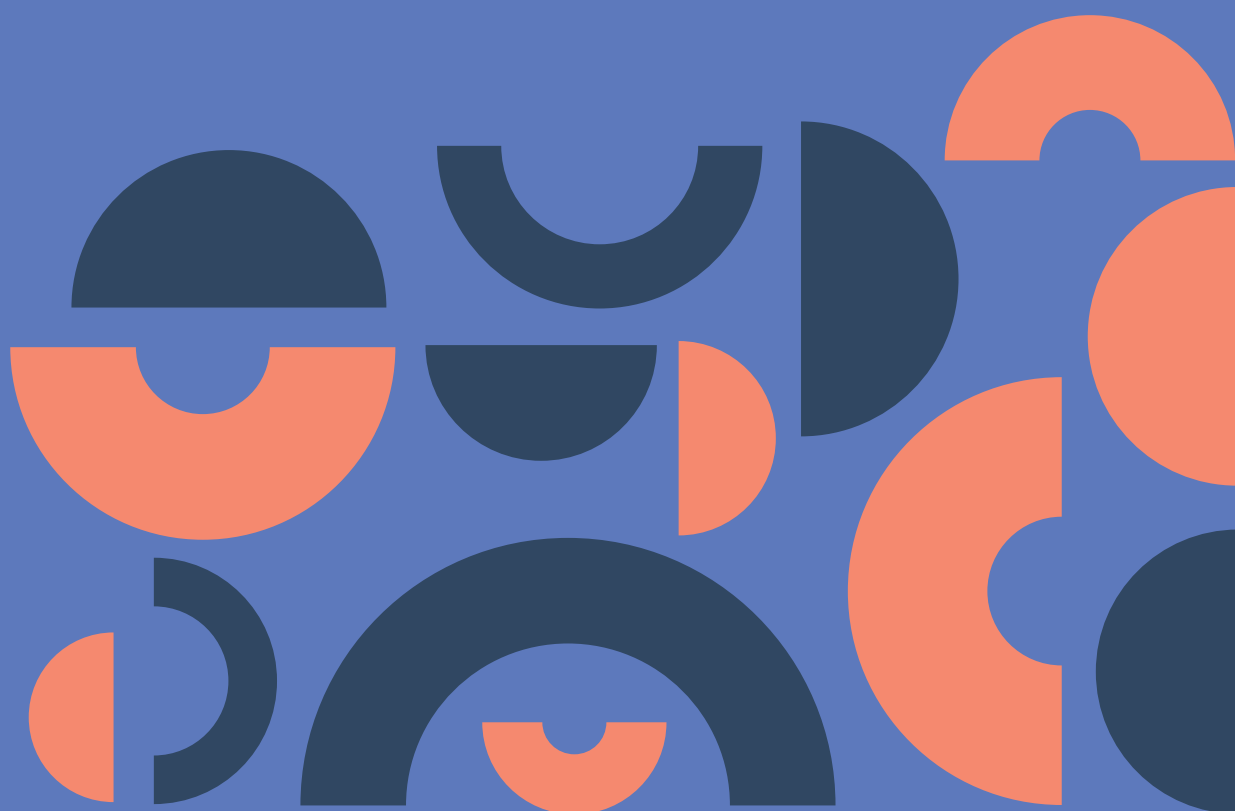




Business Guide

Bid-Rigging

WHAT YOU NEED TO KNOW



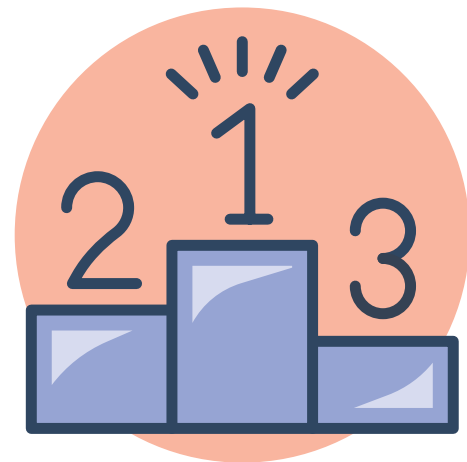
Detecting and preventing bid-rigging in Ireland

Who we are, and what we do

The Competition and Consumer Protection Commission (CCPC) is an independent statutory body with a dual mandate to enforce competition and consumer protection law in Ireland.

The CCPC's mission is to use its statutory powers, knowledge and skills to promote competition and enhance consumer welfare. The CCPC uses its statutory powers to increase compliance with competition and consumer protection law, taking enforcement action where appropriate. The CCPC's ultimate aim is for open and competitive markets where consumers are protected and businesses actively compete.

The CCPC was established in 2014 following the amalgamation of the National Consumer Agency and the Competition Authority.



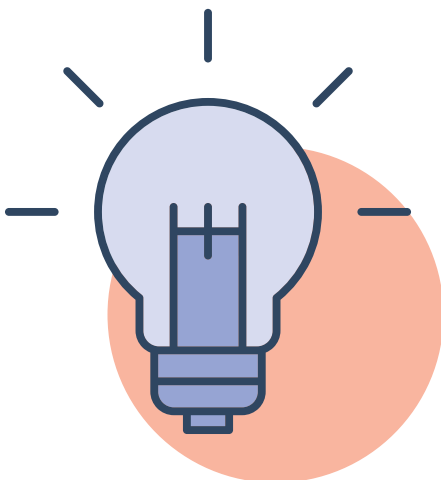
The CCPC and competition in Ireland

The CCPC is responsible for enforcing Irish and European competition law. These laws prohibit anticompetitive agreements and the abuse of a dominant position by firms.

Effective competition directly benefits consumers because firms try to win consumers' business through lower prices, improved quality of goods and services, and greater choice. The CCPC protects this competitive process and ensures that markets work to the benefit of consumers.

We maintain a competitive market in several ways:

- Where there is evidence of businesses engaging in anticompetitive practices the CCPC can intervene.
- We can prevent mergers between businesses that could substantially lessen competition and negatively impact consumers.
- We identify public restrictions on competition and advise the Government on how proposed legislation and regulation may effect competition.



Why competition?

A competitive market has many benefits for consumers:

- It increases choice and ensures a broader range of products and services.
- It increases value for money.
- It drives innovation and productivity because businesses look to create new products to win customers.

These benefits feed into one-another, with businesses, consumers and the wider economy all benefitting because of competition.

What is competitive tendering?

Competitive tendering is a system that awards contracts for public and private services on the basis of competitive bids by potential suppliers. The system promotes competition, and provides consumers with the benefits set out above.

What is bid-rigging?

Bid-rigging is a serious form of anticompetitive behaviour. It happens when a number of suppliers come together and agree not to bid against one-another for a tender or contract. In these cases, the winning tender price may be higher than the price that would be reached through competitive tendering. An open competition means that firms reveal the lowest price at which they are willing to do the job. Bid-rigging also reduces the range of goods and services that consumers can choose from.

What's the harm?

Customers pay more for goods and services than would be the case in a competitive situation. Procurers might also receive goods and services that are of poorer quality because tendering parties have no incentive to take quality into account.

In public procurement, if a government agency is overpaying, then both citizens and companies are worse off. The additional costs can result in fewer public services being delivered, as well as taxpayers paying more for those services.

Types of bid-rigging

Collusive tendering can take many forms, however the most common types are bid suppression, cover bidding, and bid rotation.

BID SUPPRESSION

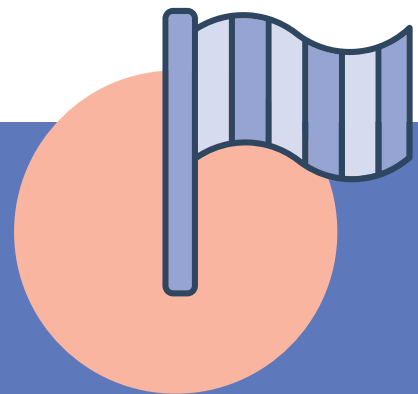
Firms who would normally be expected to bid for a contract agree not to submit bids or to withdraw their bids entirely. This results in another party's tender being selected instead. Removing competitors also means that the incentive to go as low as possible in order to win the contract is removed too.

COVER BIDDING

This is also widely known as protective bidding or shadow bidding. In these cases, competitors agree to submit artificially high tenders that cannot be selected. This allows for one of the other firms to win the contract. They give the appearance of a genuine process but it is never intended for these bids to be selected.

BID ROTATION

Firms continue to bid but agree to take turns winning business and being the designated successful bidder. Competitors may also agree to take turns according to the size of the contract. These schemes need to be sophisticated in order to avoid detection and to ensure that participants receive their agreed share of the value of contracts.



The warning signs of bid-rigging

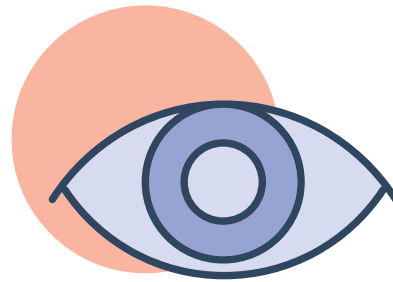
Bid-rigging can be difficult to spot, but for buyers who are concerned that their organisation might be the victim of collusive tendering, there are some key warning signs to look out for, like patterns, pricing irregularities and suspicious behaviour.

► BID PATTERNS

- Some firms regularly submit bids that are much higher than their own previous tenders or the published price lists.
- Geographic allocation patterns appear; for example firms are submitting tenders but never win in a particular area.
- Fewer competitors than normal submit tenders to a competition.
- A likely bidder fails to submit a bid.
- The same contractor is frequently the lowest bidder and has been awarded the contract on a number of occasions.
- A winning firm repeatedly subcontracts work to companies that submitted higher bids on the same projects.
- Unsuccessful bids regularly contain less detail than expected. For companies engaged in bid-rigging, completing tender forms may be a cost they are not willing to take on, especially if an agreement is already in place which means their firm will not win in a particular instance.
- Tender prices appear to drop whenever a new or infrequent bidder submits a tender.
- The winning bidder does not accept the contract and is subsequently subcontracted work by the new winning contractor.

► PRICING IRREGULARITIES

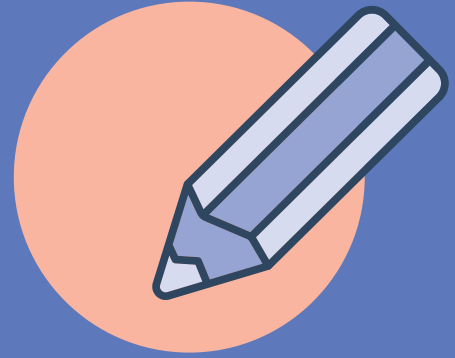
- Losing bids which have been submitted may be identical or vary only to a fixed extent. Unsuccessful bids may also frequently change prices at the same time and to the same extent.
- There is a large and unexplained difference between the winning tender and other competing tenders. Or, a certain company appears to be bidding substantially higher on some tenders than on others.
- Competitors exchange price information among themselves. Exchanges like this can take subtle forms, such as public discussions of the "reasonable" price.



- Local competitors are bidding higher prices for local delivery than for distant deliveries. This might indicate price fixing because the distant sellers would probably charge more for an item to account for the extra transportation cost.
- High local delivery charges may also indicate that a firm is not afraid of losing local business, and does not feel the need to provide competitive prices.
- There are sudden price increases or changes in price.
- Expected discounts or rebates suddenly vanish.

► SIGNS INVOLVING SUSPICIOUS BEHAVIOUR

- There are irregularities in the physical appearance of the proposal, for example identical calculation or spelling errors. The use of identical stationery might suggest that competitors have copied, discussed, or planned one-another's tenders or proposals.
- Competitors meeting as a group with the contracting parties to discuss tender proposals. This may facilitate subtle exchanges of pricing information.
- When competitors file a "joint tender" even though at least one of the competitors could have bid on its own.
- A bidder appears in person to present his tender and also submits the tender of a competitor.
- Competitors regularly socialise or appear to hold meetings, or otherwise get together shortly before the deadline for submitting tenders.



Bid-rigging in Ireland

A case study

Ireland's first conviction for a bid-rigging offence came in May 2017. Brendan Smith and Aston Carpets pleaded guilty to implementing and taking part in a bid-rigging agreement in the procurement of flooring contracts for major international companies between 2012 and 2013. The intention of this agreement was to fix the price, indirectly, for the supply and fitting of floor finishes and also to share the market by over-bidding on alternating tenders. The CCPC uncovered collusion in respect of some 16 contracts during this time.

The case was brought before the Central Criminal Court by the Director of Public Prosecutions (DPP), and followed an investigation by the CCPC. Information had been received from a complainant who made an application under the CCPC's Cartel Immunity Programme. This Programme is operated by the CCPC in conjunction with the DPP, and provides immunity to a member of a cartel if they are the first member to come forward, reveal their involvement in illegal cartel activity, and fully cooperate with the CCPC's investigation.

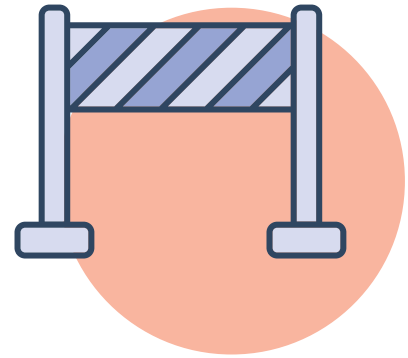
The Central Criminal Court imposed a fine of €45,000 against Mr Smith who was convicted of impeding a criminal prosecution, and was also disqualified from holding a company directorship for five years in accordance with section 839 of the Companies Act 2014.

*"The court is also of the view that...
a fine should be for a sum greater
than the financial gain, so that it
satisfies the requirement that it is
punitive and acts as a deterrent."*

– MR. JUSTICE MAHON

How to prevent bid-rigging

Detecting when bid-rigging is happening is important, however businesses and government agencies involved in public procurement can also take steps to prevent this sort of collusive behaviour.



EXPAND THE LIST OF BIDDERS

- Ensuring the largest number of potential bidders for a contract reduces the ability of conspirators to collude. The larger a group of competitors is, the more difficult it becomes to agree and to coordinate.
- Tender requirements should be clear and easy to follow. This will encourage more companies to bid.
- Keep the cost of bidding down.

KEEP THE PROCESS SECRET

- The identity of bidders should not be disclosed. This will help to stop competitors from contacting one-another and coordinating.
- Avoid providing bidders with unnecessary opportunities to communicate with one-another.
- At the end of the process, carefully consider whether bidding information, such as the firms who bid, and the winning price, should be disclosed publicly.

CHOOSING BETWEEN EQUAL TENDERS

- If identical bids are awarded equal shares of business it can encourage bid-riggers. Business shared equally with other competing firms at higher prices is still preferable to risking uncertainty at lower, competitive prices.

EDUCATE STAFF AND KEEP RECORDS

- Staff involved in procurement, investigators and auditors should all understand the different forms of collusion, and should know what signs to look out for in order to detect this behaviour.
- Keeping records allows for comparisons over time, and helps staff spot patterns. Letting bidders know that you conduct this level of analysis could help to deter potential bid-rigging.

What to do if you suspect bid-rigging?

If you suspect a case of potential bid-rigging then you should make a report to the CCPC. The CCPC will review the information and determine whether to investigate specific breaches as criminal offences or civil infringements, or to use less formal means.

In the event of a criminal prosecution, guilt must be proven 'beyond reasonable doubt'. It is vital that all available information is gathered and preserved as soon as suspicions of anticompetitive behaviour emerge.

Evidence can be in the form of letters relating to price changes, notes of telephone conversations, and records of meetings. Original documents should be preserved in their original state.

PROVIDING INFORMATION:

Any information that is provided to the CCPC is treated confidentially. It is the CCPC's policy not to:

- Talk about individual investigations.
- Reveal the identity of a complainant during an investigation.
- Give the names of organisations or people being investigated.

The CCPC may be obliged to disclose confidential information where it is required to do so by law. This may happen when:

- Disclosure is for the purpose of the administration and enforcement of competition law,
- Disclosure is necessary for the prevention of the commission of a criminal offence,
- Disclosure is made in the course of legal proceedings.



Penalties for breaches

The Competition Act, 2002 (as amended) sets out the rules regulating the competitive process in Ireland. This includes anticompetitive agreements and abuses of dominant positions.

Under the Act, convictions for engaging in cartel activity such as bid-rigging can carry criminal penalties of up to ten years' imprisonment for individuals, and fines of up to €50 million or 20% of turnover (whichever is the greater) for individuals and undertakings.

A company director convicted of a cartel offence will automatically face disqualification from acting as a director for five years.





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