



Republic of Serbia
**COMMISSION FOR PROTECTION
OF COMPETITION**
25 Savska St, 4th Floor, Belgrade
Number: 4/0-01-274/2020-1
Date: February 6, 2020

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 SHALL BE INSTITUTED *ex officio* for investigating the infringement of competition against the following companies:

- MITECO-Kneževac doo Beograd, with registered office at 39 Oslobođenja St., Belgrade-Rakovica, company number 07056877, whose legal representative is Nevena Čolić Mohora, CEO;
- YUNIRISK doo Beograd, with registered office at 18 Simina St., Belgrade-Stari grad, company number 08627240, whose legal representative is Vladimir Matović, CEO;
- MODEKOLO doo Beograd, with registered office at 9g Đorđa Stanojevića St., Belgrade-New Belgrade, company number 20197919, whose legal representative is Milorad Pejić, CEO;
- BREM GROUP doo Beograd, with registered office at 39B Oslobođenja St., Belgrade-Rakovica, company number 20188090, whose legal representative is Mladen Lalić, CEO;
- KEMIS doo Valjevo, with registered office at 91/92 5 Bulevar palih boraca Blvd., Valjevo, company number 20086904, whose legal representative is Zoran Milovanović, CEO;

in order to establish the existence of a restrictive agreement referred to in Article 10 of the Law on Protection of Competition.

II All persons are invited to submit data, documents or other relevant information in their possession that could contribute to the accurate fact-finding in this proceeding to the Commission for Protection of Competition, 25 Savska St., 4th Floor, Belgrade.

III This conclusion shall be published in the Official Gazette of the Republic Serbia and on the website of the Commission for Protection of Competition.

Rationale

Based on publicly available information, the Commission for Protection of Competition (hereinafter, the Commission) obtained knowledge of the facts that the Ministry of Environmental Protection (hereinafter, the Contracting Authority) had carried out the Public procurement – Permanent disposal of hazardous waste services in company in liquidation Magnohrom d.o.o. Kraljevo, PP No. 1.2.32/18 (hereinafter, PP “Magnohrom”), announced on August 30, 2018. Based on the contract award decision, available on the Contracting Authority’s website, it is established that only one group of bidders has submitted a bid in the public procurement concerned.

In accordance with the powers conferred on it, the Commission contacted the Contracting Authority with a request for the provision of all relevant documentation. In line with the request, the Contracting Authority has provided a report on the expert evaluation of bids, minutes on opening of bids and a copy of the bid submitted by a group of bidders in the public procurement concerned, with annexes to the bid proving conformity with requirements for participation provided for in the tender documentation.

By reviewing publicly available information and the dossier presented, it is established that the only bid was submitted by a group of bidders consisting of undertakings as presented in the table below:

Public procurement	Members of the bidding group					
PP "Magnohrom"	Miteco doo Beograd	Yunirisk doo Beograd	Modekolo doo Beograd	Brem Group doo Beograd	Kemis doo Valjevo	Anahem doo Beograd

Based on publicly available information, the Commission was able to ascertain that the Contracting Authority has carried out an additional public procurement in the same period that concerned the same services, specifically the Negotiating procedure without publication of the invitation to submit bids – Evacuation and permanent disposal of hazardous waste services in the territory of the Republic of Serbia, PP No. 1.2.24/18, announced on August 30, 2018. Based on publicly available information and the dossier presented, the Commission obtained knowledge on bidders in this public procurement as well:

Public procurement	Members of the bidding group					
Negotiating procedure		Yunirisk doo Beograd	Modekolo doo Beograd	Brem Group doo Beograd	Kemis doo Valjevo	Institute Mol doo Stara Pazova

Based on the evidence presented, the following can be stated:

- only one bid was submitted in each of the two public procurements by a group of bidders;
- the bidding groups in both public procurements consist of four identical undertakings, while in PP "Magnohrom", whose value of procurement is smaller than the public procurement carried out in negotiating procedure, a fifth member of the bidding group emerges;
- both public procurements require holding the SRPS ISO/IEC 17025 certificate, relating to laboratory operations. Based on documents at the Commission's disposal, it can be concluded that laboratories are selected and contracted by bidders.

Upon the examination of complete available documentation, the Commission established that for individual members of the bidding group in PP "Magnohrom" was possible to form a smaller group, while other group members, in cooperation with some of the certified laboratories, could have formed a second group, thus a competing bid, given the fact that both smaller groups in such manner could have fulfilled the requirements for participation provided for in the tender documentation. The fact that smaller groups also need to contract a certified laboratory holding the SRPS ISO/IEC 17025 certificate was analyzed from the perspective of existence of a larger number of certified laboratories that could be contracted by bidders, such as, for instance, Institute Mol doo Stara Pazova that as a certified laboratory was contracted in a public procurement carried out in negotiating procedure during the same period, or some of the remaining certified laboratories.

Accordingly, the Commission had reasonable belief that members of the group of bidders in PP "Magnohrom", namely companies Miteco doo Beograd, Yunirisk doo Beograd, Modekolo doo Beograd, Brem Group doo Beograd, and Kemis doo Valjevo, have made collusive bidding agreements in the public procurement concerned as a single bidding group with one joint bid, thus waiving in mutual competition with separate bids submitted by smaller groups of bidders.

The provision laid down in 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) states that restrictive agreements are prohibited and void, except in cases of exemption from the prohibition pursuant to the Law.

In line with an earlier position of the Commission¹, agreements on joint bidding in public procurements entered into by the competing undertakings shall not be considered to be restrictive agreements within the meaning of Article 10(1) of the Law, provided that (1) none of the parties to the agreement could independently participate in a public procurement under the requirements for participation provided for in the tender documentation, or (2) none of the parties to the agreement could participate in a public procurement by submitting a separate joint bid. The agreements on joint bidding in public procurements that do not meet the above-mentioned requirements represent restrictive agreements within the meaning of Article 10(1) of the Law.

In view of the assessment of the fulfilment of conditions from Article 35(1) of the Law for instituting *ex officio* proceedings to investigate the infringement of competition, 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 Article 40(1) of the Law stipulating that a decision on instituting proceedings *ex officio* shall 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 against the final decision of the Commission.

PRESIDENT OF THE COMMISSION

Nebojša Perić

¹ Implementation of Article 10 of the Law on Protection of Competition concerning certain forms of cooperation between undertakings in public procurements, available at <http://www.kzk.gov.rs/kzk/wp-content/uploads/2016/12/Primena-%C4%8Dlana-10.-Zakona-o-za%C5%A1titi-konkurencije-na-odre%C4%91ene-oblike-saradnje-izme%C4%91u-u-%C4%8Desnika-na-tr%C5%BEi%C5%A1tu-u-postupcima-javnih-nabavki.pdf>