

ACM confirms that wind farm developers are allowed to submit joint bids in tender processes for wind farms in the North Sea

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Two wind farm developers are allowed to submit joint bids in tender processes organized by the Dutch government for wind farm projects in the North Sea near the Dutch coastal city of IJmuiden. A wind farm developer wishes to submit bids with a partner. By developing and operating the wind farms together, they are able to spread the risks, and thus reduce those risks, such as financial risks and construction risks. That will enable them to have the opportunity to submit a more competitive bid, and increase their chances of successful and on-time realization. As a result, the collaboration between these businesses can contribute to making the Dutch energy supply more sustainable. At the request of the wind farm developer, the Netherlands Authority for Consumers and Markets (ACM) has confirmed that the collaboration is compatible with the competition rules, and that, in this case, joint bids are allowed.

Joint bids in tender processes for wind farms IJmuiden Ver Gamma-A and Gamma-B

Despite the fact that joint bids for offshore wind farm contracts are common, the wind farm developer argues that it is insufficiently clear under what circumstances it can collaborate with others in light of the competition rules. With this informal guidance, businesses that wish to submit joint bids in tender processes are given the desired clarity by ACM regarding the circumstances under which this is possible.

Over these past few years, the development of offshore wind farms has come under pressure. For example, the most recent tender process for an offshore wind farm in the Dutch part of the North Sea was unsuccessful, because no bids had been submitted. The investments that are needed for the construction of a wind farm are large. That can make it difficult for wind farm developers to secure the necessary funding. Due to the market circumstances, and the magnitude, costs, and risks of these offshore wind farm projects, the wind farm developer expects not to be able to submit a competitive bid on its own. That is why it wishes to collaborate with another wind farm developer.

Informal assessment: ACM does not see any objections

ACM has informally assessed the Initiative in accordance with the Policy Rule regarding ACM's oversight of sustainability agreements, and does not see any objections. A joint bid submitted by businesses that could have submitted individual bids for the same tender process may fall under the cartel prohibition. In this case, ACM does not expect the joint bid to restrict competition. Key factors in ACM's assessment include the collaboration's objective and scope. For example, the collaboration is aimed at truly jointly developing and operating the wind farms, and is only limited to two specific tender processes. No arrangements are made about future tender processes. Other important

factors are the required investments, the fact that the agreement is not secret, and that sufficient other bidders are expected, as a result of which sufficient competition will remain in the tender processes.

In addition, businesses must handle competition-sensitive information with care, and prevent situations where they exchange information that is not necessary for the joint bid. If businesses wish to submit joint bids, ACM expects them to identify such potential risks before submitting their joint bid, and to take appropriate measures.

Given the fact that the tender processes in question are still ongoing, ACM does not disclose the names of the businesses involved in the collaboration.

More information

- Arrangements between businesses regarding sustainability (in Dutch)
- Policy rule ACM's oversight on sustainability agreements | ACM

<https://www.acm.nl/en/publications/acm-confirms-wind-farm-developers-are-allowed-submit-joint-bids-tender-processes-wind-farms-north-sea>