



Republic of Serbia
**COMMISSION FOR
PROTECTION OF COMPETITION**

25/IV Savska St., Belgrade

Number: 4/0-02-805/2018-1

Date: November 19, 2018

Pursuant to Article 35(2) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013), the President of the Commission for Protection of Competition enacts the following

CONCLUSION

I PROCEEDINGS IS INSTITUTED *ex officio* for investigation of infringement of competition against the following undertakings:

- Bora Kečić – vangabaritni transporti d.o.o., 113 Stevana Filipovića St., Belgrade, company number 21039527, whose legal representative is Miodrag Katić,
- Preduzeće za puteve Kragujevac d.o.o., 16 Tanaska Rajića St., Kragujevac-city, company number 07165897, whose legal representative is Ljubiša Živković,
- Transportšped d.o.o., 19 Omladinskih brigada St., Belgrade-New Belgrade, company number 07019904, whose legal representative is Miljan Baćović,
- Agrorit d.o.o., 33-37 Svetozara Markovića St., Melenci, Zrenjanin, company number 08623830, whose legal representative is Ružica Mijatov,

in order to determine the existence of restrictive agreements, within the meaning of Article 10 of the Law on Protection of Competition.

- II** All persons in possession of data, documents or other relevant information which could contribute to the accurate fact-finding in this proceedings are called upon to submit said to the Commission for Protection of Competition to the address 25/IV Savska St., Belgrade.
- III** This conclusion shall be published in the Official Gazette of the Republic of Serbia and on the website of the Commission for Protection of Competition.

Rationale

On October 17, 2018, the Commission for Protection of Competition (hereinafter, the Commission) has received an initiative submitted by PE Elektroprivreda Srbije (hereinafter, the Contracting authority or the Applicant), filed with the Commission under number 4/0-04-733/2018-1. As underlined in the initiative, the Applicant requested the Commission to investigate as to whether or not in the negotiated procedure with invitation to bid conducted in accordance with Article 123 of the Public Procurement Law with reference to the public

procurement “Provision of hauling services for the remaining equipment of used excavator and stacker from Germany to Serbia”, no. *JH/400/1049/2019* (hereinafter, the public procurement concerned), where the Applicant is the Contracting authority, the infringement of competition has occurred, carried out by companies Bora Kečić – specijalni transporti d.o.o. Beograd and Bora Kečić – vangabaritni transporti d.o.o. Beograd, in a manner where companies Bora Kečić – specijalni transporti d.o.o. Beograd and Bora Kečić – vangabaritni transporti d.o.o. Beograd have colluded on the content of bids.

In examining the validity of the statement presented in the initiative, the Commission has requested the Applicant and company Bora Kečić – vangabaritni transporti d.o.o. to submit complete bids as presented in the public procurement concerned.

By analyzing submitted documentation and publicly available data, the Commission has established the following:

- the freight forwarding and hauling services are procured in the public procurement concerned, in particular in respect of predominately oversized transport services;
- Bora Kečić – vangabaritni transporti d.o.o., Preduzeće za puteve Kragujevac d.o.o., Transportšped d.o.o., and Agrorit d.o.o. (hereinafter, the Group of bidders no. 2) have concluded the Joint venture and bidding agreement, filed with Transportšped d.o.o. under no. 1254 of April 23, 2018, Bora Kečić – vangabaritni transporti d.o.o. under no. 100 of April 23, 2018, and with Agrorit d.o.o. under no. 2621/18 of April 23, 2018;
- in line with the completed Annex 1 to the tender documentation submitted by the Group of bidders no. 2, Bora Kečić – vangabaritni transporti d.o.o. is the leading member of the group and responsible for organization, preparation, loading and hauling of the equipment, along with ensuring all necessary permissions, approvals and other supporting documentation, Preduzeće za puteve Kragujevac d.o.o. is responsible for securing 18 drivers with Class E driver licenses, Transportšped d.o.o. is in charge of the customs clearance work of hauled equipment, including all supporting customs-related activities, and Agrorit d.o.o. is hauling the equipment and performing other activities necessary for the execution of equipment haulage;
- in the reply sent to the Commission, Bora Kečić – vangabaritni transporti d.o.o. has underlined that Agrorit d.o.o. does not own trailers for oversized hauling and does not have 20 drivers with Class E driver licenses, as well as that Transportšped d.o.o. does not have regular sheeted trucks and trailers for oversized hauling, as well as drivers with Class E driver licenses;
- Agrorit d.o.o. owns vehicles and optional equipment for the special cargo transport - oversized cargo or heavy equipment transport¹, and advertises itself as an “international freight forwarder providing hauling and logistics services, both at home and abroad”²;
- On the internet page, section Transport capacities, Transportšped d.o.o. provides photos of sheeted trucks³ that require drivers with Class E driver licenses.

The provision of Article 10(1) of the Law on Protection of Competition (Official Gazette of the RS 51/2009 and 95/2013 - hereinafter, the Law) stipulates that restrictive agreements are agreements between undertakings which as their purpose or effect have a significant restriction, distortion or prevention of competition in the territory of the Republic of Serbia. Article 10(3) of the Law stipulates that restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to the Law.

¹ <http://www.agrorit.rs/nase-usluge/specijalni-transport>, accessed on November 13, 2018.

² <http://www.agrorit.rs/nase-usluge/carinsko-posredovanje>, accessed on November 13, 2018.

³ <http://www.transportsped.co.rs/kapaciteti.jsp#transportni>, accessed on November 13, 2018.

Joint bidding agreements concluded between competitors by their nature restrict, distort or prevent competition, and as such may represent restrictive agreements from Article 10 of the Law.

On the basis of facts established, it is assumed that the Joint venture and bidding agreement concerned is concluded between direct competitors on the market of the public procurement concerned.

The Commission has reasonably assumed that said undertakings, as direct competitors, were able to independently participate in the public procurement procedure, and that therefore existed no reason to conclude the Joint venture and bidding agreement, which suggests that in such manner said undertakings have significantly restricted, distorted or prevented competition on the relevant market.

Furthermore, it is established that the Joint bidding agreement concerned is not exempt from the prohibition by the Commission.

In view of the assessment of the fulfilment of conditions from Article 35(1) of the Law for instituting *ex officio* proceedings for the investigation of competition infringement, pursuant to the provision of Article 35(2) of the Law, it is decided as in Paragraphs I and II of enacting terms herein.

Pursuant to the provision of Article 40(1) of the Law stipulating that conclusions on instituting *ex officio* proceedings are to be published in the Official Gazette of the Republic of Serbia and on the website of the Commission, it is decided as in Paragraph III of enacting terms herein.

Instruction on legal remedy:

This conclusion is not susceptible to special appeal, but is permitted to institute an administrative dispute by appealing to the Administrative Court against the final decision of the Commission.

PRESIDENT OF THE COMMISSION

Dr Miloje Obradović