21 February 2018: Public contracts in Martinique

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The Autorité de la concurrence sanctions 3 Martiniquan companies belonging to the Fontaine group for entering into an anticompetitive agreement

Facts

Two Martiniquan social landlords, the Société Martiniquaise de HLM (SMHLM) and the OZANAM company had issued in 2011 a public invitation to tender for the maintenance of green spaces adjacent to their buildings.

Among the applications, those presented by the companies belonging to the Fontaine group showed a great homogeneity (identical use of writing, paragraphs, vocabulary, illustrations, and cost assessment of the technical and human services offered). Each of the companies of the Fontaine groupe had submitted separate offers, presented as competitive, while they had been elaborated in a centralized fashion, as recognized by the leaders of the concerned companies. The aim was to circumvent the market allotment requirements, especially the limitation of lots allocated to one and only one company.

The French Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF) then offered them a settlement, which they refused. The case was then referred to the *Autorité de la concurrence*.
Rules governing the exchanges between the companies of the same group.

Harmful practices but with a limited impact

The *Autorité* recalls that in the framework of a call to tenders, companies belonging to a group have two options: they can either give up their commercial autonomy or agree on which company is in the best position to answer the call to tenders. In this hypothesis, they can only submit one offer. Or, these companies can choose to each present an offer provided that they have not discussed to elaborate these offers. In this last hypothesis, every agreement before the submitting of offers is constituent of a cartel.

Sanctions

In the light of the circumstances of the case, the *Autorité* pronounced a sanctioning fine of 60,000 euros against Madianet, most prominent subsidiary of the Fontaine group, and of 10,000 euros for SARL Groupe Fontaine and SCEA Les Bougainvillées.

The articulation of powers between the DGCCRF and the Autorité in view of the settlement procedure

Since 2008, the Minister of Economy, via the DGCCRF, has had the power to deal with anti-competitive practices affecting local markets engaged in by businesses with annual turnovers lower than certain thresholds by imposing fines of up to €150,000 per firm (subject to a limit of 5% of annual turnover). In case of a refusal – as it is the case here – the DGCCRF refers the case to the *Autorité* which then assesses if the facts justify a sanction.

> See the full text of Decision 18-D-02 of 19 February 2018 regarding practices implemented in the maintenance of green spaces in Martinique

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