



The CNC imposes multi-million euro fine for price fixing in public tenders

Resolution of the Spanish Competition Authority (CNC), of 19 October 2011, (Case S/0226/10 Roadwork tendering)

Anti-competitive practice

The CNC has imposed fines amounting to more than 44 million Euros to 46 companies in the construction sector for dividing up tenders and fixing prices in public tenders of road paving. In such tenders the Administration established a reference budget and each selected company had to submit its offer by indicating the discount that they were willing to make on such budget. The CNC considers it accredited that the fined companies used to gather in order to exchange information on the discount that each one of them wanted to apply. On the basis of such information, it was agreed which company would submit the best offer and its amount, and the company that was awarded the tender would economically compensate the rest of the competitors.

Circumstantial evidence, proof and reasonable alternative explanations

Some of the parties charged with the anti-competitive behaviour put forward that there was a reasonable alternative explanation to justify the fact that the offered discounts were of such small amounts: the budgets of the Administration were very tight and the costs of the works had notably increased, and therefore there was little margin for discounts. Nevertheless, the CNC considers that the alternative explanation loses plausibility in light of the documents provided by the person who reported the anti-competitive behaviour (a former employee of one of the fined

companies), which is very detailed and concurs with the accounting documents obtained during the inspections that were carried out. Likewise, the CNC based itself on testimonies of several of the participating companies that admitted their involvement and the operation of the cartel, and to which a mitigating factor of 15% was applied in their sanctions.

On the other hand, some of the fined companies argued that there was no proof that they had gathered in all the tenders that the CNC charged them with, and that it had not been proven that compensation payments were made to all competitors. On this point, the CNC reminds that according to the doctrine of the CJEU the existence of an agreement contrary to the rules on competition may be inferred from certain coincidences and circumstantial evidence that, altogether and in the absence of any other coherent explanation, allow for the reconstruction of the circumstances and may represent proof of an infringement of competition rules, without the need to document each and every one of the facts alleged.

Responsibility of the UTEs

The CNC considers that the companies which participated at the tenders through UTEs (Temporary Union of Companies without legal personality) cannot be exonerated from responsibility by claiming that they were unaware of the conditions in which the UTE participated in the tender.