The most common violation – prohibited agreements

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The most common and most serious violation of competition law is cartels, or prohibited agreements between market participants, for example, on price, market, procurement participation or procurement participation rules.

This is stipulated in Article 11 of the Competition Law, emphasizing that agreements between market participants are prohibited, which purpose or consequences is to hinder, limit or distort competition in the territory of Latvia.

The practice of the Competition Council (the CC) shows that the most common violation of competition law is prohibited agreements on participation or non-participation in procurements or auctions.

If the CC sees signs of a possible violation of competition law, or suspects market participants of prohibited agreements or participation in a cartel, however, the possible violation has not been repeated and has not affected a large part of the market and society, the institution applies the "Consult first" principle, eliminating the violation with a warning without initiating a formal case.

In the first half of 2022, the CC has been an active enforcer of warnings. The CC has carried out five prevention procedures, warning a total of eight legal entities and one association. All the mentioned cases were related to possible violations in public procurement.

In one of the mentioned cases, the CC saw suspicions of coordinated bids by applicants in procurement - one applicant had sent the customer additional requested information about the technical bid, in which the name of the other applicant was visible in the details of the document.

This gave the customer reasonable concerns about possible coordinated action between the two bidders within the scope of the procurement. On the other hand, in another case, the CC received information that in a procurement organized by the municipality, two technical offers submitted by applicants were similar, especially the descriptions given in the "Technical offer" appendix, as well as an identical sub-background could be seen on the edges of the scanned pages in the offers.

Also, the details of the "Excel" file submitted in the offers showed that the files for both applicants were prepared by a person with the same username, and they were created at the same time, where the last time the document was saved was different by a few minutes. At the same time, the offers themselves were submitted to the Electronic Procurement System on the same date and at similar times.

An anonymous whistle-blower reported one of the most suspicious cases where signs of prohibited agreements may be visible, and this submission was forwarded to the CC by the institution's cooperation partner - the Procurement Monitoring Bureau. The procurement organizer was a state-owned capital company. In this case, several signs were identified that showed that the submitted bids were not prepared independently. Namely, it was established that two supposedly independent offers were submitted to the contracting entity by the same person, as well as signed by the same person - both technical and financial offers. In this case, the members of the two companies were related persons. Most likely, the companies had acted in this way to win as many parts of the procurement as possible. The regulation stated that one company can win no more than three parts of the procurement, but when participating with two companies in the procurement at the same time, the possibility of winning several parts, even six, increases.

However, from the point of view of competition law, such coordinated actions are not permissible in the process of preparation of offers, where apparently there had been an exchange of sensitive information about the information contained in the offers, and in essence it was an imitation of fair competition in the specific procurements. In all of these cases, either the customer

himself or the CC's cooperation partners reported the possible violation to the CC.

It is essential that it is the contracting entity who, when recognizing the apparent signs of a cartel in a procurement, reports them to the CC.

Therefore, the CC is also very active in educating the contracting entities on how to recognize the early signs of a cartel. The purpose of these preventive activities is not only to raise the society's culture of competition law as a whole, but it is especially important to ensure that the contracting entities understand the principles of competition law and the prohibition of collusion between applicants, and knows how to apply preventive tools.

https://www.kp.gov.lv/en/article/most-common-violation-prohibited-agreements