



Competition

The Portuguese Competition Authority applied a fine of €310,000 to Aeronorte and Helisol for breach of the Portuguese Competition Law.

Contacts

António de Macedo Vitorino

avitorino@macedovitorino.com

Cláudia Martins

cmartins@macedovitorino.com

Neuza Lopes

nlopes@macedovitorino.com

Sara Duarte

sduarte@macedovitorino.com

This information is provided for general purposes only and does not constitute professional advice. If you have any question on a matter of Portuguese law you should contact a lawyer licensed to practice law in Portugal. If you are a client of Macedo Vitorino & Associados please contact your usual contact partner or any of the lawyers listed in the contacts section.

The Portuguese Competition Authority fines cartel in public procurement case

1. The facts

In 2005, the National Service of Fire-fighters and Civil Protection launched an international tender for the supply of forest fire fighting services involving the use of six helicopters and other related services.

Unlike other previous tenders, in which two different bidders – Aeronorte and Helisol – presented separate bids for these services, in 2005, these companies decided to create a consortium and presented a joint bid with a price increase of 93% in relation to 2004's best bid.

As a result of the price increase, the Portuguese Government decided to annul the tender and to seek other solutions through the launching two new tenders using other types of fire fighting air equipment.

2. The procedure

After the press news concerning the annulment of the tender, the Portuguese Competition Authority decided to open an investigation to examine an alleged collusion involving the bidding consortium.

The Competition Authority concluded that Aeronorte and Helisol had presented a joint bid with the purpose of preventing, restricting and distorting the competition in the relevant market. The agreement leads to the elimination of the competitive pressure through the coordination and sharing between Aeronorte and Helisol of the supply of services and goods, the decrease in the number of bidders from two to one and an unjustified increase of the bid price.

3. The decision

Although the tender did not lead to a final award, the Competition Authority considered that this did not prevent the application of the Portuguese Competition Law and that the agreement entered into between Aeronorte and Helisol contravened article 4/1 the Portuguese Competition Law, as it prevented, restricted and distorted the competition to fix the prices and other commercial terms and conditions.

As a result, the Competition Authority applied fines of €179,933.38 to Aeronorte and €128,539.77 to Helisol, corresponding to 10% the annual aggregate turnover of each company, which is the maximum allowed by the Portuguese Competition Law.

Although it is expected that Aeronorte and Helisol will now appeal from the decision of Portuguese Competition Authority to the Commercial Court of Lisbon (*Tribunal de Comércio de Lisboa*), and whatever the outcome of this appeal might be, this decision opens a precedent in public procurement cartels evidencing the Competition Authority's determination in fighting cartels and other restrictive practices in a series of decisions that defy the tradition of Portuguese regulators.

© 2007 Macedo Vitorino & Associados