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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Global Forum on Competition**

**FIGHTING CORRUPTION AND PROMOTING COMPETITION**

-- Executive Summary --

**27-28 February 2014**

*This Executive Summary by the OECD Secretariat contains the key findings from the discussion held during Session I of the 13th meeting of the Global Forum on Competition on 27-28 February 2014.*

*More documents related to this discussion can be found at <http://www.oecd.org/daf/competition/fighting-corruption-and-promoting-competition.htm>*

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## EXECUTIVE SUMMARY

*By the Secretariat\**

The 13<sup>th</sup> edition of the Global Forum on Competition held a roundtable discussion on 27 February 2014 to discuss the fight against corruption and the promotion of competition so as to address five main questions:

- The relationship between competition and corruption and the ability of antitrust enforcement to contribute to the fight against corruption;
- The role of competition authorities in fighting corruption;
- The relationship between leniency programmes to fight cartels and the fight against corruption: in particular whether leniency programmes undermine the fight against corrupt officials;
- The co-operation between competition authorities and anti-corruption bodies and the allocation of cases between competition authorities and anti-corruption bodies; and how to fight corruption within competition agencies.

Combating corruption is a top priority for the OECD. The OECD has been at the forefront of the fight against corruption for decades and in particular through one of its important instruments, the Anti-Bribery Convention, which came into force in 1999<sup>1</sup>. There are 40 parties to the Convention today: all of the OECD members as well as Argentina, Brazil, Bulgaria, Colombia, the Russian Federation and South Africa. At the G20 summit in St Petersburg world leaders encouraged all G20 members to engage with the OECD Working Group on Bribery with the view to possible adherence to the Convention. Further, the OECD launched the *CleanGovBiz* initiative, which draws together all OECD anti-corruption tools, reinforces their implementation, improves co-ordination among relevant players and monitors progress towards integrity.

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This Executive Summary does not necessarily represent the consensus view of the Competition Committee. It does, however, encapsulate key points from the discussion at the roundtable, the delegates' written submissions, and the Secretariat's background paper. All documentation related to this discussion can be found at <http://www.oecd.org/competition/globalforum/fighting-corruption-and-promoting-competition.htm>.

Considering the discussion at the roundtable, the delegates' submissions, as well as the panellist's presentations, several points emerge:

- (1) *It was generally accepted that more competition results in less corruption and that the presence of corruption interferes negatively with effective competition policy. Further, an effective way for competition authorities to help the fight corruption is to focus on public procurement. By limiting collusion, competition authorities significantly contribute to reducing corruption in public tenders. Furthermore, if a competition authority detects corruption it then has an obligation to inform the public prosecution.*

The OECD, the Council of Europe and the UN Conventions do not define "corruption". Instead these bodies establish the offences for a range of corrupt behaviour. Hence, the OECD Anti-Bribery Convention establishes the "offence of bribery of foreign public officials", while the Council of Europe Convention establishes offences such as trading in influence, and bribing domestic and foreign public officials.<sup>2</sup> During the discussion Transparency International defined corruption as a misuse of public office for private gain. Corruption happens in every country, to varying degrees. High levels of corruption in a country tend to create unstable governments with a history of conflicts, low GDP per capita income, and very low human development indices. When looking at countries where corruption is prevalent, the ability to move from being a primary-commodity based economy to a human-capital knowledge-driven economy is harder, as epitomised in the low human-development indicators. Thus, the waste and the inefficiency present in the society as a result of corruption continue to reinforce themselves in a vicious circle.

In an open market economy, the incentives to compete are directly linked to the prospects of gaining market shares and market power over the rivals, which in turn allows firms to charge higher prices. Truly competitive markets are few. Oligopolistic competition, which is the case in most if not all markets, generates rents which can be usurped for private gain by individuals. All things being equal one would therefore expect to find fewer opportunities and incentives for corruption in competitive markets. On the other hand, high levels of corruption typically imply high entry barriers into lucrative markets, and create an uneven playing field that results in lower levels of competition, with higher consumer prices as a result. Thus, while competition results in pressure to reduce costs and innovate, driving productivity and overall economic growth particularly through the entry of new businesses; corruption replaces this virtuous circle with a system that rewards inefficient and sometimes outright criminal companies. However, while increased competition tends to lead to less corruption in the long run, increased competition might temporarily lead to an increase in corruption in transition countries, as the advent of new markets and new regulation may create corruption opportunities, for instance in licensing procedures for newly opened markets.

Delegates expressed strong support for measures to fight corruption, including for application of the OECD Anti-bribery Convention, regardless of whether corruption is found to take place domestically or by national companies operating abroad.

Fighting corruption in the private sector is not in itself sufficient to remove corruption: the causes of corruption should also be sought within government. In the same way, focusing only on anti-corruption measures will not address the root causes of the problem either, because those who work primarily on corruption and focus their attention on the fight against corruption will rarely see the market consequences of this corruption. Hence competition enforcement and anti-corruption measures are complementary actions that should be pursued in parallel.

A highly effective way for competition authorities to contribute to addressing the problem of corruption is to focus on public procurement. Different types of anti-competitive and corrupt behaviour have been identified in public procurement processes both in OECD and non-OECD countries. Corruption refers to agreements between a particular bidder and a particular corrupt official under which the official agrees to manipulate the procurement process in order to ensure that the corrupt bidder wins and that the—usually more qualified firms—are excluded in exchange for personal gain. Collusion implies an agreement amongst bidders themselves to reduce the level of competition in the procurement process. While bid rigging and corruption are two separate phenomena, they may nevertheless reinforce and feed on each other.

Agencies that investigate suspicious bids for public tenders need three elements to put a case together. First, to be efficient require experienced personnel because investigating allegations of collusion and corruption in bid-rigging involves demanding investigative procedures. Second, agencies need access to special investigative techniques beyond simple police work because in many cases the only evidence that can be found may be circumstantial evidence (such as unusual bid patterns, or firms seemingly acting against their economic interests). Third, the investigative team needs adequate resources such as basic software programmes to help analyse bidding patterns, or the ability to investigate through the Internet the existence of “shell” companies with no website, no permanent business premises, and no permanent staff. Similarly, investigators would also need specialised software to recover information deleted from computers owned by the bid-rigging companies.

- (2) *Many delegations emphasised the complementarity between the traditional mandate of competition authorities to enforce competition laws and fighting corruption, which is not usually part of the remit of competition authorities. This is particularly evident when competition authorities are enforcing cartel laws to stamp out anti-competitive behaviour in public procurement.*

Several panellists and delegates noted that promoting competition was highly complementary to fighting corruption since both actions try to correct dysfunctions in the market mechanisms. Furthermore, well-functioning markets make it harder for corruption to prosper. Hence, actions by competition authorities that promote competition in public procurement (e.g. prosecuting bid rigging) will also have a direct impact on the fight against corruption.

There were examples from several participants demonstrating ways in which competition authorities can take action to punish and discourage corruption, ranging from actively involving the national public administration in looking out for bid-rigging, to penalising public officials who have instigated, favoured or participated in bid-rigging. Some countries grant their competition authority special powers in this regard, allowing them to Fair Trade Commission the power to investigate and prosecute bid rigging cases.

The fight against corruption is especially important to the OECD as unethical behaviour affects the correct and proper functioning of markets. Bribery is one form of market distortion that can have serious consequences on the ability of markets to deliver the expected results in terms of lower prices, better product, innovation and growth. As such there are clear synergies between competition enforcement and the fight against corruption. It is for this reason that the two policy communities should work together and bring this discussion to the top of the domestic and international agenda of policy makers.

- (3) *Co-operation between competition authorities and anti-corruption bodies was found to be crucial to the success of the fight against corruption in the context of competition enforcement.*

The existence of criminal sanctions for individuals is a major tool in deterring and punishing the more serious violations in cases of corruption. It is necessary, however, to make sure that the punitive effect of these sanctions is reconciled with the role of leniency programmes and their importance for competition agencies in uncovering cartels.

In that respect, the co-operation between the competition authority and anti-corruption bodies has in general not been an obstacle to the good functioning of leniency programmes. This may be a result of the fact that in some cases criminal law was found to allow for a more lenient approach towards those who co-operate with the police or with the prosecution. In other cases, this was achieved by making the competition agency manage the case file of the leniency applicant during the investigation, so that this person may benefit from the clemency measures implied in leniency application when co-operating with the authorities.

- (4) *It was generally found that the effectiveness of leniency programmes was not hampered by the co-operation between competition and anti-corruption agencies. However, in some cases, tension may arise between pursuers of a corruption case who seek punishment for those found guilty of wrong-doing, and the proponents of leniency for whistle-blowers who enable the disclosure of a cartel.*

Several agencies described cases where the competition agency investigated bid rigging or price fixing only to discover that there was a form of bribery or corruption involved. In so, the competition authority will work closely with the anti-corruption body, if there is one in the jurisdiction, and this co-operation may take several forms with competition and anti-corruption bringing their respective expertise to the table. The anti-corruption body may for instance second investigators to the competition agency to assist in the investigation of the alleged bid rigging connected to corruption activity. The competition agency may advise and guide the anti-corruption body and the police on issues related to investigating bid rigging. Some agencies found other ways of developing co-operation between agencies, for instance allowing employees from both institutions to access the other institutions' files for database searches, having joint training or carrying out joint searches. In some cases, the co-operation between competition agencies and anti-corruption bodies has extended to the drafting of new legislation, drawing on mutual expertise to define offenses and appropriate sanctions.

- (5) *Special safeguards would need to be put in place in order to ensure that competition officials do not engage in corruption themselves.*

Delegates emphasised that competition officials must be compelled to safeguard the principles of legality, honesty, impartiality and efficiency, and should be required to disclose any personal conflicts of interest. Officials should also have the obligation to preserve confidential information and documents used in their work. Further, there should be a "cool-off" or quarantine period after the conclusion of their public service during which officials cannot use the knowledge acquired over public service. Some questioned whether this would deter people from seeking work within competition authorities or in the public sector in general in the first place, for fear of not finding work upon leaving the public sector.

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<sup>1</sup> The full title of the Convention is: OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, but it is mainly known as the "Anti-Bribery Convention".

<sup>2</sup> Quoted from "Corruption: A glossary of standards in International Law", OECD 2008.