Spain: The Comisión Nacional de la Competencia fines Cartel in Civil Engineering Field

On 31 July 2012, the CNC Council has adopted a resolution finding that several undertakings active in the post-tensioning and geotechnical systems have been sharing contracts and customers between themselves. In particular, the CNC has established the existence of the following practices:

(i) on the post-tensioning systems markets, agreements to share out contracts for post-tensioning systems – including various large projects – and supply of bars; and (ii) on the geotechnical market, the existence of customer-sharing agreements. On this basis, fines totalling more than € 16 000 000 were imposed on the undertakings concerned.

This case arose out of a leniency application submitted on 23 April 2010 by the controlling shareholders of the company Dywidag Sistemas Constructivos S.A. (DSC) in respect of a breach of Article 1 of the Spanish Competition Act, consisting of the sharing out of the market for post-tensioning and geotechnical systems. According to the information provided DSC itself and the following companies BBR Pretensados y Técnicas Especiales, S.L (BBR), CTT Stronghold, S.A. (CTT); Freyssinet, S.A. (FSA), Mekano4 S.A. Técnicas del Pretensado y Servicios Auxiliares, S.L (Tecpresa) and VSL-Spam, S.A. had been implicated in these practices for at least 14 years.

On 26 July 2010, having carried out inspections, the Investigations Division of the CNC opened formal proceedings (S/0287/10) against these companies for anti-competitive practices of a kind prohibited by the Spanish Competition Act. The companies mentioned operate in the civil engineering field, offering post-tensioning and geotechnical systems. Together they are the main operators on the market and in some cases they are subsidiaries of large construction companies such as FCC (BBR) or Ferrovial Agroman (Tecpresa). The relevant market is on the one hand the market for post-tensioning systems, which are systems that permit the reinforcing of concrete structures used in numerous types of buildings, and on the other hand the market for geotechnical tensioning systems, which serve to fix the structures and stabilise the ground. The demand on these markets comes from large companies in the construction sector.

Following the investigation, the CNC Council found that these practices constitute a single and continuing breach, in the form of a cartel, of Article 1 of the Spanish Competition Act and Article 101 TFEU from at least 1996 until the date of the inspections on 17 June 2010. The cartel participants held periodic meetings amongst themselves (as often as monthly at some points) in order to proceed with the sharing out of potential contracts and the monitoring of the sharing arrangements. Quotas were defined per company, which reflected their weight on the market, and potential contracts were shared out by reference to these quotas. It was also established that agreements were reached on the price to be submitted to companies seeking the services in order to try to ensure that the contracts would be won by the company designated by the cartel in its sharing arrangements. Mechanisms were also defined for compensation between companies by reference to the quotas, particularly in the context of large projects.

The CNC Council has therefore decided to set the following penalties: BBR: € 2 640 000, CTT: € 2 426 000, DSC: € 5 228 000, FSA: € 2 805 000, Mekano4, S.A., a fine of € 1 420 000, Técnicas del Pretensado y Servicios Auxiliares, S.L. € 1 957 000, VSL-Spam, S.A. € 384 000. However, the CNC Council decided that DSC, which would have been jointly and severally liable for a fine together with its parent company DSI INTERNATIONAL, S.A.R.L., benefitted from immunity from the fine in accordance with the provisions of Article 65.1.a) of the Competition Act, as it provided evidence that enabled the CNC to carry out the inspections in this case.

See case proceedings (in Spanish)