

The court upholds the decision of the Competition Council on the found cartel in the land reclamation sector

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The Senate of the Republic of Latvia, with its August 30 decision not to initiate cassation proceedings, has upheld the 2021 decision of the Competition Council (the CC), with which the institution fined two land reclamation companies - SIA "Valkas meliorācija" and SIA "Agromeliorators" - for submitting agreed offers to the state SIA "Zemkopības ministrijas nekustamie īpašumi" in the organized procurements. Thus, the decision of the CC came into force, and SIA "Valkas meliorators" must pay a fine of 208,837.15 euros to the state budget. On the other hand, the decision of the CC regarding the detected violation regarding SIA "Agromeliorators" came into force already this year. On June 9, when the company decided not to file a cassation complaint against the Administrative District Court's verdict.

99 Juris Gaiķis, the CC's Chairman: "The land reclamation industry has been under the scrutiny of the Competition Council for several times in recent years. The Competition Council found coordinated actions of the reclamation industry companies in procurement both in 2018 and 2021. Both decisions were appealed to the court, but with this decision of the Senate of August 30, all legal proceedings related to the cartels in the land reclamation sector have ended. In both cases, the court has recognized that any exchange of information between potential competitors about whether and at what prices they plan to participate in specific procurements is, by its very nature, aimed at restricting competition, which is prohibited by the Competition Law. This is another reminder to all the market participants, so that they do not come under the scrutiny of the Competition Council, they must plan their actions on the market, including participation in procurement, independently."

In 2021, the CC discovered overlaps in the procurements organized by the SIA "Zemkopības ministrijas nekustamie īpašumi" in the period from 2016 to 2019, implemented within the framework of the program of the European Agricultural Fund for Rural Development for 2014-2020. While evaluating procurements and conducting inspections in six companies, the CC obtained evidence that melioration service providers - SIA "Valkas meliorācija" and SIA "Agromeliorators" - have illegally agreed on the terms of participation in three procurement procedures.

The companies exchanged the documents to be submitted in the relevant procurement, including financial estimates, simulating competition. As a result of these coordinated actions of the companies, the contracting entities did not receive procurement offers created under conditions of fair competition, which would allow purchasing the most advantageous service. For the detected violations, the CC applied a fine to SIA "Valkas meliorators" in the amount of 208,837.15 euros and to SIA "Agromeliorators" in the amount of 13,132.45 euros.

Both companies appealed to the Administrative Regional Court, asking to cancel the violation found in the decision and the imposed fine. The administrative district court in its judgment of June 9 of this year recognized that in the specific case, the exchange of information by companies in connection with the preparation and submission of offers in procurement procedures is by its nature aimed at restricting competition. Therefore, the CC has rightly concluded that this behaviour can be evaluated as a cartel agreement. Also, the Regional Court concluded that, taking into account the established signs of the legal composition of the violation established in the first part of Section 11 of the Competition Law, the CC has justified imposing a fine. At the same time, the Regional Court did not find any errors in the actions of the CC when calculating the amount of the fine. "The District Court also does not find that the penalty imposed by the Competition Council was obviously disproportionate," the judgment states.

One of the two members of the cartel - SIA "Valkas meliorators" - submitted a cassation complaint to the Senate against the judgment of the District Court of June 9, 2022. In its decision, the Senate concludes that the arguments of the cassation

complaint do not cast doubt on the legality of the Regional Court's judgment and do not show that the case would be important in the development of jurisprudence, thus the initiation of cassation proceedings is rejected. Therefore, the decision of the CC has entered into force.

99 Andris Eglons, the Chief legal advisor of the Legal Department of the CC: "The participants of the market, trying to justify the mutual communication before the procurement, stated that the exchange of information took place with the aim of creating cooperation between the general contractor and the subcontractor in the project. As recognized by the Senate, in order to be able to establish a true general contractor-subcontractor relationship between market participants, the market participant must be able to do so openly and in a way that would allow an outside observer to clearly understand the formation of such a relationship, and only in that case the exchange of information between companies could be justified with this particular situation. In the practice of the CC, market participants repeatedly point to an allegedly existing cooperation between market participants, even though the evidence obtained during the research does not confirm this, so this finding of the Senate is particularly important."

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