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COMPETITION COMMITTEE****Working Party No. 3 on Co-operation and Enforcement****Summary of Discussion of the Joint Meeting of the Competition Committee's
Working Party No.3 on Co-Operation and Enforcement (WP3) & the Working
Group on Bribery in International Business Transactions (WBG)****14 June 2016, Paris, France**

This document prepared by the OECD Secretariat is a detailed summary of the discussion held during the Joint Meeting of the Competition Committee's Working Party No.3 on Co-Operation and Enforcement (WP3) & the Working Group on Bribery in International Business Transactions (WBG) on 14 June 2016.

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*Summary of Discussion of the Joint Meeting of the
Competition Committee's Working Party No.3 on Co-
Operation and Enforcement (wp3) & the Working Group on
Bribery in International Business Transactions (WBG)*

By the Secretariat

1. The **Chair of the Working Group on Bribery, Drago Kos**, welcomed the delegates to the first ever joint WP3 and WBG meeting. He mentioned that in 2014, the OECD published the Foreign Bribery Report, which analysed more than 400 foreign bribery cases between 1999 and 2014 (involving companies or individuals from the 41 signatory countries to the OECD Anti-Bribery Convention) and found that 57% of them involved public procurement contracts. This shows that corruption interferes with fair competition for public contracts. Mr Kos called for a continuing co-operation between the WBG and WP3, to enhance law enforcement co-operation and seek out ways of levelling the playing field for companies and preventing corrupt or anti-competitive conduct.

2. The **Chair of Competition Committee, Frederic Jenny**, observed that the Competition Committee had examined the links between lack of competition and corruption, in a roundtable at the 2010 Global Forum on Competition on corruption and collusion in public procurement. It furthered its consideration of this matter in another roundtable at the 2014 Global Forum on Competition on fighting corruption and promoting competition, in which Mr Kos had participated. Moreover, WP3 had, in 2015, reported to Council that there is scope for strengthening co-operation between competition and anti-corruption authorities to fight bid rigging and corruption in public procurement, and this joint meeting is following up on this recommendation.

3. The joint WP3-WBG meeting was divided in two parts. The first addressed the detection of antitrust and bribery cases, including through leniency and whistle-blower programmes, and various forms and arrangements for co-operation between anti-corruption and competition authorities. The second addressed matters related to the investigation, prosecution and resolution of cases, as well as the exchange of information and evidence between anti-corruption and competition authorities.

4. The **FBI's International Corruption Unit Special Supervisory Agent, Denise E. Biehn**, presented the FBI's experience in investigating domestic and international antitrust and bribery cases. Ms Biehn gave an overview of FBI's co-operation across the divisions in the United States Department of Justice (US DoJ), which includes co-operation with the Antitrust Division and the Criminal Division, in particular the Asset Forfeiture and Money Laundering (AFML) Section and the Foreign Corrupt Practices Act (FCPA) Section, as well as with state attorneys. The FBI's International Corruption Unit (the Unit) works with the FBI's 56 field offices throughout the US, and has 3 dedicated corruption squads in Washington, New York and Los Angeles focused on antitrust, foreign corrupt practices, and asset seizure. The Unit looks at the supply (private sector) and demand (public sector) sides of corruption, as well as intermediaries and facilitators (e.g. money laundering facilitation). The Unit has intelligence analysts who study data to identify areas of concern upon which agents could focus their efforts. It also relies on self-reporting of corruption, FBI sources, other investigations, third party complaints, and media articles. Agent Biehn also stressed the importance of 'cop-to-cop' informal co-

operation in order to obtain information. The Unit involves prosecutors at all stages of the investigations, and discusses with them the goals and targets of the investigation, in order to enable team work and successful outcomes. Finally, agent Biehn presented a corruption and antitrust case involving a local official, which was prosecuted as an antitrust case, as the evidence of cartel conduct was stronger, and penalties would be significant. Agent Biehn concluded that it would be useful for authorities to work together and assess whether there is an antitrust breach in bribery or corruption cases, and vice versa.

5. The **Italian competition authority** seeks, in bid-rigging cases, co-operation with institutions involved in fighting corruption and bid rigging, such as the judiciary, the national anti-corruption agency (ANAC), and the finance police. The judiciary sends information to the competition authority when it finds elements of bid rigging in a criminal case. The competition authority and ANAC concluded a MoU at the end of 2014. ANAC is not an enforcement agency; it has monitoring and reporting powers on anti-corruption, and focuses mainly on increasing transparency and preventing corruption in the public administration. ANAC also manages the dataset on public contracts, which was introduced in 2010 and gathers an extensive amount of data and documents concerning tenders above certain thresholds. The MoU aims to facilitate the exchange of information between the two institutions. The competition authority informs ANAC of possible corruption in public tenders; ANAC informs the competition authority of suspicions of bid rigging, and allows it to access the public contracts dataset. The authority is considering developing software that will screen the dataset and identify patterns indicative of collusion.

6. The **Russian Federal Antimonopoly Service FAS** described its co-operation with the Ministry of Internal Affairs. FAS provides the Ministry with information, materials and documents on antitrust criminal violations for the Ministry to start criminal proceedings. The Ministry in turn informs FAS of competition violations, sends police officers to participate in dawn raids, and assists FAS in finding evidence. FAS also has a co-operation agreement with the Russian investigative committee.

7. The **US DoJ Antitrust Division** described the Division's Corporate Leniency Program, adopted in 1978 and revised in 1993 to both make it more transparent as well as to increase incentives for insider self-reporting. The most important change was that corporate executives are now covered by the grant of corporate leniency if they fully co-operate; thus, qualifying company and co-operating executives have full immunity from prosecution. Since its revision in 1993, the Corporate Leniency Program has been the Division's most effective investigative tool; the fact that an insider is reporting helps the Division unpack often very complicated and far reaching conspiracies. Since 1996, more than USD 11 billion have been imposed in fines against companies for antitrust crimes and over 84% of this total is tied to investigations assisted by leniency.

8. The **US DoJ Criminal Division** then described the Fraud Section's one-year pilot programme for matters related to the Foreign Corrupt Practices Act (FCPA). This pilot programme was launched in April 2016 and provides incentives to companies to self-report potential violations of the FCPA. The programme is based on voluntary disclosure and full co-operation, and encourages the companies to take measures to remedy the issue. Companies that disclose, co-operate and remedy can get up to 50% reduction in fines, so it is not a full amnesty programme. The pilot has prompted more self-disclosures.

9. **Liz Owen from the OECD Anti-Corruption Division** presented the OECD report on whistle-blower protection. She stressed that any form of corruption, fraud or anti-competitive behaviour is by nature a hidden crime, therefore detection is always a challenge. Employees who observe wrongdoing often do not report it out of fear of retaliation. It is therefore important for countries to have in place a clear, well-publicised and effective whistle-blower protection framework to encourage reporting from insiders and employees, and ensure that whistle-blowers are protected. The OECD report found that whistle-blower protection is far more common for public sector employees, but there is a recent increase in the private sector taking voluntary measures to create internal whistle-blower channels and complementary protections. This development may be due to an increase in corporate liability laws and related incentives which recognise corporate compliance programmes, including whistle-blower protection mechanisms. The report also found that whistle-blowers typically report internally as a first step, and often as their only step, i.e. do not report externally. To enable external reporting, some OECD countries provide for different competent authorities for different sorts of disclosed conduct, or for anonymous hotlines. Some countries have recently also introduced financial rewards to whistle-blowers to encourage reporting.

10. The **Hungarian competition authority GVH** then described Hungary's leniency policy, and their new web tool, called "cartel chat". Leniency was introduced in Hungary in 2004, but it did not attract a high number of applications. In contrast, the informant reward scheme introduced in June 2009 was successful. In both cases, in the experience of the GVH, informants and leniency applicants were generally reluctant to reveal their identity or were concerned that their identity would be revealed, although Hungarian law provides that they can request to keep their identity confidential. Thus the GVH thought of establishing a system that ensured full anonymity, and introduced the cartel chat in December 2015. The chat is a web tool that allows anonymous reporting of suspected cartels to the cartel detection section of the GVH, and/ or anonymous questions to clarify doubts about cartels, the leniency policy, or the informant rewards. The chat fully protects the anonymity of exchanges: each user has exclusive access to his own correspondence by using his login and password, and even the supervisors of the chat do not have access to the exchanges. In the first semester of operation, 20 persons have used the chat to provide information to the GVH; in 2/3 of the cases the information was not concrete, but 1/3 of the information had some value, and 2 cases were initiated on the basis of information provided through the chat.

11. **Austria's Federal Ministry of Justice** presented the Austrian whistle-blowing system, introduced in 2013 and operated by the Central Public Prosecutor's Office for Combating Economic Crime and Corruption. The whistle-blower can electronically report his suspicions, and can choose whether to stay anonymous, or identify himself. Reports received through the system can be forwarded to the competition authority.

12. The **Swedish Competition Authority (SCA)** has good working co-operation with the prosecutors at the anticorruption unit and with police officers investigating corruption. The co-operation focuses on advocacy, joint articles and mutual educational activities, and, to the extent that this is allowed by Swedish law, include exchange of information and tip-offs on possible cases. There are challenges, which include the lack of knowledge of antitrust rules on the part of other agencies or the police, lack of high quality procurement data to develop more effective detection methods, and the absence of information gateways between authorities. The delegate called on the OECD to raise awareness among anti-bribery agencies and enforcers of the market consequences of antitrust violations, of how well-functioning markets make it harder for corruption to

succeed, and how promoting competition is complementary to fighting corruption. The SCA has screened procurement data to detect suspicious patterns, and supports further OECD work on the use of screens to detect both collusion and corruption. With respect to co-operation in law enforcement, Swedish authorities cannot in principle exchange confidential information; legal powers to do so are analysed on a case-by-case basis to assess the extent to which information can be exchanged. The delegate concluded by enumerating good practices for co-operation: set clearly defined limits regarding the extent of the co-operation among authorities; appoint specialists in each authority to be responsible for the co-operation and establish direct contacts among them, and with a senior manager of each authority; have frequent small informal meetings.

13. **Mexico's competition authority COFECE** stressed that in order to achieve effective co-operation between competition and anti-corruption institutions, it is necessary to have adequate legal instruments, which would however not affect Mexico's successful leniency programme. Currently, COFECE's leniency programme and the "reduction of sanctions benefit programme" under Mexico's anti-corruption law are not compatible because they are part of different legal frameworks and are conducted by different institutions autonomously (COFECE and the Ministry of Public Administration, SFP, which is in charge of procurement oversight and sanctions). There is no provision to guarantee coordination, or a clear process that defines the rules, timeframes and way that information on alleged offences may be exchanged between the two authorities. The new Mexican national anti-corruption system may help in coordinating COFECE's leniency programme with the new corruption leniency programme that will be put in place.

14. Drago Kos closed the first part of the meeting by noting the essential role that well-designed legal frameworks play in helping authorities bring out and use available information on criminal activity and to co-operate effectively at the international level. Frederic Jenny opened the second part of the meeting on investigating, prosecuting and resolving cases. He observed that corruption and collusion often have a mutually reinforcing effect, and one can serve to finance the other. He stressed that legal frameworks that allow information to be exchanged are important; equally important is advocacy so that each branch of law enforcement understands what the other branch looks for, and what it needs in terms of useful information and evidence to bring a case.

15. The **Israeli antitrust agency (IAA)** gave an overview of their investigative tools, and their co-operation with other agencies in investigations. IAA has wide investigatory powers and, since 2000, has the power to wiretap, subject to obtaining a court warrant. In 2006, the Israeli government established a forum for enforcement agencies fighting white collar crime, including the police, the tax authority, the security authority and the IAA. The authorities started discussing, training each other, and getting acquainted with each other, both institutionally and personally. The IAA, realising that bid rigging may include several criminal offences beyond bid rigging, like breach of trust, bribery, misrepresentation, money laundering, engaged in more co-operation with other enforcement agencies. In 2007, the IAA started co-operating with the police and wiretapped phone calls; the police gave the IAA guidance in this respect. This co-operation led to joint IAA-police investigations in 2009. In 2015 the police, on its own initiative, invited the IAA to participate in bribery and bid rigging investigations. Thus co-operation is growing and become more integrated.

16. **Canada's Competition Bureau** described the steps that it takes to strengthen its relationship with police forces and procurement authorities in order to jointly combat collusion and corruption. In Canada, collusion is a criminal offence. The Bureau is an

investigative agency only; the criminal Competition Act offences are referred for prosecution to the federal Public Prosecution Service of Canada (PPSC) and, if relevant, the provincial crown attorneys. In terms of co-operating with procurement authorities, the Bureau is delivering 20 to 30 presentations per year to federal and provincial procurement bodies, and their principal partner is the federal procurement authority, the Public Service and Procurement of Canada (PSPC). The Bureau and the PSPC have a co-operation MoU, and work together closely. They are currently co-operating on a project to screen procurement data to detect bid rigging. As a result of the co-operation initiatives, the Bureau has received tip offs about potential cases, and the PSPC has agreed not to debar individuals or companies that have received immunity from prosecution under the Bureau's immunity programme. The Bureau also has MoUs with other law enforcement agencies (e.g. with the police) to facilitate joint work and to provide guidance on the types of information to share and protocols to follow, when there are potential conflicts. Canada has an information gateway provision that allows sharing confidential information for the purpose of enforcement. Thus, the Bureau shares with the police information involving corruption or bribery that it comes across in its own investigations and, similarly, the police send files and information to the Bureau. The police have in general provided valuable assistance to the Bureau, including execution of search warrants, wiretaps, and handwriting and voice analyses. The delegate stressed the importance of trust in the exchange of information and tips and of conducting investigations using informal tools. A notable example of co-operation is the joint investigation by the Bureau and the Quebec anti-corruption unit (UPAC - Quebec) of corruption and bid rigging in construction contracts in the Montreal region. The Bureau seconded investigators to UPAC-Quebec, and they conducted joint interviews and dawn raids. The investigation uncovered evidence of a sophisticated scheme providing preferential treatment to a group of contractors trying to obtain contracts for municipal infrastructure projects. As a result, 77 criminal charges were laid against 9 companies and 11 individuals, including 44 charges of bid rigging and other criminal charges, including corruption in municipal affairs, breach of trust, improperly influencing a municipal official, and fraud upon the government. The Bureau also co-operated with the Commission Charbonneau, which made recommendations on measures against corruption and collusion in public procurement, emphasising the importance of co-operation between enforcement agencies. The delegate concluded that co-operating has undeniable benefits, and that the key to successful co-operation is to build trust, communicate regularly and informally, respect each other and not to try to affect each other's processes.

17. **Brazil's competition authority, CADE**, mentioned that CADE has co-operation agreements with numerous anti-bribery and anti-corruption agencies. The delegate referred to the Operation Dubai investigation, which aimed at collecting evidence of a cartel in the fuel retail and distribution markets and was coordinated between CADE, the Federal Police and the Federal District Prosecution Service. The delegate also mentioned the Car Wash operation that began with investigations by the Brazilian Federal Police concerning money laundering, which then unveiled bid rigging and corruption within Petrobras, the state oil company. In this case, the Federal Prosecution Service section in the state of Paraná (called the Car Wash task force) and the Federal Police shared with CADE their findings in the criminal investigation, which led to opening cartel investigations against contractors. The delegate stressed the importance of sharing information between competition and anti-corruption bodies.

18. **Korea** reported that between 2011 and 2015 there was an increase in the number of antitrust and foreign bribery cases, following the enactment of the law on whistle-blower protection, which covers foreign bribery and antitrust cases and encourages reporting of such cases. If the whistle-blower reports point to corruption or antitrust violations, the cases are referred to the relevant investigative authorities. The anti-corruption authority (the Anti-Corruption and Civil Rights Commission ACRC), the competition authority (the Korean Fair Trade Commission, KFTC), the police and the public prosecutor's office work together if the case requires it. The ACRC is notified of the results of investigations.

19. **Lithuania's Competition Council (CC)** explained its co-operation with authorities investigating white collar crime. The CC co-operates mainly with the Special Investigation Service (SIS) which investigates corruption offences. In 2015, SIS sent to the CC information on suspected collusion in two public tenders. The CC launched an investigation based on that information and completed it in less than a year, making a finding of bid rigging. In another case, a company under investigation for bid rigging by the CC attempted to bribe the authority's investigating officer. The officer reported this to the SIS which launched an anti-bribery investigation. The CC mentioned the challenges in using information, found in criminal investigations by other authorities, in its own antitrust (administrative) investigations. Using data found by other authorities in criminal investigations can be problematic, because the rights of defence and the privilege against self-incrimination are different in administrative and criminal proceedings. The delegate stressed the importance of informal co-operation, of building trust between authorities, and of clear signals from the heads of agencies encouraging co-operation.

20. **Indonesia's competition authority KPPU** described its co-operation with the anti-corruption agency, the Corruption Eradication Commission (KPK). The KPK has enforcement powers that the KPPU does not have: it can wiretap, seize documents, perform dawn raids, issue a travel ban, block bank accounts, and remove state officials. The two agencies have co-operated since 2008 on the basis of a MoU. The co-operation covers the exchange of data and information and expert assistance, but coordinating the timing and steps of investigations is difficult. The KPPU has referred at least 4 bribery cases to the KPK in the last 10 years. Information and evidence collected during investigations is protected. So the two agencies share information and findings in a closed discussion, however the information cannot be used in court, unless the providing agency is called to testify.

21. The **Romanian Competition Council (RCC)** has MoUs with the Directorate for Investigating Organised Crime and Terrorism and the national anti-corruption body (the two Romanian anti-corruption agencies who are in charge of criminal investigations for bid rigging). On the basis of the MoUs, the RCC has sent information and materials to the two agencies on what bid rigging is as well as on its indicators, and what to look for in investigations. The RCC has access to the national public procurement database. In 2011, the Directorate for Investigating Organised Crime and Terrorism referred to the RCC clues of bid-rigging in tenders of the natural gas carrier. The RCC opened an investigation, found bid rigging and in 2012 imposed sanctions to 4 companies amounting to €5.5 million. The co-operation between the two authorities is active and currently the RCC and the Directorate for Investigating Organised Crime and Terrorism are jointly handling another bid rigging case. Following recent amendments to the Romanian Competition Law, the RCC can use information and documents that other authorities collect.

22. The **Dutch competition authority ACM** explained that it can use information which they gather in one case in other cases, if necessary. It can also share information with other agencies, if it is obliged by law, or if these are specific authorities listed in national laws. In 2010, the Public Prosecutor's Office was investigating an allegation of bribery in a construction project when it found evidence of a cartel, which it provided to the ACM. The ACM opened two bid rigging cases on the basis of that evidence. The concerned companies appealed against the opening of investigations, arguing that information should not have been exchanged between authorities, but the court did not accept the appeal. The companies later appealed against the fines imposed by the ACM using the same argument; their appeal was rejected by the final instance court. The court decision helped to clarify the rules and stipulates that, in essence, the ACM can send data to other agencies and can receive data from them, as long as they were acquired legitimately.

23. The **UK Competition and Markets Authority (CMA)** stressed that enforcement goals cannot be achieved in isolation, and that successful enforcement requires co-operation with others. Cartel conduct overlaps with other forms of economic crime, so the CMA tries to ensure that it is able to identify broader crimes in cartel cases, and refers such cases to partner agencies, in particular the Serious Fraud Office (SFO). The CMA and the SFO have an MOU setting out the basis on which they will co-operate to share intelligence, investigate and prosecute criminal cartels in the UK, and specifying the use of single points of contact within the intelligence units of both the CMA and the SFO to facilitate the flow of information. The CMA and the SFO also have statutory gateways under which they can supply and share information with each other. Both gateways make provision for the sharing of information obtained by the respective organisations in relation to criminal proceedings subject to certain provisions: for example, the disclosed information cannot be used for any purpose other than that for which it is disclosed, and the disclosure should be proportionate to what is sought to be achieved. The CMA has a leniency programme, and all decisions to grant immunity in respect of the cartel offence rest with the CMA; however, the CMA and the SFO will liaise where the immunity could affect the outcome of an SFO-led investigation.

24. The **US DoJ Antitrust Division** gave examples of plea agreements. First, in the 2009 Kellogg Brown & Root case, Kellogg Brown & Root LLC (KBR), a global engineering construction and services company, pled guilty to FCPA charges for its participation in a scheme to bribe Nigerian government officials to obtain engineering, procurement and construction contracts to build liquefied natural gas facilities on Bonny Island, Nigeria. The plea agreement in that matter bound both the Fraud Section and Antitrust Division regarding non-prosecution for both bribery and conduct related to the coordination of bids. As part of the plea agreement, KBR agreed to pay a \$402 million criminal fine, at the time the second largest fine ever in an FCPA prosecution. Then the delegate referred to the Marine Hose case, where both corruption and bid rigging were found. In September 2011, Bridgestone Corporation, a Tokyo-headquartered manufacturer of marine hose, agreed to plead guilty and pay a \$28 million criminal fine for conspiring to violate the Sherman Act and the FCPA by rigging bids and making corrupt payments to foreign government officials in Latin America related to the sale of marine hose. A Bridgestone executive also pled guilty and was sentenced to serve two years in jail and pay a criminal fine for participating in the bid rigging and bribery conspiracies.

25. **BIAC** observed that the fight against corruption is necessary to foster economic development. An increase in government accountability and transparency boosts investor

confidence, and thereby encourages foreign investment. Investors are increasingly unwilling to take the high risks involved when working in corrupt countries, due in part to the uncertainty of return on investment, but also to the adoption of strong statutes against corrupt activities, such as the FCPA, and other such legislation across the globe supported by the OECD Anti-Bribery Convention. BIAC submitted that only effective competition laws, built on principles of independence and accountability, transparency of the process, and normative substantive principles, coupled with co-operation with the anti-corruption enforcement authorities, will have a material impact on the fight against corruption. BIAC called for a strong OECD role in this area together with enforcement authorities.

26. Frederic Jenny summarised the second part of the meeting, noting that it concerned three levels of interaction between competition and anti-corruption authorities. The first level relates to raising the awareness of each other's mandate and of the kind of information that would be useful to (and could be shared with) the other authority. The second level concerns building trust between the authorities. The third level concerns the legal framework that enables co-operation and the exchange of information. Mr Jenny suggested that, in addition to a detailed summary of this discussion, the Secretariat could develop a scoping note on potential future work.

27. The two chairs closed the meeting thanking delegates for the very successful first joint meeting, and proposed that another joint meeting be held in the future to keep each working party informed of developments in the other's work.