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Global Forum on Competition

COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT: BREAKOUT SESSIONS

Briefing Note by the Secretariat

-- Breakout Session 3 --

This briefing note discusses "Experiences on working with other parts of government to fight bid rigging". It is submitted by the Secretariat under Breakout Session 3 of the Global Forum on Competition to be held on 18 and 19 February 2010.

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WORKING WITH OTHER PARTS OF THE GOVERNMENT TO FIGHT BID RIGGING

-- Briefing Note by the Secretariat --

I. Introduction

1. The Third Report on the Implementation of the 1998 Recommendation on Hard Core Cartels lists the fight against anticompetitive behaviour in auction and procurement markets among the enforcement priorities that countries should pursue in their fight against hard core cartels. The Report notes that more countries should expand their awareness programmes, and work more extensively with procurement officials in an effort to fight bid rigging more effectively because the procurement authority is frequently the best placed agency to detect signs of unlawful bidding arrangements.

2. However, programmes to systematically educate procurement officials exist only in a few member countries. Moreover, because bid rigging can occur when other crimes occur, such as tax evasion, it is also important that a variety of agencies be made aware of bid rigging. This suggests that a variety of officials in many countries are not yet sufficiently aware of the danger of bid rigging and of the important role they can play in preventing and detecting it.

3. This workshop will explore ways in which competition authorities can work with procurement agencies and other parts of the government. The workshop will focus on practical issues and will seek to answer the following questions:

- What parts of the government should competition authorities seek to work with in order to enhance their fight against bid rigging?
- What methods should be used to raise awareness among officials about the risks of bid rigging?
- What steps can competition authorities take to ensure that outreach begins smoothly?
- How frequently should competition authorities conduct outreach work with other government agencies?
- How can competition authorities build upon their outreach work to enhance the profile of their own work?

II. Working with procurement agencies and other parts of the government

4. In order to fight bid rigging, some competition authorities have sought to connect government attorneys, who have the expertise to investigate and prosecute bid rigging, with public procurement agents, who are in the best position to detect and prevent bid rigging. A significant goal of these programmes is to increase the willingness of procurement agents to report bid rigging. These programmes often focus on detecting bid rigging rather than on helping procurement agencies design tenders to reduce the risks of bid rigging. Manuals, charts and other materials are frequently distributed to officials in order to increase their awareness. These documents explain what bid rigging is, the antitrust laws, suspicious behaviour and bidding patterns, and how to contact the competition authority. In many instances, half day programmes are conducted.

5. Some competition authorities have also sought to strengthen their relationship with other government agencies, including those that fight corruption, have police powers, or prosecute individuals and companies for legal violations. As with procurement agencies, an important goal of this work is to explain the legal standards for a violation of the competition law, to raise awareness of indicators of bid rigging, and to discuss penalties. However, because bid rigging can occur alongside other crimes, such as fraud, money laundering, tax violations and public corruption, it is important these agencies be made aware that additional penalties can be imposed.

III. Successful examples of advocacy work

a) Canada

6. The Canadian Bureau has a mandate to promote and maintain competition in Canadian markets. Part of the Bureau's outreach activities involves giving presentations to procurement officials throughout Canada. In 2008 alone the Bureau gave over 35 presentations to procurement officials. Since 2005, more than 3,000 officials have attended the Bureau's outreach programme. Bureau officers give general explanations about the Competition Act and then focus on the way it applies to procurement processes. The Bureau's goals are to increase awareness about competition law offenses in the procurement process; help procurement agents detect collusion and help officials design tenders that reduce the risks of bid rigging. The Bureau's outreach strategy has led to an influx of complaints.

b) Chile

7. *Fiscalía Nacional Económica* (FNE) is the sole agency responsible for investigating and prosecuting bid rigging in Chile. In 2008, FNE established the Interagency Taskforce for Fighting Bid Rigging, one of the few cross-agency partnerships ever created in Chile. Founding members of the Taskforce include: the e-procurement agency for the Chilean government, the Ministry of Public Works, an Association of Public Procurement Officers, the General Comptroller and the Internal Government Comptroller. Recent additions include the housing ministry, the pensions agency, and the transport agency.

8. The main purpose of the Taskforce is to help officials understand what bid rigging is, the importance of tackling it, how to detect it, and steps that agencies can take to prevent bid rigging from occurring. Meetings are scheduled on a bi-monthly basis and focus on common concerns such as the difficulty of simultaneously executing core procurement work and detecting bid rigging. Discussions also highlight practices that individual Taskforce members have taken to fight bid rigging. After numerous meetings and discussions, Taskforce members now have a common view that fighting bid rigging requires strong, co-ordinated efforts from multiple partners in order to achieve lasting results.

c) Finland

9. The Finish Competition Authority (FCA) has carried out a project called the Public Sector Partnership. The objective of the partnership was to work closely with procurement agents in order to proactively attack cartels. Beginning in 2005, the FCA began approaching the largest purchasing organisations located in 14 cities. Procurement agencies were highly receptive to the FCA's offer to conduct half-day training sessions. FCA presentations focused on its activities and the legal prohibitions against cartels; the process of investigation and prosecuting a cartel; how to detect cartels; and how to design tenders to reduce the risks of collusion. FCA presentations led to numerous reports of suspicious conduct and to investigations. The ultimate goal of their work is to create a communication channel through which they will learn about suspicious behaviour and through which municipalities could obtain information about combating cartels.