MEMO

The Hellenic Competition Commission issues settlement decision no 642/2017 imposing record fines of approx. 80 million € in a case of collusion/bid rigging in tenders for public works of infrastructure

Background

In April 2016 the Rapporteur of the Hellenic Competition Commission (HCC) issued a statement of objections in a complex case of alleged collusion regarding tenders for public infrastructure works (motorways, rail, metro and concession projects) between 1989 and 2012 involving major Greek and international construction companies. Some of the alleged infringers participated in settlement proceedings, while others followed ordinary infringement proceedings.

The HCC settlement decision no 642/2017

As it was announced by the HCC on 3 August 2017, following conclusion of the settlement proceedings, the HCC issued settlement decision no 642/2017 whereby:

1. The HCC held that several Greek construction companies took part, at varying starting/ending points, in a single and continuous infringement of art. 1 par. 1 of the Greek Competition Law and art. 1 of the TFEU from 2005 to 2012 through bid rigging in tenders for public works (among others, metro rail projects in 2005-2006, public-private partnerships in 2008-2009 and infrastructure works in 2011-2012). According to the HCC decision, the members of the cartel coordinated their business conduct, among others by agreeing who would be submitting the winning bid, by submitting cover bids and by agreeing before the submission of the bids to jointly execute the relevant works.

One of the participating undertakings was granted Type 1B full immunity from fines, this being the first HCC decision applying the current leniency programme.

The HCC imposed fines totaling approximately 80 million €. These are the highest fines imposed by the HCC on an individual undertaking as well as in the aggregate until this date. In determining the amount of fines the HCC proceeded as follows:

- Firstly, the HCC determined the basic amount of fine by taking into account various aggravating and mitigating circumstances in accordance with its 2006 Guidelines for
setting fines (which largely follow the European Commission Guidelines for setting fines under art. 23(2)(a) of Regulation (EC) 1/2003. With respect to 2 undertakings, the amount of fines so determined exceeded the maximum provided by the law (10% of the undertaking’s total national turnover during the last year of the infringement) and it was reduced accordingly.

- The amount of fines determined in accordance with the above was reduced for all participating undertakings taking into account the effects of the economic crisis in the construction sector in Greece.
- The fines were further reduced by 15% for all participating undertakings due to their participation in the settlement procedure.
- Finally, for the first time the HCC reduced the fine even further for 2 of the participating undertakings which invoked inability to pay due to their financial condition.

2. The HCC also ascertained infringements due to bid rigging in other tenders without imposing any fines because its relevant powers were time barred (art. 42 of the Competition Law).

3. With respect to other public tenders which were also included in the Statement of Objections, including concession projects, the HCC concluded that no infringement of art. 1 of the Competition Law was established and that there were no grounds for further action under art. 101 TFEU.

As it is mentioned in the relevant HCC press release of 3.8.2017 (https://www.epant.gr/en), the ordinary infringement proceedings regarding the parties that did not participate in the settlement procedure have also been concluded and the HCC decision is in the process of being drafted.

This is the second settlement decision which was issued since the introduction of the settlement procedure into Greek competition law in July 2016 (HCC decision no 628/2016). The first settlement decision (HCC decision no 636/2017) imposed fines of approx. 1 million€ in a case of retail price fixing in the beauty and cosmetics sector.

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