

As.so.li. *et* Truelite

VS.

Provincial
Government of
Bolzano

in re Resolution No. 882
before Administrative Tribunal of
Bolzano

Resolution No. 882

May 25, 2010:

The Provincial Government of Bolzano issued the Resolution n. 882

Goals:

- Upgrade the o.s. installed on the 145 servers of the Administration;
- Buy CAL for 4,000 clients;
- Buy some other software tools.

Resolution No. 882

The recitals (whereas) of the resolution makes clear that:

- The Provincial Government conducted a reserved negotiation with Microsoft; and
- The resolution is just intended to create the administrative “authorization” for the Provincial Government to enter into the contract at the terms and conditions already agreed.

Resolution No. 882

The Provincial Council's resolution established:

- *“To enter in an Enterprise Agreement with Microsoft to buy software licences”;*
- *“To approve an overall expense of € 2,234,279.56”*

Pre-judicial stage

June 4, 2010:

Associazione per il software libero APS wrote to the Administration, claiming that che Resolution No. 882 breaches the Law in many aspects

July 23, 2010:

The Administration replied maintaining that the Resolution is fully lawful

Lawsuit

July 23, 2010:

Associazione per il software libero and Truelite S.r.l. served the complaint to the Administration and the sole counter-interested (Microsoft)

August 2, 2010:

The complaint is filed before the Regional Administrative Tribunal of Bolzano

Legal Background

Art. 68, Code of Digital Public Administration

(Legislative Decree no. 82 of March 7, 2005)

“The Public Administrations [...] shall acquire software via a comparative evaluation on technical and economical issues, between the following different solutions available in the market ...”

Legal Background

Art. 68, Code of digital Public Administration

(Legislative Decree no. 82 of March 7, 2005)

- a) Custom developing;
- b) Reuse of software developed by other Administrations;
- c) Proprietary software under licence;
- d) Open source;
- e) Combinations of the above solutions.

Legal Background

Art. 57, Code of Public Contracts

[Legislative Decree no. 163 of 12 April 2006, implementing Directives 2004/17/EC and 2004/18/EC (art. 31)]

“Contracting authorities may award public contracts by a negotiated procedure without prior publication of a contract notice only in the following cases and with a proper motivation [...]”

Claims

Demands:

- To void the resolution;
- To declare the ineffectiveness of the subsequent contract

(under Articles 121 e 122 of the Code of Administrative Trial Procedure, implementing Article 2d of the Directive 2007/66/EC)

Claims

1st count:

- Breach of art. 68 C.A.D.

secondarily:

- Lack of motivation on the Comparative Evaluation

Claims

2st count:

- Breach of art. 57 C.C.P.

secondarily:

- Lack of motivation on the evaluation of art. 57's requirements

