Belgian Competition Authority imposes fines in bid rigging cartel

In a decision of 02 May 2017, the Belgian Competition Authority (BCA) imposed total fines of €1.8m on five undertakings involved in a bid rigging cartel in Belgium. One of the cartel participants was granted full immunity from fines after an application for leniency.

**Facts**

In 2008, Infrabel, the Belgian railway infrastructure operator, launched a public tender for the delivery and onsite installation of electrical circuit equipment and related technical assistance. More specifically, the tender related to two types of compact stations (compact stations for traction substations and compact stations for sectioning posts).

The contract was awarded in two stages. In a first round, Infrabel selected five companies and concluded a framework agreement with each of these companies. Framework agreements have been concluded with Siemens, Sécheron, ABB, AEG and Schneider. In the second round, Infrabel launched different calls for specific orders. In the context of each call, the selected parties were to submit offers which could not exceed the initial maximum price offered. The undertaking offering the most favourable price in the second round received the order.

There were no indications of collusive tendering in the context of the first selection round, even if the file refers to certain contacts between some of the parties concerned. However, when concrete calls for tender were made in the next round, it turned out that the five selected competitors agreed which one of them would obtain the contract. This allocation was made on the basis of the preferences of each of the companies concerned, but, interestingly, also on the basis of the preferences of Infrabel, which preferred a certain standardisation per zone. In order to guarantee that the selected undertaking would actually win the tender, the five companies exchanged prices and either the selected undertaking would lower its price in comparison to the prices offered by its competitors, or the non-selected undertakings would all increase their prices.

The decision noted that the behaviour of Infrabel had contributed to the collusion. Infrabel had made the market very transparent and had shared sensitive information with the companies concerned.

**Decision**

The existence of the cartel was revealed to the BCA by one of the cartel participants, ABB, which in exchange was granted full immunity from fines. Siemens and AEG followed ABB’s lead and were both granted significant reductions of
their fines as a result of their requests for leniency. The reduction granted to Siemens was remarkable since Siemens was held to be the ring leader.

The BCA took both aggravating and mitigating factors into account for the calculation of the fines. Siemens’ fine was increased due to its role as cartel leader. A member of its key personnel had organised multiple meetings and the exchange of information between the different cartel members, had moderated in case of conflicts or discussions regarding the distribution of the different calls for tender and had occasionally assisted in the price setting process.

Infrabel’s role in the cartel was considered to be a mitigating factor. The BCA noted that Infrabel’s members of staff had increased the market’s transparency beyond a level that was considered appropriate in the context of a public tender process. In particular, Infrabel held meetings with the five companies where sensitive information was being exchanged, for example information on budget, current and future projects, and prices offered by competitors, as well as Infrabel’s preferences for certain suppliers.

The BCA established that by agreeing which undertaking would obtain each call for tender and by exchanging and fixing their prices accordingly, the five companies concerned formed a cartel with the object of distorting and limiting competition on the Belgian market. The cartel lasted for a period between five and six years.

The decision is another settlement decision of the BCA.

Comment

The decision is another testimony of the interest of the BCA in detecting and sanctioning possible anti-competitive practices in the context of public procurement. In January 2017, the BCA published a guide for contract authorities in order to help them to detect possible bid rigging practices. In addition, in its 2017 priorities note, the BCA expressed its intention to tackle bid rigging practices. On a yearly basis, Belgian contracting authorities launch public tenders worth approximately €50bn, which represents 10% to 15% of the national GDP. The BCA considers public procurement to be highly sensitive to cartelisation.

Furthermore, it should be noted that new rules on public procurement have recently entered into force in Belgium. These rules expand the contracting authorities’ competences to detect and sanction anti-competitive behaviour by participants in tenders.