

F I E C

European Construction Industry Federation

EuDA Conference

“STATE AID AND TIED AID”

Examples of threats in Europe

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1905 1st meeting

27 countries
30 federations

Enterprises
- of all sizes
- active in all fields
of building and
civil engineering

-  Full member
-  Observer member
-  Co-operation Agreement



some clarification

FIEC is not in favour of

- closing of markets
- Introducing protectionism

FIEC is in favour of

- fair competition
- on a level "playing field"
- real "reciprocity" with 3rd countries

Geld macht Freu(n)de

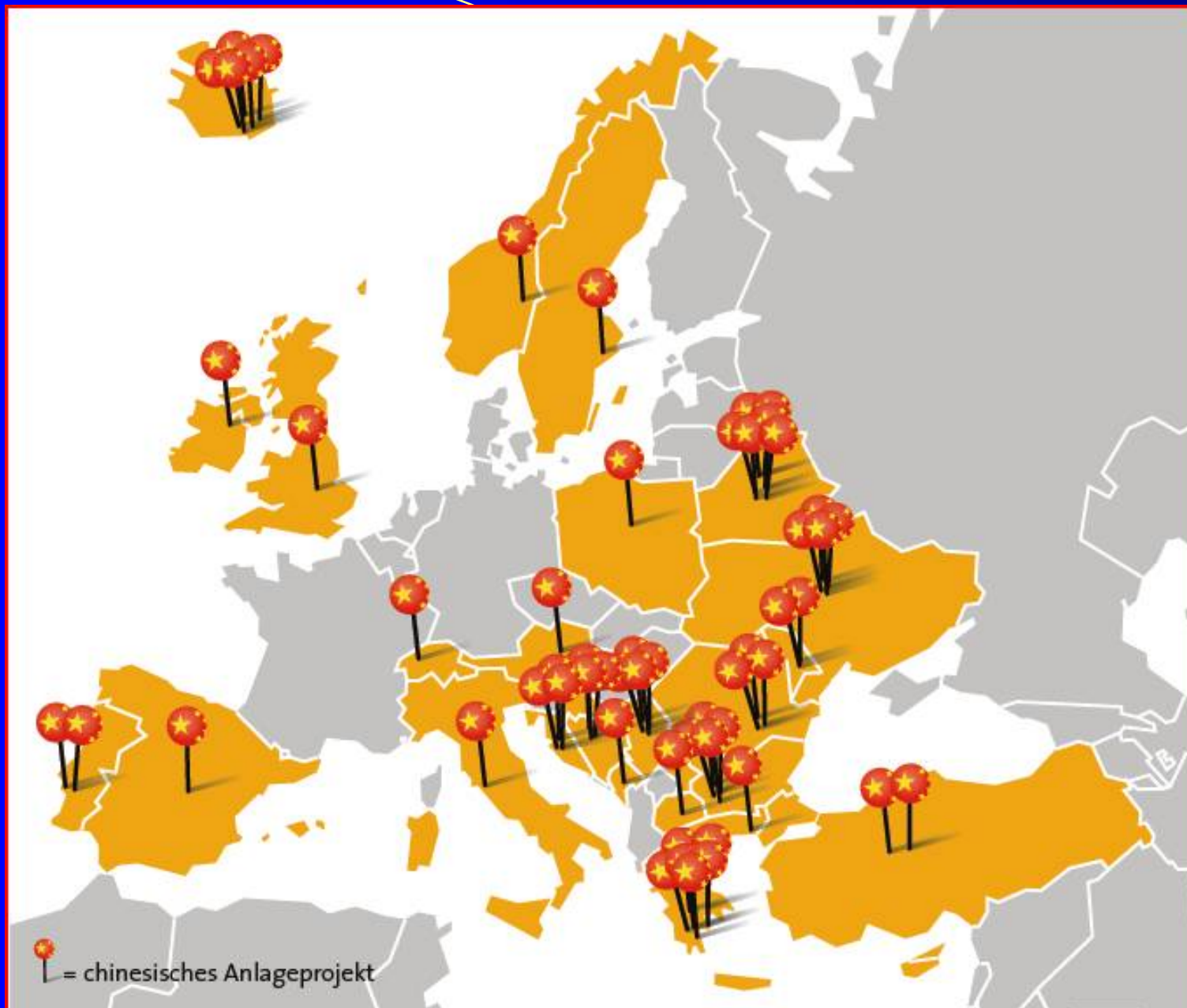
CHINA | Pekings Machthaber nutzen die Krise in Europa und investieren Milliarden in klamme EU-Länder. Dort ist das Geld willkommen – doch die Angst vor Abhängigkeiten wächst.

Strategische chinesische Aktivitäten in Europa



Quelle: Ost-Ausschuss der deutschen Wirtschaft, eigene Recherche

Foreign Investment China's Shoppinglist



Capital
17/2/2011

in order to avoid misunderstandings

- The A2 case is simply an example
- 2 sections motorway are no problem
- The problem is that it is a first step, serving as a platform (so COVEC)
- "good faith", a general EU principle?

Example: motorway A2, Poland



Example: motorway A2, Poland

- Stryków (Łódź) - Konotopa (Warschau)
- 91 km total length, 5 sections
 - A: 29 km, B: 17 km, C: 20 km, D: 18 km, E: 7 km
- client: GDDKiA (Dir Gen of motorways)
- originally tendered as PPP
- then as a traditional project
- FIDIC Yellow Book (with specific cond.),
i.e. contractor's design

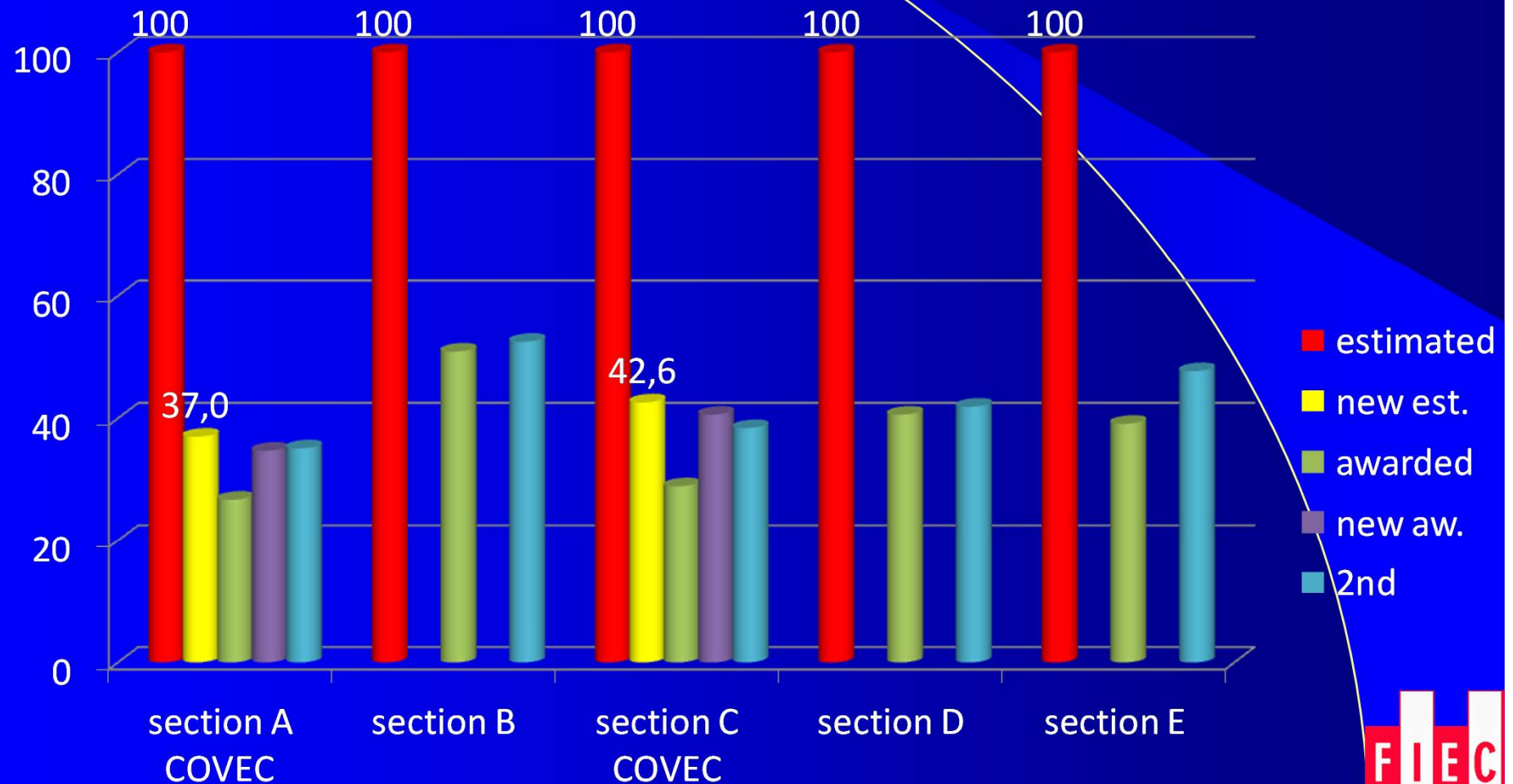
time line of award procedure

- 14/8/2009 tenders opened
- 17/8/2009 ALT-request to COVEC
- 19/8/2009 COVEC-explanations
- 7/9/2009 "protest" of 2nd to GDDKiA
- 11/9/2009 rejection of "protest"
- 17/9/2009 appeal to nat. proc. office
- 28/9/2009 award to COVEC
- 17/11/2009 rejection of appeal

... and then?

- ?/6/2011 GDDKiA terminates contracts
 - non-respect of deadlines,
 - non-payment of sub-contr.
- ?/6/2011 COVEC terminates contracts
 - low quality of plans
 - unexpected problems
 - increased material prices
- 2-9/8/2011 new award of lots A and C

A2: client's estimation ./ award price



A2: EU procurement aspects

no infringement proven, all is fine, say

- the client GDDKiA (“protest” decision)
- the national procurement office (“appeal”)
- the EU-Commission
- the EIB (referring to CEC)

A2: EU procurement aspects

some food for thoughts:

1. tender signed by person without power (“mentioned too late”)
2. guarantee on Chinese bank without activity in EU (“corresponds to tender”)
3. 30 positions priced “0 zł”, although each position had to be priced (“not an unconditional obligation”)

A2: EU procurement aspects

some food for thoughts (ALT):

4. 100 million USD cash for tender phase, plus further payments after award
5. no need for expensive European credits
6. efficient organisation of work
7. no need for risk margins
8. use of own construction machines

A2: EU procurement aspects

some food for thoughts (ALT):

9. cheaper costs of Chinese personnel
10. unique organisation methods
11. low benefit margin
12. price calculated on assumption of winning 2 lots, so advantage of scale

→ **Conclusion: all is fine!** 😊

A2: state aid aspects

State Council of the People's Republic of China

State-Owned Assets Supervision and Administration Commission
SASAC

List of Central State Owned Enterprises

"CRECG"
"controlling shareholder"

"China Railway Group Limited"
created in "CRECG macro reorganization"
joint stock company with limited liability
reg. cap. 12.8bln RMB, 100% by CRECG

COVEC

A2: state aid aspects

- COVEC offered 100 million USD for the tender phase and more after the award until completion
- qualification documents showed net value of COVEC: 97 million USD
- “State aid” is “state aid” only inside EU!
- ➔ **“State aid” from 3rd countries irrelevant for fair competition?**

A2: funding aspects

- Structural funds 2007-2013 for PL: 67 billion € (+ 630 million € in June 2010)
 - EIB loan: 500 million for the 5 sections
 - EIB loans for numerous projects
 - not to forget COVEC/ PRC 😊
 - only condition:
respect procurement directives
- ➔ **good example: US MCC**

A2: environmental aspects

- no problem 😊
- COVEC ensures respect of all national and EU rules on environment
- due to the developments, it was not possible to check this aspect

A2: social aspects

- no problem 😊
 - COVEC assures respect of all rules,
 - in particular concerning salaries/ wages
 - visa, work permits: member state matter
- ➔ COVEC offered higher salaries/ wages,
at least for highly qualified persons
(with a price 30% lower than 2nd ?)

external trade aspects

- PRC member of WTO
 - since, EU share in PRC dropped from 6% to 1%
 - GPA negotiations on-going (DG GROW)
 - PRC offers: considerably weaker than EU offers
 - PRC government procurement barriers
 - annual report, EU-China Chamber of Commerce
 - “symmetric” access unexisting
- **question of access to Internal Market,
not of implementing directives**

external trade aspects

- CEC has exclusive mandate by Member States for trade negotiations
- PL action damages EU position
- Negotiation results not binding for MSt
- Purchases over and above negotiations weaken EU position
- ➔ **needs single voice, fully respected**
- ➔ **needs results to be fully respected**

ideas what to do?

Public Procurement

- bank guarantees from EU/ EEA/ GPA
- genuine check of ALT explanations
- mandatory exclusion of ALT based on illegal state aid
- allow access to EU Internal Market only if absence of illegal state aid proven

ideas what to do?

External Trade

- develop WTO defence for services
- ensure effective “reciprocity” in practice
- strengthen position of CEC:
 - **self-obligation by Member States:**
no action weakening negotiation position
 - **self-obligation by Member States:**
no bi-lateral market opening over and above negotiated reciprocal market opening

Market Access Instrument

- 03/2012 Commission prop.: Regulation
 - stallmate in Council
 - proposal withdrawn by new Commission
 - new proposal “under construction”
- **this will not solve our specific problem of third-country market access**

Foreign Direct Investment (examples)

- High Speed Line Budapest airport-city
- Romanian “wish list”
- Greek offer to sell railway
- PM Cameron, Chancellor Merkel
- VP Katainen mission to China/ Asia
- ➔ **Europe asks for Chinese investments**
- ➔ **consequences for EU industry ???**

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