

**The CNMC has fined 6 of the main construction companies in Spain 203.6 million euros for altering the competitive process in infrastructure construction tenders for more than 25 years**

- The sanctioned companies are: Acciona Construcción S.A., Dragados S.A., FCC Construcción, Ferrovial Construcción, Obrascón Huarte Lain S.A., and Sacyr Construcción S.A.
- Since 1992, the companies met on a weekly basis and decided on the public contracts on which they would share technical work in their bids.
- They also exchanged information on their bidding strategy for public tenders.
- Among the thousands of tenders affected, there are infrastructures of general interest such as hospitals, ports, airports, roads, etc.

**Madrid, 7 July 2022.-** The CNMC has imposed fines totalling xxx euros on six of Spain's leading construction companies: Acciona Construcción S.A. (29.4 million euros), Dragados S.A. (57.1 million euros), FCC Construcción (40.4 million euros), Ferrovial Construcción (38.5 million euros), Obrascón Huarte Lain, S.A. (21.5 million euros) and Sacyr Construcción S.A. (16.7 million euros) for having altered thousands of public tenders for construction and civil works for 25 years. [\(S/0021/20\)](#).

This conduct constitutes a very serious infringement of Article 1 of Spanish Competition Law 15/2007 of 3 July and Article 101 of the Treaty on the Functioning of the European Union.

These particular practices have been especially harmful to society, as they affected thousands of tenders issued by Spanish public administrations for the construction and building of infrastructures such as hospitals, ports and airports, roads etc.

The public administrations affected include mainly those belonging to the Ministry of Public Works (currently the Ministry of Transport, Mobility and the Urban Agenda) and its dependent bodies and public business entities.

## **Conduct and *modus operandi* of the group**

Since 1992, the group of sanctioned companies met weekly to analyse public works tenders that had been published on different state procurement platforms.

At the meetings, the companies decided on the tenders in which they would share — among all of them or among a sub-group — part or all of the work that would make up the technical bids for the tenders. The work was commissioned jointly by the members of the group from external companies.

The companies could not modify the jointly generated work to include it in their bids without the knowledge and approval of the other members of the group. The only customisation allowed was the inclusion of logos and names of each company in the joint document in order to give the administrations an appearance of independence in the presentation of bids. The companies developed complex rules of operation that evolved over the course of their anti-competitive conduct.

In addition, at the weekly meetings, the companies exchanged sensitive commercial information (other than that necessary to share their work). For example, they would share their intention to bid or not to bid for tenders, or their intention to form temporary joint ventures and the members who would be part of them.

## **Agreements on technical bids**

For construction and civil works contracts for infrastructures of general interest (hospitals, roads, airports, etc.) during the period under investigation, the technical bid was often the most important competitive variable. This reached 70% of the tender score, compared to 30% corresponding to the economic score.

The works shared by the construction companies were always scored by the administration as part of their technical bids<sup>1</sup>. In around 5% of cases, the companies even shared the bidding project that they were going to present to the administration.

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<sup>1</sup>The shared works covered mainly the following areas: Environment, Health and Safety, Measurement Verification, Detailed Study, Topography, Geotechnics, Affected Services (Traffic Deviations, Interference...), Technical Reviews, aspects related to construction projects: recalculation and revision of the project.

Sharing technical bids and exchanging information between bidders **breaches the duty to submit a single tender** and the duty of **secrecy of tenders and eliminates the independence** required of companies in public procurement procedures.

The companies dissolved the G7 in 2017 and expressly stated that these agreements could be contrary to antitrust rules.

### **Effects of the conduct**

The sanctioned collusive agreements have led to **a reduced variety and quality of technical bids** submitted by the companies to the contracting administration.

Their conduct also produced **effects on competing companies**, who competed for public contracts in **competitive disadvantage** compared to the companies of the group, since they had to incur higher costs for the preparation of their technical bids. In addition, as they did not have the same strategic information as the companies of the sanctioned group, **the terms of fair competition among all bidders were altered**.

The aggregate effect the collusive practices had on competition must be taken into account, due to **to the large number of construction works involving shared information** between the companies of the group, **the high value of the said construction works and the long duration of the anti-competitive practices**.

### **Economic sanctions and prohibition of contracting with the administration**

This conduct constitutes a very serious infringement of Article 1 of Spanish Competition Law 15/2007 of 3 July and Article 101 of the Treaty on the Functioning of the European Union, which entails the following sanctions:

- Acciona Construcción S.A. 29.4 million euros
- Dragados S.A. 57.1 million euros
- FCC Construcción S.A. 40.4 million euros
- Ferrovial Construcción S.A. 38.5 million euros
- Obrascón Huarte Lain S.A. 21.5 million euros

- Sacyr Construcción S.A. 16.7 million euros

The CNMC declares the proceedings against the company Lantania S.A. to be closed.

The sanctioned anti-competitive conduct has lasted beyond the date of entry into force of the prohibition of contracting (22 October 2015) and therefore the resolution is referred to the Public Procurement Advisory Board to determine its duration and scope.

The CNMC would like to point out that an administrative appeal may be lodged directly with the National High Court against these decisions within two months from the day following their notification.

Further information:

**[The CNMC has ordered to restart the processing of the civil works proceedings.](#)**