



GAZDASÁGI
VERSENYHIVATAL

The Supreme Court took side of the GVH in the highway construction cartel case

By its judgement of 3 December 2008, the Supreme Court of Budapest (SCB), rejecting the claim of the plaintiffs, upheld the judgement of 2007 of the Appeal Court of Budapest (ACB) that established that the Hungarian Competition Authority (GVH) had been right. The GVH had previously established that the undertakings – Betonút Rt., DEBMÚT Rt., EGÚT Rt., Hídépítő Rt. and Strabag Rt. – which submitted tenders as a response to an invitation to tender issued in July and August of 2002 by Nemzeti Autópálya Rt. (National Motorway Corp. - NM) concluded an agreement infringing the Competition Act. The undertakings previously agreed between them about the identity of the tenderer acquiring the construction works contract for the particular motorway-sections. In some cases they even agreed that the winners would involve the others as subcontractors. Every large undertaking that could be expected to meet the conditions to be fulfilled by candidates set out in the invitation, was party to the cartel agreement. The total of the fines imposed amounted to HUF 7,043 billion (approx. EUR 27.7 million in January 2006), which have already been paid in by the infringers.

The GVH commenced an ex officio proceeding in February 2003 in order to establish whether the undertakings mentioned above colluded during the open procedure for the award of the public works contracts (with a qualitative preliminary selection of the candidates) of the NM in which the sections Balatonszárszó of the motorway M7, Becsehely-Letenye of M7-M70 and Görbeháza of M3 were put out to tender in August 2002. The proceeding was later extended to the restricted procedure in which the same works had been put out to tender in July 2002 but which was subsequently declared unsuccessful.

Based on the documents, statements and other proofs available, the Competition Council established that the firms had previously agreed between them about the identity of the tenderer acquiring the construction works contract for the particular motorway-sections and of the tenderer, which the general contractor would involve as a subcontractor in the construction works which concerned, as a total, a length of 59.91 km and a growth value of HUF 160 billion (approx. EUR 630 million). After that the first procedure was declared unsuccessful, the concurrence of wills between the tenderers manifesting in price concertation and market allocation remained unchanged for the repeated procedure too.

According to established EU-practice, the most severe sanctions are imposed on cartels of this type for they distort directly and entirely the efficient allocation of resources and result in an increase of the prices.

The market distorting effect of the collusion was significant since every large undertaking that could be expected to meet the conditions to be fulfilled by candidates set out in the invitation participated in it. The prices which came into existence under non-competitive circumstances

could influence for years the prices of motorway construction works in Hungary. The Competition Council, in compliance with its earlier decisions, took into consideration that the infringement concerned the utilisation of public means. Hence, its impact seriously harmed public interest.

All the fined undertakings – Betonút Rt., DEBMÚT Rt., EGÚT Rt., Hídépítő Rt. and Strabag Rt. – appealed the Competition Council's decision at the Municipal Court of Budapest (MCB), the ACB and then the SCB. In its judgement of 23 January 2006 the MCB dismissed the appeal of them, and while the ACB found, with its judgement made on 29 August 2007, the appeals submitted against this judgement to be unfounded.

Rejecting the claim of the plaintiffs, the SCB upheld the judgement of the ACB at today's trial.

The undertakings paid the fines imposed (in million HUF: on Betonút: 2212, DEBMÚT: 496, EGÚT: 496, Hídépítő: 1371, Strabag: 2468) during December 2005 and January 2006.

As the GVH informed the public several times before, injured parties may lodge claims for damages to civil courts in order to get compensation for the harm caused by cartel behaviour. The GVH considers these suits very important, since - as it has been shown by international experience - these actions may have serious deterrent effect on infringers.

Case number: Vj-27/2003.

Budapest, 3 December 2008.

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Facts and figures

I. Invitation to the tender of July 2002

1. Time of invitation: July 2002
2. Invited undertakings:
 - a) Strabag Rt.,
 - b) Hídépítő Rt.,
 - c) Betonút Rt., and
 - d) EGÚT Rt.
3. Opening date of the bids: 22 July 2002
4. Bids:

Table 1: M3 (Polgár-Görbeháza)

Candidate	Consortia	Bid/million HUF/net	Winner
<i>M3 Görbeháza 2002 Konzorcium</i>	<i>EGÚT- D-Profil Kft.</i>	15.854	x
Bihar Konzorcium	Strabag-Hoffman Rt.	16.952	
Tiszántúli Autópálya Építő Konzorcium	Betonút- Kutas BB Kft.	18.111	

Table 2: M7 (Balatonszárszó)

Candidate	Consortia	Bid/million HUF/net	Winner
<i>M7 Balaton Konzorcium</i>	<i>Hídépítő-Strabag-Penta Kft.</i>	54.650	x
M7 Balaton 2002 Konzorcium	EGÚT- D-Profil Kft.	59.996	
Balatoni Autópálya Építő Konzorcium	Betonút- MÁV Hídépítő	62.971	

Table 3: M7 (Becsehely)

Candidate	Consortia	Bid/million HUF/net	Winner
<i>Adria Autópálya Építő Konzorcium</i>	<i>Betonút- Kutas BB. Kft</i>	14.549	x
M7 Zala Konzorcium	Strabag-Kaiser Rt.	15.142	
M7 Határ Konzorcium	Hídépítő-Penta-Viadom	15.000	

Table 4: M70

Candidate	Consortia	Bid/million HUF/net	Winner
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<i>M70 Mura Konzorcium</i>	<i>Strabag-Hídépítő-Hoffman</i>	24.355.112	x
Zalai Autópálya Építő Konzorcium	Betonút-Mélyépítő Bp.	25.114.937	
M70 Letenye 2002 Konzorcium	EGÚT-D-Profil	26.310.232	

5. Date of declaring unsuccessful: 23 July 2002

II. Open procedure with a qualitative preliminary selection of the candidates, August 2002

6. Date of announcement: 26 August 2002

7. Candidates:

- a.) Strabag (all sections),
- b.) Hídépítő- Betonút konzorcium (all sections),
- c.) Egút- Debmút (all sections),
- d.) Betonút¹ (by oneself M3, M7-M70 sections),
- e.) Hódút² (M3 sections)

8. Bids received:

Table 1: M7-M70

Candidate	Undertakings	Bid (million HUF - net)	Winner
Országhatár Konzorcium	Hídépítő – Betonút	47.240	
M7–M70 Közös Vállalkozás	EGÚT– DEBMÚT	47.533	
<i>Strabag</i>		44.880	x

Table 2: M7 Balatonszárszó

Candidate	Undertakings	Bid (million HUF - net)	Winner
<i>Szárszó Konzorcium</i>	<i>Hídépítő – Betonút</i>	65.159	x
M7 Balaton Közös Vállalkozás	EGÚT– DEBMÚT	70.701	
Strabag		69.114	

Table 3: M3 Görbeháza

Candidate	Undertakings	Bid (million HUF - net)	Winner
<i>M3 Görbeháza 2002 Közös Vállalkozás</i>	<i>EGÚT-DEBMÚT</i>	18.055	x
M3 Konzorcium	Hídépítő-Betonút	18.666	
Strabag		18.977	

¹ Had not been prequalified, because of lack of reference

² Had not been prequalified, because of lack of reference