



REPUBLIC OF ALBANIA
-COMPETITION AUTHORITY-
Competition Commission

DECISION

No. 158 of 12 November 2010

**“On
several recommendations on preventing bid rigging in public procurement”**

The Competition Commission, composed of

- Lindita Milo (Lati) Chair
- Servete Gruda Member
- Koço Broka Member
- Rezana Konomi Member

in its meeting of 11 November 2010 reviewed the Case with:

Subject-matter: Giving recommendations on the public procurement legal framework, with the purpose of preventing bid rigging;

Legal basis: Articles 24 (d) and (f) and 70 (2) of Law no. 9121 of 28 July 2003 “On Competition Protection”.

After reviewing the Report on the In-Depth Investigation into the Market of New Vehicle Market; the Report on Several Recommendations on Detecting and Fighting Bid Rigging in Public Procurement and the relevant Secretary General’s Report; pursuant to the Memorandum of Understanding with the Public Procurement Agency and the Action Plan on Combatting Bid Rigging and Corruption

NOTES THAT:

Bid rigging occurs when undertakings (economic operators), which are expected to compete among themselves, secretly agree to increase their prices or reduce the quality of their goods or services to be delivered to buyers procuring them under a procurement procedure.

A competitive process can ensure lower prices, a better quality and novel elements only if the undertakings (economic operators) compete honestly, by submitting their conditions and criteria with integrity and independence.

Bid rigging can become particularly harmful if it occurs in public procurement. Such secret agreements cause adverse consequences for buyers and taxpayers, reduce public confidence in the competitive bidding process, and reduce the benefits of a competitive market.

Bid rigging is a prohibited practice across OECD countries, and, as such, it is investigated and penalized in accordance with the Competition Law and rules.

Pursuant to Article 4 of Law no. 9121 of 28 July 2003 "On Competition Protection", bid rigging is prohibited, as it restricts free and effective competition in the market.

Public procurement procedures are governed by Law no. 9643 of 20 November 2006 "On Public Procurement", as amended, and its implementation regulations.

Pursuant to Article 13 (3) of the Public Procurement Law, the Public Procurement Agency bans an economic operator from participation in procurement procedures for a period of one to three years in the cases provided for in that same Paragraph.

Constant cooperation between the Public Procurement Agency and the Competition Authority is indispensable in order to increase competition and efficiency in public procurement; prevent bid rigging in public procurement; raise business and public awareness of fighting bid rigging; raise tender participants' awareness of bid rigging consequences; and detect and report potential cases of infringements of procurement procedures;

FOR THESE REASONS:

The Competition Commission, pursuant to Article 24 (d) and (f) and Article 70 (2) of Law no. 9121 of 28 July 2003 "On Competition Protection", with the proposal of the Secretariat,

DECIDED:

- I. To recommend the Public Procurement Agency, the Council of Ministers and the Parliament of Albania to:
 1. Amend Law No. 9643 of 20 November 2006 "On Public Procurement", more specifically its Article 13 (3) which states that the Public Procurement Agency bans an economic operator from participation in procurement procedures for a period of one to three years in the cases provided for in points (a), (b), (c) and (ç) in that same Paragraph, and insert a point (d) in the same Paragraph with the following content:

“(d) Where a Competition Commission Decision finds that there has been bid rigging among economic operators participating in procurement procedures.”
 2. The legal framework on public procurement should include procedures addressing those cases where contracting authorities have the responsibility for informing the Competition Authority if they have identified indications of prohibited agreements in public procurement during the development and/or execution of procurement procedures. In cooperation with the Competition Authority a special chapter should be drafted in Council of Ministers' Decree no. 1 "On public procurement rules" (or in any other law or regulation that is deemed appropriate) whereby the abovementioned cases are provided for.

- II. To recommend the Public Procurement Agency to:
3. Include a certificate of independent bid in the standard tender documents.
 4. Prepare a joint Instruction on combating bid rigging in public procurement
 5. Prepare a Guide on the detection and reduction of bid rigging in public procurement, and a Brochure on the signals of bid rigging in public procurement.
 6. Cooperate in the area of training procurement officers in the importance of detecting and preventing bid rigging and the methods of fighting this phenomenon that has quite serious effects on competition, taxpayers and the State Budget.
- III. The Competition Authority Secretariat is instructed to forward these recommendations to the relevant institutions.
- IV. This Decision shall enter into force immediately.

COMPETITION COMMISSION

Servete GRUDA
Member

Koço BROKA
Member

Rezana KONOMI
Member

Lindita MILO (LATI)

CHAIRPERSON