and its participants must also observe the principles of fair competition in these procurements. Apart from the "Builders' cartel" discovered last year, where the agreement was made for both public and private construction procurements throughout Latvia, this is the first case in the practice of the Competition Council when a cartel was discovered directly in a procurement organized by a private contracting entity. The successful outcome of the investigation of this case is due to the close and efficient cooperation between the institutions. In this case, the Ministry of Finance provided the initial information about the signs of a possible violation to the Competition Council, but during the investigation, when the Competition Council obtained evidence of possible illegal activities of the contracting entity, the information was transferred for further examination to the European Public Prosecutor's Office, which implemented a successful criminal trial against the contracting entity for defrauding the European Union's finances. Therefore, in order to avoid unfair behaviour of companies in procurements, which results in the purchase of goods and services at a higher price, a significant role in the identification and elimination of cartels is played directly by the contracting entities. They are the first ones to spot signs that may point to a cartel. In order to reduce the risk of prohibited agreements and possible artificial price increases in procurement, we invite contracting entities to report all suspicious cases to the Competition Council."

<https://www.kp.gov.lv/en/article/competition-council-fines-three-construction-companies-prohibited-agreements-procurement-organized-private-contracting-entity>