
Workwear manufactures acquitted of cartel activities

10.9.2019

The District Court of Glostrup has acquitted two businesses and two senior employees who were suspected of price rigging in a bidding process for a workwear framework agreement. In the Court's opinion, it had not been proved with sufficient certainty that the cooperation had as its object or effect to restrict competition. The Court therefore acquitted both manufacturers and the two senior staff members, the latter thus escaping the prison sentence sought by the Prosecution.

By assistant attorney Maria Gartenmann

Judgment of 24 September 2019 by the District Court of Glostrup

In 2014, five departmental authorities invited tenders for delivery of workwear under a framework agreement. The agreement consisted of five subcontracts, one of which concerned footwear and another concerned logistic services. One of the bidders, Bacher Logistics, bid for all five subcontracts, while another, Bjerregaard Sikkerhed, only bid for the footwear contract.

Strange details in the bids

The contracting authority noticed some peculiarities in the bids and therefore contacted the Danish Competition and Consumer Authority. As an example, both businesses had stated the same prices in the footwear sub-contract and had even made the same mistake by setting the price of one product at DKK 0. When contacted by the contracting authority, one of the bidders offered to correct the error and informed the authority that the other bidder would like to do the same.

Subsequently, material emerged showing that the bidders intended to "collude" in the tender process. The material included i.a. some emails exchanged between two senior employees from the manufacturers and material relating to the parties' participation in and discussions at an "annual meeting".

Dismissal of the claim

In the criminal action, the Prosecution had claimed that the two senior employees should be given prison sentences. A similar claim has been made in the demolition cartel cases, but has not yet been sustained by the courts. Read more about the demolition cases in our [previous news article](#).

The District Court of Glostrup found that the manufacturers are not competitors, and that it was not unusual for bidders to cooperate when bidding for contracts. Bacher Logistics is primarily a provider of logistics services, while Bjerregaard Sikkerhed is a wholesale supplier of footwear. Thus, the Court held that the only purpose of the annual meeting and the "collusion" was to make Bjerregaard a sub-contractor to Bacher. It was therefore not uncommon for Bacher to use material from Bjerregaard as a basis for its bid.

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The Court further held that the emails exchanged between the two senior staff members were not an indication of price fixing between the parties. Finally, the Court noted that while the bidders' identical prices could indicate bid rigging, there was no other material to substantiate this.

In these circumstances, the Court concluded (read the judgment [here](#)) that the evidence presented was not sufficient to establish that the cooperation had as its object or effect to restrict competition. Both businesses and their employees were therefore acquitted.