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An tÚdarás Iomaíochta

# BID RIGGING – CARTELS IN PUBLIC PROCUREMENT

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ST. MARTIN CONFERENCE 2011

20 Years of Czech Competition Law  
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# The Law

Ireland - S.4 Competition Act 2002 = Article 101  
TFEU:

Prohibits ... agreements or concerted practices  
between undertakings ... which have as their  
object or effect the prevention, restriction, or  
distortion of competition in trade in any goods or  
services (N.B. Horizontal agreements really bad)

Identical to Article 101 TFEU: must be an effect on  
trade between Member States.

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# Detection & Sanctions

Probability of being caught –

- need well resourced, trained and focused NCA
- need for well informed procurers !!!

Need for effective sanctions -

to deter wrongdoing, increase awareness and compliance

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# Bid Rigging is Bad

Bid rigging = Price fixing = Cartel = Theft

Bid rigging/collusive tendering:

- competitors illegally agree on who will win
- deprives consumers of benefits of competition,
- Enables business to earn higher profits

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# Types of Bid Rigging

Bid Suppression – some competitors don't tender

Complementary Bidding - cover bidding-

token tenders not intended to be accepted

Bid Rotation - take turns being the lowest bidder,

Combination of all (or some) of the above

Evidence of 'kick backs' in some cases



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# State is a Consumer too

OECD

Guidelines For Fighting Bid Rigging In Public  
Procurement

“Bid rigging can be particularly harmful if it affects  
public procurement”

Public procurement - approximately 15% of GDP  
Taxpayer pays more

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# National Competition Authority

Lectures private business on competition as their actions can damage consumers and State

Need to Educate State and agencies (Government Departments, local government etc.)

NCA's have vital advocacy role to educate public procurers about evils of bid rigging

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# Provide Information

Information Booklets: Irish Competition Authority  
'The Detection and Prevention of Collusive  
Tendering'

Information for public procurers on tell-tale signs of bid-rigging, detail steps to help prevent collusive tendering.

Booklet assists all businesses that tender not just public procurers.

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# Proactive Outreach

Booklets are NOT enough – they just gather dust

Advocacy and Education by Competition Authority:  
must sell the message, by...

- Bid Rigging Roadshow
- Staff give training seminars to purchasers in Government Departments, public agencies etc.

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# Measuring success

Roadshows –useful or effective?

Are they box ticking exercises by the

- Public Procurers?
- Competition Authority?

Danger of being seen as just doing right thing –

- Is behaviour changing?
- Same level of bid rigging for public contracts?

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## Measuring Success 2

Old habits die hard –

- Long established relationships
- pressures to get job done

Will behaviour really change?

NCA did X number of seminars in 2011 –

- What does this really measure?

Need to see some visible results, so...

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## Measuring Success 3

1. Actual change in tendering processes by public procurers – now standardised procurement procedures and documentation
2. Requests for follow up seminars – ongoing training – especially at lower levels
3. More complaints to NCA from public procurers
4. More focused & accurate complaints to NCA
5. More cases and/or less bid rigging



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# Culture Change

‘Buy in’ from top - ensures real change happens

1. Heads of Departments & Agencies, then
2. Public Procurement Officials

Also successful bid rigging cases educates

- public procurers **and**
- tax payers on the benefits of competition

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