



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

25/IV Savska Street, Belgrade

Number: 4/0-01-464/2023-1

Date: April 20, 2023

Pursuant to Article 35, paragraph 2 of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia” no. 51/2009 and 95/2013), the President of the Commission for Protection of Competition hereby issues the following

CONCLUSION

I The *ex officio* competition infringement investigation **PROCEDURE IS HEREBY INITIATED** against the following companies: KTG Solucije doo Subotica, seated in Subotica, 60 Venac Bratstva jedinstva Street, Subotica, reg.no. 21181030, legally represented by the Director Milica Nikoletić and Eco sense doo Subotica, seated in Subotica, 3 Graničarska Street, reg.no. 21696625, legally represented by the director Darko Putnik for the purpose of determining the competition infringement, as referred to in Article 10 of the Law on Protection of Competition.

II All persons having data, documents or other relevant information that may be significant for determining the factual situation in this procedure, are hereby invited to submit them at the address of the Commission for Protection of Competition, 25 Savska Street, Belgrade.

III This conclusion shall be published in the “Official Gazette of the Republic of Serbia” and webpage of the Commission for Protection of Competition.

Rationale

The Commission for the Protection of Competition (hereinafter referred to as: The Commission) discovered, through the Public Procurement Office, that the company KTG Solucije d.o.o. Subotica, with its headquarters in Subotica, 60 Venac Bratstva jedinstva Street, in Subotica, reg.no. 21181030, whose legal representative, the Director Milica Nikoletić (hereinafter referred to as: the KTG Solucije doo), as a bidder involved in certain public procurement procedures, withdrew from bids, which is why the contracting parties concluded contracts with the second-ranked bidder, the company Eco sense doo Subotica, with its headquarters in Subotica, 3 Graničarska Street, reg.no. 21696625, whose legal representative, the Director Darko Putnik (hereinafter referred to as: The Eco sense doo company), but at higher prices compared to those offered by the KTG Solucije doo company. The subjects of disputed public procurements were materials and means for maintaining the facilities’ hygiene.

The Commission, by reviewing the documentation it obtained from the Office for Public Procurement, and based on publicly available data on the Public Procurement Portal, determined the following:

- in the public procurement procedure number 05/2022 of the contracting authority PUC "Stadion" Subotica, company KTG Solucije d.o.o. withdrew from the bid on the day of the opening of bids, July 4, 2022, by sending a statement in which it was stated that there was an error made in the course of the preparation of the calculation, so that it is withdrawing from the bid due to the offered unrealistically low price. The offered price of this company was 3,500,390.00 RSD excluding VAT, while the estimated value of the public procurement was 4,000,000.00 RSD. The public procurement procedure ended with the decision to award the contract to the bidder Eco sense d.o.o. with which a contract was concluded in the amount of 3,985,850.00 RSD excluding VAT. A detailed analysis of the bids of both bidders, especially an analysis of the structure of the offered price, shows that the offered prices of both bidders for 38 out of 56 items procured in public procurement are identical, while they differ for the remaining 18 items and are lower, as provided by the company KTG Solucije d.o.o., which withdrew from the offer for the said public procurement. The company KTG Solucije d.o.o. and Eco sense doo were the only bidders in this public procurement;
- in the public procurement procedure 01-02/2022 launched by the ordering party, the Sports Center "Soko" from Sombor, the company KTG Solucije d.o.o. withdrew from the bid, having been awarded the contract by the contracting party, which is why the contracting authority concluded a public procurement contract with the bidder Eco sense doo. The estimated value of the public procurement in question was 1,250,000.00 RSD, the value of the offer of the bidder KTG Solucije d.o.o. 1,030,660.00 RSD, and the contract was concluded with the bidder Eco sense doo, whose offer was 1,098,012.00 RSD. In addition to the said two companies, the bid was also submitted by the third bidder with the highest offered price;
- in the public procurement procedure, number 13/2022, for the lot 4, of the ordering party Special Hospital for Rehabilitation "Banja Kanjiža", the bid of the KTG Solucije d.o.o. company was rejected, that is, it was not considered due to the bidder's withdrawal from the bid within its validity period. The estimated value of lot 4 was 1,980,000.00 RSD, the company KTG Solucije d.o.o. offered 1,008,385.00 RSD, and the company Eco sense doo 1,165,005.00 RSD, to which the subject lot 4 was awarded. Bids were submitted by a total of four bidders, whereby the bids of KTG Solucije d.o.o. and Eco sense d.o.o. were the first, i.e. the second-ranked ones;
- by analyzing the IP addresses (Internet Protocol addresses) from which the companies KTG Solucije d.o.o. and Eco sense d.o.o. accessed the Public Procurement Portal in the said public procurement procedures, either to download tender documents or to submit bids, it was noted that both companies almost always accessed from identical IP addresses;
- the results of the analysis of the IP address indicate that the companies KTG Solucije doo and Eco sense doo accessed the Public Procurement Portal almost always from the same device, which were connected through the same internet network, and possibly even from an identical device.

In accordance with the above, the Commission reasonably assumed that the companies KTG Solucije d.o.o. and Eco sense d.o.o., submitted bids, especially but not exclusively, in the observed public procurement procedures contrary to the statements given in each individual public procurement procedure, i.e. it was reasonably assumed that they did not submit the bids independently, without the agreement with other bidders, which would constitute a competition

infringement, referred to in Article 10 of the Law on Protection of Competition (“Official Gazette of the Republic of Serbia”, number 51/2009 and 95/2013, hereinafter referred to as: the Law).

An agreement or concerted practice of market participants who are competitors to indirectly or directly determine prices or other terms of trade, i.e. divide the public procurement market or otherwise influence the choice of the contracting authority, is a restrictive agreement referred to in Article 10, paragraph 1 and 2, items 1) and 5) of the Law, which is prohibited and cannot be exempted from prohibition in accordance with the provisions of Article 14, paragraph 2 of the Law.

Article 35, paragraph 1 of the Law prescribes that the Commission initiates the procedure of investigation of competition infringement *ex officio*, when, based on submitted initiatives, information and other available data, the existence of competition infringement can be reasonably presumed, as well as in terms of concentration examination, and given that based on all of the above, the existence of violation infringement referred to in Article 10 of the Law was reasonably presumed, the decision has been made as stated in the paragraph I of the wording of this Conclusion.

The Commission shall, in the investigation procedure, in line with Article 41 of the Law, undertake all necessary evidentiary actions in order to correctly determine the factual situation, examine the existence of a competition infringement, and make a final decision upon finalization of the procedure.

In line with provisions of Article 35 paragraph 2 of the Law, decision has been made as stated in the paragraph II of the wording of this Conclusion.

In line with provisions of Article 40 paragraph 1 of the Law, prescribing that the conclusion on initiating the procedure *ex officio*, is published in the “Official Gazette of the Republic of Serbia” and on the Commission’s website, it has been decided as given in paragraph III of the enacting terms.

Legal remedy:

A separate appeal shall not be allowed against this Conclusion, but it may be disputed in the administrative procedure by filing an appeal against the final decision of the Commission.

**PRESIDENT OF THE
COMMISSION**

Nebojša Perić