



## **An assessment of public procurement related cartels under competition law and criminal law – the joint conference of the GVH and PPKE**

**Public procurement cartels qualify as the most egregious violation of competition law and are considered so harmful to society that they are qualified by the criminal law as a crime. The bid rigging activity of bidders in public procurement or in concession situations endanger the rational use of public resources, with cautious estimations suggesting that these practices may increase prices by 10 percent. The conference on the competition and criminal law related aspects of cartels was organised by the Gazdasági Versenyhivatal (GVH – Hungarian Competition Authority) and the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University (PPKE) under the title: “Who bears the actual responsibility? – i.e. the criminal consequences of hard-core cartels”.**

In her introductory speech **Ms. Tevanné Annamária Südi, the Secretary General of the GVH**, emphasised how the GVH has been devoting a huge amount of effort and resources to fighting cartels including bid rigging activities in public procurement cases. The speaker stated that the detection of these practices is particularly important from a social and material point of view, as the “effective and responsible management” of public resources and also the requirement of fair competition are violated by agreements restricting competition. To inform the contracting entities (e.g. heads of county municipalities, mayors of settlements) in the framework of its “Compliance Campaign”, the GVH published a leaflet in 2014 titled: “*Suspected Cartels in Public Procurement*”.

The key to successfully taking steps against cartels is to break the “rule of omerta” so that decisive proofs can be found and obtained. Based on the joint notice published in 2004 by the President and the Chair of the Competition Council of the GVH, the leniency policy came into effect. Since 2009, the rules concerning the Hungarian leniency policy have been contained in the Competition Act itself. In the European Union – contrary to the Hungarian situation – the leniency policy is one of the most important means of fighting cartels.

“This year the GVH is initiating a campaign to introduce the goals and background of its leniency policy with the aim of more effectively and successfully enforcing the public interest tied up with cartel detection” the Secretary General announced, emphasising that bid rigging in public procurement and concession procedures may result in criminal sanctions.

**Dr. Ádám Békés, associate professor of the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University**, reported that “recently the GVH and the National Bureau for Investigation (NBI) investigated a public procurement related competition restriction in close cooperation. At the moment the case is pending before the court. In spite of the fact that the GVH has launched several actions and that since 2005 the Criminal Code has contained provisions dealing with restrictive agreements, no criminal court practice has evolved so far for this kind of violation.” As he said, the

case pending at court has highlighted that the cooperation of the two distinct legal areas (competition law and criminal law) and of the two distinct institutional regimes (GVH and NBI) might bring new results in maintaining and developing the conditions of competitive markets. The associate professor added: “the goals of the conference are to share current practical experience and conclusions stemming from experience, the outlining of probable directions of future development, exchange of views about the possible ways, how still existing procedural difficulties could be overcome and to promote compliance by calling attention to the possible criminal consequences.

At the conference practitioners and theoreticians of the GVH and the Faculty of Law and Political Sciences of the PPCU spoke about the essential connections between competition law and criminal law and provided a comprehensive overview of the conducts that may result in imprisonment, the major types of public procurement cartels, the advantages of the cooperation of the two legal areas and the necessity of maintaining the threat of criminal law in a proportional form from a competition law point of view.

Budapest, 21 April 2015.

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