



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Detecting Anti-competitive Practices in Public Procurement

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Structure of Presentation

Role of the Competition and Consumer Protection Commission

Bid-rigging & Public Procurement

Future Interaction & Co-operation



Competition and Consumer Protection Act 2014

The Competition Authority

National Consumer Agency



**Competition and Consumer
Protection Commission**



Our many functions

Investigating
breaches of
consumer law

Product
Safety

Providing information,
esp. re financial
services

Authorising Credit
Intermediaries

Advising
policy-
makers

Grocery
Regulations

Investigating
Anti-competitive
agreements, inc.
cartels

Investigating
Abuse of
dominance

Mergers &
Acquisitions



Competition benefits everyone ?

Competition law prohibits
agreements between businesses
which have as their object or effect
the prevention, restriction or
distortion of competition



Benefits of Competition

- Value for money – ensuring firms compete on price and quality
- Greater choice – a broader range of products and services
- Innovation and productivity – firms create new products and reduce costs to win customers

Focus is on consumers rather than competitors
Consumer may be the State



Competition Benefits for Public Procurement

The public tender process aims to achieve the
benefits of competition



Cartels







Agreements between competitors

Price fixing

Bid-rigging

Market allocation

Shield themselves from competition

Price-fixing

Cover bidding

Bid Rotation

Bid-rigging

Fraud

Theft

Market-sharing

Bid Suppression



Bid-Rigging

Bid-rigging is a Crime!

Bid rigging on public projects: theft of public funds and steals from society as a whole

Severe penalties reflects harmful nature

Jail for individuals



The Costs of Bid-Rigging

Deprives the State of the benefits of competition

Makes competitive tendering process ineffective

All markets at risk



Cartel Enforcement in Ireland

- First criminal cartel convictions in Europe
- Thirty two criminal convictions on indictment
- First cartel conviction on indictment by a jury in Europe
- Nine custodial sentences totalling 84 months in prison – all suspended
- Fines totalling €600,000



Bid Rigging is a Worldwide Problem



Lifts & Escalators Cartel



Perspective from the Courts (1)

“These businessmen went into this with their eyes wide open and knew that what they were doing was criminally illegal. It was all about greed ...”

March 2006 - Mr. Justice Raymond Groarke



Perspective from the Courts (2)

“Operating a cartel is not a once off criminal act. It is not done on the spur of the moment. It is continuous and requires high levels of planning and organisation. A person seeking to successfully implement a price-fixing agreement decides every day to go into work and therein to commit and conceal a criminal conspiracy. That person, typically will be well educated, business astute, either owns the business or has risen to senior management, and almost certainly will have done a value benefit/detection appraisal. He then proceeds, indefinitely as to duration, ceasing only when confronted. For that person whose persona is representative of carteliers, it is very difficult to say that such behaviour is out of character.”

DPP v Patrick Duffy and Duffy Motors (Newbridge) Ltd

March 2009 - Mr. Justice McKechnie



Perspective From the Courts (3)

“....I say once more that if the first generation of carteliers have escaped prison, the second and present generation almost certainly will not.”

3 April 2009 - Mr. Justice McKechnie



Prevention of Collusive Tendering

Success depends upon:

- ✓ Deterrence
- ✓ Defection
- ✓ Detection
- ✓ The CCPC and Public Procurement Agencies each have an important role to play.



Detection is the Key for Protection

- Bid-rigging schemes are secret and difficult to detect
- Some types of industries are more susceptible to bid-rigging
- Various warning signs may signal a bid-rigging scheme



Industry Characteristics Conducive to Collusion

- Small number of competitors
- Identical or simple product or service
- No significant technological changes
- Active trade association
- Product has few or no close substitutes



Warning Signs



- Comments by bidders/technical consultants suggesting collusion
- Unusual bidding patterns e.g. unusual pricing and rotation:
 - Regular incremental differences between the bids
 - Vastly increased value of a bid compared with a bid from the same bidder on a similar contract
- Correspondence between bidders

Warning Signs



- Communication of Trade Association “protocols” & meetings
- Social networks/forums
- Identical/similar phrases, excuses or spelling mistakes
- Identical miscalculations
- Similar post marks or franking on bid envelopes
- Parts of bids missing from higher bids e.g. bill of quantities

Watch out for.....



- False bids “cover-pricing”
- Non-compete agreements—bid suppression
- Geographic or customer allocation
- Bid-rotation patterns (historical data)
- Sub-contracting schemes
- Site meetings



Preventing Bid Rigging

Protect procurement integrity in key areas:

- Pre-tender preparation & establishment of bidding pool
- Drafting tender specifications
- Awarding contracts
- Training and auditing
- Disclosure of communications



Prevention: Pre-tender Preparation

- Prepare effectively before designing the tender process
- Appropriate pre-qualification criteria
- Reduce barriers to entry: less restrictive criteria
- Reduce frequency of procurement and therefore bid-rigging opportunities

Prevention: Establishing Bidding Pool

- Increase pool of potential bidders
- Know your suppliers and their market prices
- Be aware of price changes for supply inputs (know your cost environment)
- Know prices in other jurisdictions
- Keep bid list confidential



Prevention: Drafting Tender Specifications (1)

- Define requirements clearly and avoid predictability
- Design tender process to reduce communication and flow of competitively sensitive information amongst bidders and between bidders and the tendering authority
- Carefully choose criteria for evaluating and awarding tender



Prevention: Drafting Tender Specifications (2)

- Require disclosure regarding potential subcontractors and their pricing
- Allow substitute products whenever possible
- Regulate joint-bidding
- Avoid predictability – consider aggregating and disaggregating contracts



Prevention: Awarding Contracts

- Avoid splitting contracts between suppliers with identical bids
- Keep tender assessment and awarding process in-house
- Ask questions if prices or bids don't make sense
- Reserve right to not award if suspicion that bid not competitive



Prevention: Training and Auditing

- Educate staff to be aware and look for signs of bid-rigging
- Invite CCPC to do presentations
- Maintain procurement records
- Review tender history periodically, especially in susceptible industries (electronic database/excel spreadsheet)
- Conduct interviews with
 - Suppliers/bidders who no longer offer supply
 - Unsuccessful suppliers/bidders



Prevention: Disclosure of Communications

- Use a “Certificate of Independent Bid Determination or “Certificate of Non-collusion”
- Certificate requires disclosure of communications between bidders
- Establish a complaint mechanism for suppliers to convey competition concerns



Detecting Anti-competitive Practices In Public Procurement

- Industry characteristics: identical or simple product or service
- Warning Signs: Unusual bidding pattern; vastly increased value of a bid compared with a bid from the same bidder on a similar contract
- Watch out for...: joint site meetings
- Prevention: Establishing Bidding Pool: keep the bid list confidential; Know your suppliers and their market prices



Detecting Anti-competitive Practices In Public Procurement

- Prevention: Awarding Contracts: ask questions if prices or bids don't make sense. Reserve right not to award
- Prevention: Disclosure of Communications Certificate of Non-Collusion, Establish a complaint mechanism for suppliers to convey competition concerns



What can you do if you suspect a cartel ?



If you suspect a breach of the Competition Act....

- Listen to what is being said, ask questions
- Thoroughly record details of all relevant behaviour
- Keep bid documents, correspondence, envelopes
- Do not discuss with suspected participants
- Awareness of bid-rigging patterns and warning signs (be suspicious)
- Think about whether to proceed with tender
- Contact the CCPC



How do CCPC investigations start?

Complaints

Whistleblowers

Immunity applicants

Cartel Immunity number: 087 763 1378

CCPC initiated



Investigative Process

Initial Contact/Complaint

Evaluation

Statements & documents

Investigative tools

Develop evidence

Recommendation & file to DPP





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Questions?

Tel: 01 402 5500

Consumer helpline: 1890 432 432

Cartel Immunity Programme contact: 087 763 1378

www.ccpc.ie, www.consumerhelp.ie

Post: PO Box 12585, Dublin 1

