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

Cancels & replaces the same document of 14 May 2020

Working Party No. 3 on Co-operation and Enforcement

Criminalisation of cartels and bid rigging conspiracies – Note by Belgium

9 June 2020

This document reproduces a written contribution from Belgium submitted for Item 1 of the 131st OECD Working Party 3 meeting on 9 June 2020.
More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/criminalisation-of-cartels-and-bid-rigging-conspiracies.htm>

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Belgium

1. Availability and scope of criminal sanctions:

1.1. Please describe the range of sanctions (criminal, civil, or administrative) for cartel and bid-rigging violations in your jurisdiction, for both individuals and corporations, with a focus on criminal sanctions.

1. The BCA can only impose administrative sanctions. Cartel violations by undertakings can be sanctioned with fines of up to 10% of the worldwide turnover in the last fiscal year. Penalty payments can be imposed of up to 5% of the daily turnover per day of lack of compliance (article IV.79, §1 Code of economic law (CEL)).
2. Cartel violations by individuals can be sanctioned with fines of 100 to 10 000 euro (article IV.79, §2 CEL).
3. Bid rigging is considered to constitute a cartel violation. The BCA has consistently decided that it has jurisdiction with regard to collusion between undertakings in respect of a public tender, but not with regard to the respect of the public procurement rules. The Raad van State/Conseil d'Etat has jurisdiction with regard to the administrative law aspects of an infringement of the public procurement rules.

1.2. If your jurisdiction has authority to impose criminal sanctions in cartel cases, when did it obtain that power?

4. N/A

1.3. Are criminal sanctions available for all types of cartel offenses, or only certain types of cartel offenses?

5. Only with regard to bid rigging.
6. Bid rigging can be sanctioned with prison sentences of 15 days to 6 months and fines of 100 to 10 000 euro. (article 314 Criminal code).

2. Process for obtaining criminal sanctions:

2.1. Please describe the process for obtaining criminal sanctions. Does the competition agency pursue criminal cartel cases or are cases referred to a public prosecutor or other authority? If there are multiple authorities involved, how do the authorities coordinate their activities, in particular with regard to evidence gathering and implementation of leniency?

7. Criminal sanctions can only be imposed by the Criminal law courts, or on appeal by the Courts of appeal, in cases brought by a Public prosecutor.
8. The competition authority can file a complaint. It could probably also intervene as a third party, and it can act as *amicus curiae* – but neither has ever happened in criminal cases.

2.2. What are the investigative tools available in your jurisdiction for gathering evidence? Can evidence gathered in investigations by other agencies be used in criminal or administrative competition cases, and vice versa?

9. The competition authority has in respect of bid rigging the same investigative tools as in any other cartel case.
10. We cannot answer for the Public prosecutor's office, but they can also ask the Investigating Judge to authorize the police to organize dawn raids, and under certain conditions also telephone taps or access to telephone records.
11. The Courts can use evidence provided by the BCA. Article IV.32, §1 CEL explicitly stipulates that the professional secrecy rules applicable to the board, assessors in the Competition Colleges and all staff of the BCA do not apply when they are asked as witnesses in court, or ordered to provide evidence in accordance with the rules on private enforcement.
12. The BCA is not entitled to obtain evidence from the Public prosecutor, but if provided by him, by a party or third party, the BCA can use this evidence.

2.3. Are criminal sanctions determined by a third party (e.g., court)? For those jurisdictions that impose custodial sanctions, how is a sentence of incarceration determined? What role does the competition agency play in the sentencing process?

13. Please refer to our answers to question 2.1.

3. Leniency and corporate compliance programs:

3.1. Describe the role of leniency in your jurisdiction's cartel enforcement framework. To what extent do leniency applications generate investigations and enforcement actions in your jurisdiction?

14. We have seen in recent years a significant drop in the number of leniency applications, but not in the number of new cases. This indicates that in recent years complaints, informants and the authority's own investigations gradually became a more important source of new cases.

3.2. Does your jurisdiction credit corporate compliance programs in its cartel enforcement process? If so, what is the available credit? To what extent does compliance credit promote self-reporting of misconduct by corporations and thereby generate investigations and enforcement actions? What are the implications for criminal enforcement against individuals?

15. The BCA does not credit corporate compliance programs.
16. There is no leniency program in criminal law.

4. Enforcement of criminal sanctions:

4.1. For those jurisdictions with criminal sanctions available for cartel cases, how often are criminal sanctions imposed on individuals or corporations? If the number

of cases in which criminal sanctions are imposed is limited, what are the main reasons for this trend?

17. We have no figures on the bid rigging cases decided by the judiciary.

4.2. What types of companion civil and administrative remedies may also be imposed in cases involving bid rigging on public contracts, such as enhanced damages provisions or administrative suspension/debarment?

18. N/A.

19. Private enforcement is also possible after a criminal law judgement, and victims can intervene or ask for criminal law prosecution. But there are no enhanced damages provisions.

5. International Cooperation:

5.1. Does your jurisdiction have mechanisms/processes dedicated to enforcement cooperation in the context of criminal cases? Are they effective in cooperating with non-criminal enforcement regimes? Are there limitations/obstacles to the use of existing cooperation mechanisms in criminal cases?

20. We cannot answer for the judiciary.

5.2. If your jurisdiction does not impose criminal sanctions, are you able to cooperate effectively with jurisdictions that do provide for criminal penalties?

21. Yes, within the limits set in EU Regulation 1/2003 for which we refer to the contribution by the EU.