



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Enterprise Ireland

Competition and Consumer Protection Commission's Guide for SMEs on Consortium Bidding

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DJEI Action Plan for Jobs 2014

- See Section 7.2 and APJ Actions # 240-252
- **Action # 248:**

“Provide information to SMEs on approaches to multiparty tendering from a competition and procurement law perspective.”

(OGP, Competition Authority)



Measures to facilitate SME participation in public procurement

- Public Service Reform Plan: move towards **centralised purchasing** and common frameworks
- OGP established to drive consolidated, integrated approach to public procurement
- Various measures to **facilitate SME participation** in public procurement:
 - DPER Circular 10/14
 - EU Procurement Directive 2014/24/EU
- Need for suppliers to consider joint tendering



Guide for SMEs on Consortium Bidding: Scope of the Guide

- Aimed specifically at SMEs who want to form consortium to tender for public contract
- Focus specifically on ensuring compliance with competition law (rather than procurement law)
- Key message: consortium bids permissible under competition law **provided certain conditions met**
- Legal framework for analysis: s.4 of Competition Act 2002 and/or Article 101 TFEU
- Guide does not constitute legal advice: if doubts exist, independent legal advice should be sought



Guide for SMEs on Consortium Bidding: Overview of Content (1)

- Consortium will not breach competition law:
 - If members are **not actual or potential competitors** (subject to information sharing caveats)
 - or
 - If members all part of **same corporate group**



Guide for SMEs on Consortium Bidding: Overview of Content (2)

- Where members are actual or potential competitors => no breach of competition law if:
 - None of members can fulfil requirements of tender competition or contract on its own; and
 - No subset of members could together fulfil those requirements; and
 - Only minimum amount of information strictly necessary is shared between members; and
 - Members compete vigorously as normal in all other contexts



Guide for SMEs on Consortium Bidding: Overview of Content (3)

- In all other cases involving actual or potential competitors:
 - self-assessment applying four criteria in s.4(5) of Competition Act 2002 / Article 101(3) TFEU (i.e. weighing pro- and anti-competitive effects)
- **IN ALL CASES**: consortium must never be used as vehicle to facilitate anti-competitive collusion (e.g. price fixing, market sharing, bid rigging)



Guide for SMEs on Consortium Bidding



Available at:

<http://www.ccpc.ie/news>

(See News Release of 15 December 2014:

“Commission publishes guidance for businesses regarding competition law and consortium bidding”)





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Discussion

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