

Competition authority settles first antitrust case under new Competition Act

October 29 2015 | Contributed by [Morais Leitão, Galvão Teles, Soares da Silva & Associados](#)

Background Comment

Background

In August 2015 the Competition Authority fined five companies €831,000 for anti-competitive conduct between 2009 and 2010 in the context of public tenders opened by the state-owned company responsible for the planning, management, development and implementation of the modernisation programme for the public school network.⁽¹⁾

The tenders concerned the rental (including supply and installation) of prefabricated modules for the temporary installation of classrooms during construction work performed under the public school modernisation programme.

The investigation was initiated in January 2014 following the submission of a leniency application and was followed by dawn raids by the Competition Authority at the premises of the companies involved. According to the authority, between 2009 and 2010 the undertakings manipulated bids in several tenders by adjusting their respective prices, which aimed to determine the winner of each tender artificially. The scarcity of prefabricated modules in the quantities that the tenders required and the political pressure to speed up construction work in a large number of public schools may have contributed to the bidders' conduct.

The authority concluded that the conduct constituted an agreement between undertakings to share markets and fix prices, with the aim of restricting and distorting competition in the market for the supply and installation of prefabricated modules in the context of the relevant public tenders.

The final decision and size of the fines applied seems rather harsh in light of the authority's previous decisions in similar cases and the limited scope and short duration (two years) of the infringement. However, they are line with the authority's plan to make the monitoring of anti-competitive practices in public procurement procedures one of its priorities for 2015.

During the course of the investigation, four companies applied for leniency and, apart from the first applicant (which obtained total immunity from fines), all of the participants in the cartel obtained an additional reduction in their fines in the settlement procedure.

Comment

This is the first case in which the Competition Authority has used the settlement procedure under the new Competition Act, which for the companies involved resulted in a 10% reduction of the fines imposed.⁽²⁾

Under the existing legal framework, settlement is possible during the course of an inquiry and the phase following the statement of objections. However, while the settlement procedure may be triggered by the Competition Authority (which may invite an undertaking to submit its intention to enter into negotiations on a possible settlement proposal) and the undertaking involved during the

AUTHORS

[Dzhamil Oda](#)



[Leonor Bettencourt Nunes](#)



inquiry stage, the settlement procedure may only be triggered in the subsequent phase by the undertaking concerned, which must submit a settlement proposal in its response to the statement of objections.

In accordance with the Competition Act, a reduction in fines resulting from a settlement procedure is supplementary to any reduction that results from evidentiary cooperation by leniency applicants not eligible for full immunity from the Competition Authority. This pioneering decision under the new Competition Act seems to set the bar for reductions resulting from a successful settlement at 10%, in line with the European Commission's guidelines and practice.

For further information on this topic please contact [Dzhamil Oda](#) and [Leonor Bettencourt Nunes](#) at [Morais Leitão Galvão Teles Soares da Silva & Associados](#) by telephone (+351 21 381 74 00) or email (d.oda@mlgts.pt and lbnunes@mlgts.pt). The [Morais Leitão Galvão Teles Soares da Silva & Associados](#) website can be accessed at www.mlgts.pt.

Endnotes

(1) Press release 18/2015, August 10 2015.

(2) Law 19/2012, May 8 2012.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).