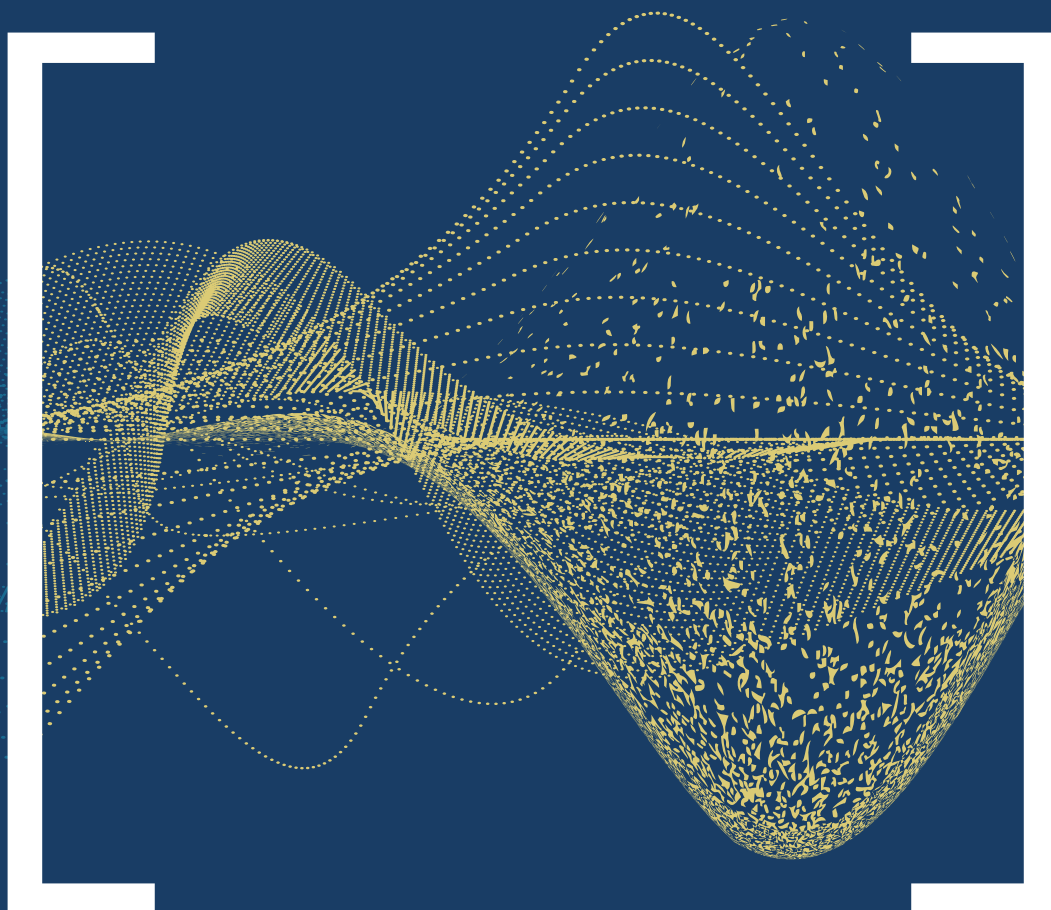


# COMPETITION POLICY IN EASTERN EUROPE AND CENTRAL ASIA

Bid rigging



OECD-GVH Regional Centre  
for Competition in Budapest (Hungary)  
Review No. 25, January 2025



Inside a competition authority:  
**Republic of Kazakhstan**

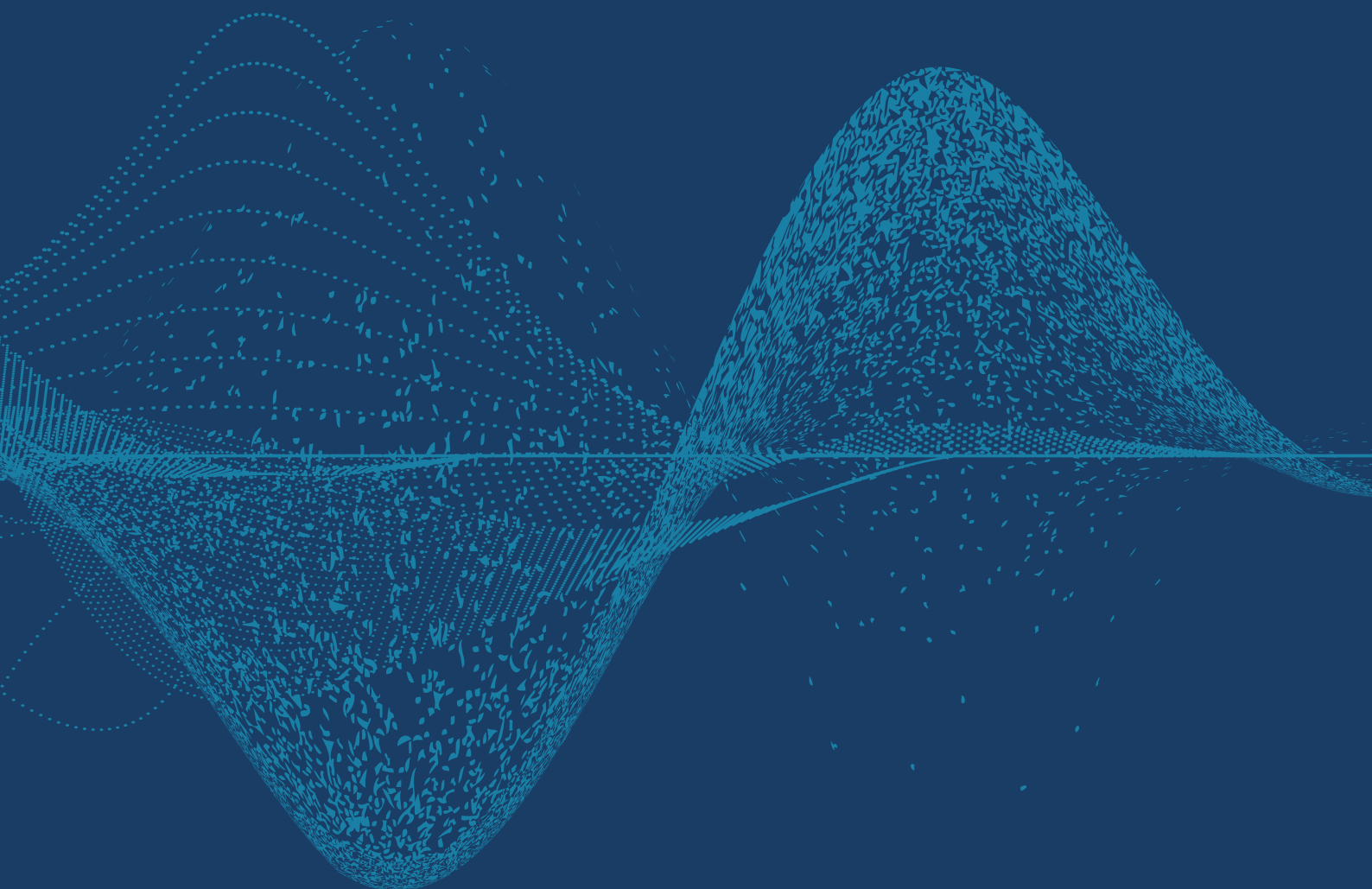
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<sup>1</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence. Hereinafter referred to as Kosovo.

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# I. FOREWORD



**María Pilar Canedo**

*Academic Director  
OECD-GVH Regional Centre for  
Competition in Budapest*

## Bid Rigging in Eastern Europe and Central Asia: A Critical Issue for Competition Enforcement

As we continue our collective journey toward stronger competition laws and enforcement in Eastern Europe and Central Asia, the issue of **bid rigging** remains one of the most insidious challenges to fair and competitive markets. Bid rigging undermines the core principles of competition, inflates public procurement costs, and ultimately deprives citizens of the best value for their taxes. This form of **anti-competitive conduct** not only distorts the efficiency of public markets but also perpetuates a cycle of corruption that is detrimental to both economic growth and social trust.

In the last semester, we have witnessed significant strides in strengthening the enforcement of competition laws across the region. Thanks to the support and active participation of the **17 beneficiary agencies** from **Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, North Macedonia, Moldova, Montenegro, Romania, Serbia, Ukraine, and Uzbekistan**, our **Regional Centre for Competition (RCC)** has been able to advance its mandate to foster greater cooperation, share best practices, and promote capacity-building.

I would like to take this opportunity to **thank each of these agencies** for their invaluable contributions. Your dedication and commitment to upholding competition

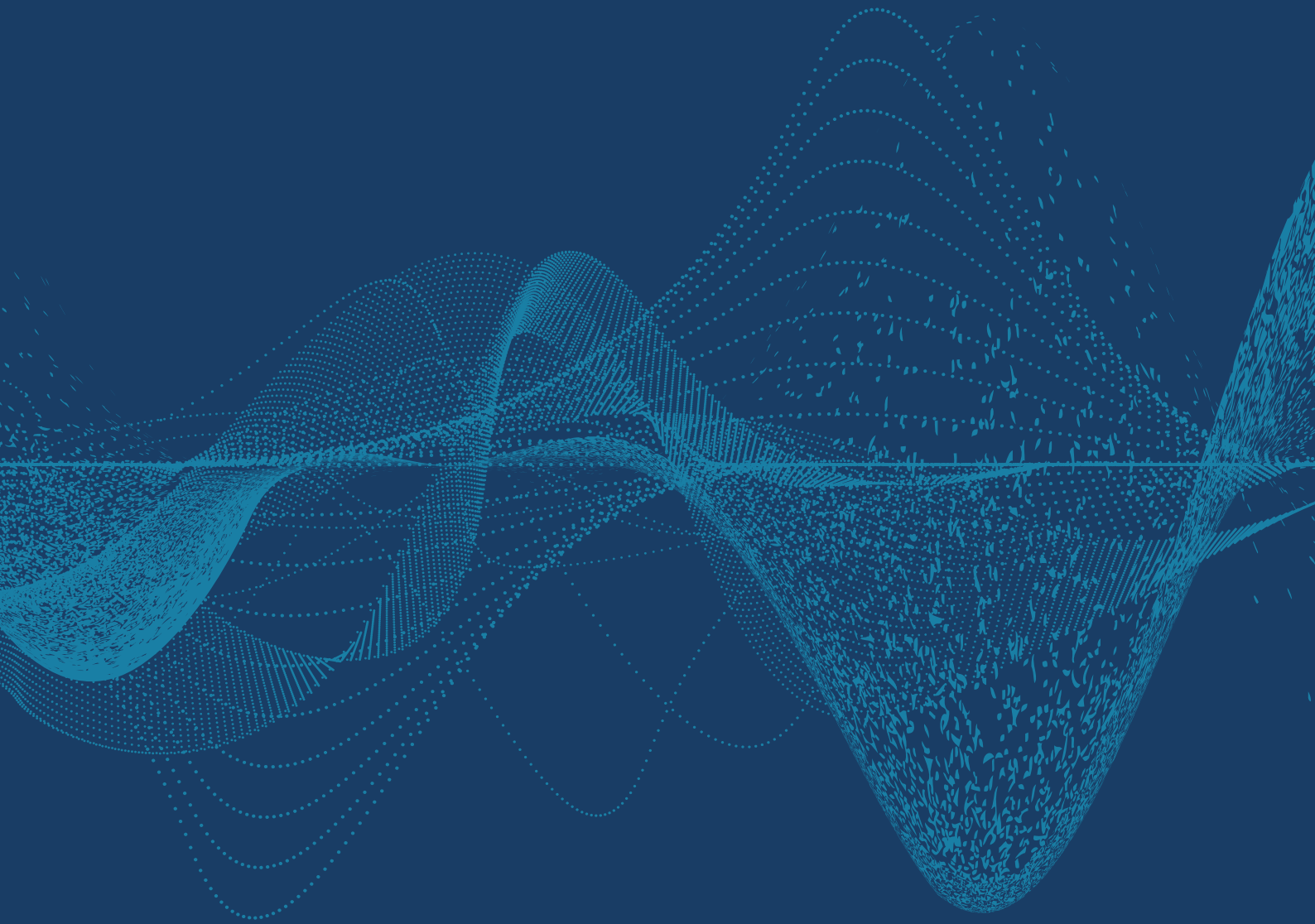
principles, particularly in tackling bid rigging, have been essential to the success of our project. Over the past six months, our collaborative efforts have strengthened national enforcement capabilities and fostered an environment of mutual support and knowledge sharing. These efforts are critical in enhancing competition laws and creating a **level playing field** for businesses across the region.

As we turn our focus to bid rigging in this edition of the **Competition Review**, we reflect on the collective progress made and the continued challenges we must face together. I am confident that with the support of our partners, the ongoing work of the RCC, and the engagement of all involved agencies, we will continue to make significant headway in eradicating bid rigging and strengthening competition enforcement throughout Eastern Europe and Central Asia.

Next year will be relevant for us, as we celebrate our 20th Anniversary with renewed strength and passion for our joint achievements.

Once again, thank you for your unwavering support. I look forward to continuing this vital collaboration in the months and years ahead as we work toward building more competitive, transparent, and efficient markets for the benefit of all.

# II. PROGRAMME 2025



# Programme of work for 2025

I. WORKSHOPS AND CONFERENCES		
Date	Topic of the Workshop	Audience
1. 27-28 February 2025 Budapest	<b>20th Anniversary of GVH-OECD- RCC:</b> The presidents of the beneficiary agencies of the GVH-RCC, together with some of the key actors of this joint venture along its long and successful history will join to celebrate the 20th anniversary of this project and present the main ideas for his future.	Event open to the public with Presidents, Chairs and senior staff of the beneficiary agencies.
2. 18-20 March 2025 Bilbao	<b>Tourism, transport, and competition:</b> The economic and social impact of those sectors has attracted the interest of national and international undertakings that sometimes face big entry or operational barriers that would require the attention of competition agencies.	Competition officials with experience in related matters both in enforcement and advocacy.
3. April Almaty	<b>Challenges on fighting cartels and bid rigging:</b> Cartels are the most relevant area of concern for competition agencies, as they are the most harmful competition infringement. Special attention to main concepts needed to fight these behaviours and sanction them will be included in this seminar.	Competition officials in charge of cartel competition enforcement.
4. May Budapest	<b>Judge's trainings. Abuses of dominance:</b> This seminar will allow the judges of the member states of the European Union together with those of Montenegro, Kosovo and North Macedonia to have a better understanding of the grounds of the evolution of case law at national and EU level.	Judges of EU or beneficiary countries
5. September Budapest	<b>SOEs and Competitive Neutrality:</b> Competitive neutrality fosters competition by eliminating or reducing undue competitive advantages that some players may enjoy over their competitors. The seminar will deal with means to try to guarantee level playing field between state-owned and privately-owned enterprises.	Competition officials in charge of competition advocacy of the beneficiary agencies.
6. October Budapest	<b>GVH staff training:</b> A group of international experts will discuss with GVH staff their views of the challenges that competition agencies face in this moment. This year we will cover the main ECJ cases on cartels and abuse of dominance.	Board members, Directors, and staff of the GVH.
7. November Budapest	<b>Judge's trainings. Non cartel agreements:</b> This seminar will allow the judges of the member states of the European Union together with those of Montenegro, Kosovo, and North Macedonia to have a better understanding of the grounds of the evolution of case law at national and EU level.	Judges of EU or beneficiary countries.

## II. PUBLICATIONS:

The OECD-GVH Regional Center for Competition will publish (both in English and in Russian):

Two issues of the Newsletter "*Competition Policy in Eastern and Europe and Central Asia*"

The Annual Report with the summary of its activities

## III. VIDEOS:

Two videos "*Key Competition Topics explained in few minutes*" on the topics:

Competitive neutrality

Competition assessment toolkit

## IV. RFI:

The RCC will continue to create a hub of exchange of information on cases for the Agencies in the Region.

# III. ARTICLES ON BID RIGGING





# 1. Introduction:

## Why is Competition so Relevant in Public Procurement?



**María Pilar Canedo**  
Senior Expert in Competition  
OECD

The most common type of *bid rigging* consists in a group of firms conspiring to raise prices or lower the quality of the goods or services offered in public tenders. This anti-competitive practice costs governments and taxpayers billions of dollars every year across OECD countries.

Let's start with some **examples**. In 2011, the US FTC uncovered a bid rigging scheme involving generic drug manufacturers that aimed to reduce competition and increase prices. Several companies were found guilty of colluding to fix prices and allocate customers for generic drugs, leading to higher costs for patients and healthcare providers. In March 2023 the UK CMA considered proved that 10 construction firms illegally colluded to rig bids for demolition and asbestos removal contracts. In 2019 the Danish Supreme Court upheld a decision by the Danish Competition Council that proved that two of the biggest undertakings of the sector submitted a joint bid covering three districts in tender for road marking, when each party had what was needed to bid for one lot. The parties to the consortium agreement were actual competitors, since both had the financial resources, know-how and access to the requirements concerning machines and staff to bid for one lot. Consequently, their bidding arrangement which involved price-fixing and contract sharing, was anti-competitive by object. In 2018 the Spanish Supreme Court confirmed a decision of the Basque Competition Authority that proved, based only in indirect evidence, that 8 catering companies were rigging bids for the tenders for public schools of the Basque Government for at least 12 years and therefore increasing the prices and reducing the quality of the meals served to the kids.

These are only a few of the hundreds of cases of competition problems concerning public procurement all over the world. They affect big and small economies, wealthy and less developed economies, strong and younger agen-

cies, very simple and extremely sophisticated behaviors. They have many things in common though.

**Public procurement generates great advantages for citizens** in modern societies in terms of more and better public services beneficial for everyone, especially the neediest. Many of the rights that we have thanks to our social and democratic rule of law depend on public procurement procedures.

The impact of public procurement in the economy is also qualitative and quantitative. OECD countries spend approximately 12% of their GDP in public procurement. This percentage can be higher in developing countries. When public procurement works in an efficient way, a country receives several positive impacts both direct and indirect:

The direct effect deals mainly with the services offered by the administration to citizens: First in terms of quality. Thanks to better procedures, citizens will see better infrastructures developed, will receive better medical services, better education, quicker and innovative transport. Second in terms of quantity. In this sense, if we avoid overcharges or corruption related with public procurement, the administration will be able to further develop more services offered to society.

Those direct effects come together with many indirect positive outcomes. If public procurement is open to more companies, economy of the country becomes more competitive and more innovative and the most efficient receives better outcomes avoiding better treatment based on tradition, personal contacts, or other not so evident reasons. This usually implies a better labor environment. As quality becomes a relevant asset, companies need to hire the best workers and therefore offer better conditions (social and economic).

If the administration can offer more services of high quality, society becomes fairer and more inclusive. If we consider the relevance of the services offered to society by the administration -such as those mentioned before or medicines in hospitals, digital or postal services, care of minors or the elderly or so many others- we will realize that they can make a difference in the quality of life for a significant part of society. It seems clear that those who belong to the most benefited part of society will always be able to access such services when they need them and with

the necessary quality. However, for some social sectors, only if the State offers high quality public services will it be possible to have access to rights that are essential for their personal development. It is therefore essential for the administration to be able to offer more services and for these to be better and accessible to all.

Finally, those elements imply that if public procurement works efficiently, citizens increase their trust in transparency and equal opportunities, and this has a positive impact on their trust in the real benefits of social and democratic state.

Considering all those reasons, modern legal systems create complex **public procurement procedures based in competition among companies**. It is not usually underlined that one of the main aims of those procedures is to guarantee that the companies feel the incentive to be excellent in quality and price.

But creating those conditions is far from easy. The services offered by the State to citizens often require technical knowledge that is not accessible to the public officials who contract, and information and data that the administration lacks are relevant to design the tenders. There is, on many occasions, a remarkable asymmetry of information. The administration must give urgent answers to specific problems, not discontinue crucial services...and sometimes **companies take advantage** of this and reach agreements that put their own benefit against general interest.

Sometimes they consider a group of contracts and decide who will win each tender; in other cases, they agree to subcontract companies that will not be awarded in exchange for economic compensation; sometimes they agree not to lower prices below certain thresholds; they agree not to hire workers of the competitors; they agree to share parts of the bids reducing their costs and the quality of the offers; sometimes they agree not to introduce improvements in the products (that would imply higher costs for them) and therefore reduce the quality of the service that citizens will receive....

The types of agreements are imaginative and varied. However, they all normally have in common that the companies create to the administration an appearance of competition (through the so-called cover offers). The public entities believe that they are contracting the best company, when, in fact, they receive rigged offers (with higher prices and lower quality).

The elimination of bid rigging could help reduce procurement prices by 20% or more and increase the quantity and quality of the products and services received by soci-

ety. The OECD was the first international organization that paid attention to this topic, leading the discussion from the publication of the first on fighting bid rigging in 1998, to the Guidelines revised this year. Therefore, competition authorities all over the world devote **personal, technical, and economic means to avoid, detect, stop and sanction these behaviors**. Bid rigging is among the **priorities** of most of them.

The conducts of the companies are in most of the cases secret, and it is not easy to find the required evidence to sanction them. This is why there are different **tools** that are key to competition agencies together with traditional complaints: The creation of confidential information channels for informants (whistleblowing) is key. It implies that anyone can inform the competition agency of problems in reference to a public procurement contract. This can be a worker, a competitor, a contractor, a client, or anyone with detailed information about this kind of behavior.

Also, the competition agencies have powerful and sophisticated methods to detect conducts that harm the market and society. The officials of competition agencies can enter the premises of companies and can collect information of books, computers, cellphones... This dawn raids are for sure one of the most efficient tools to find evidence of the illicit conducts and create strong cases to stop bid rigging.

Digital screening tools and algorithms based on AI have an increasing relevance both for conducting dawn raids and identify weird patterns of behavior of companies that can unveil possible collusions. The cooperation with contracting authorities that have access to offers (winning and rejected) is crucial for obtaining the common aim of having clean and fair public procurement procedures.

Protection of public interest requires a **deterrent** system. Sanctions for this conduct are in every jurisdiction among the highest that can be imposed.

In 2007 the Tokyo Electric Power Company was sanctioned over 62 million \$ for rig bids to secure contracts for the construction of power substations. Several executives faced criminal charges. Between 1997 and 2011 major truck manufacturers were found guilty of colluding to fix prices and delay the introduction of emission-reducing technologies. The European Commission levied fines totaling over 2.93 billion Euros.

Regrettably monetary sanctions to companies are frequently not enough. Bid rigging conducts are difficult to identify, on many occasions imply very long-term behav-

iors and, due to caps of the sanctions, they can be lower than the illicit benefit obtained by the companies. Therefore, sanctions to natural persons, debarment of companies for future public tenders (accompanied by efficient self-cleaning measures) or disqualification of company managers need to be considered.

All the elements we have developed up to this point focus on conduct carried out by companies. It should be remembered, however, that the **role of the administration** in this area is very important.

The administration must design the process adequately, opening the contracts as much as possible to create incentives for the companies to make the most competitive offers; specifications need to respect the principles of necessity and proportionality in relation to the intended objectives; publicity is fundamental to allow any capable operator to enter the market if he can offer the best offer.

The development of collaboration mechanisms between contracting administrations and competition authorities becomes critical. For the competition authority it may be impossible to know the existence of peculiar conducts by the companies that mask illicit practices, but the contracting administrations have in their possession pivotal information. A fluid dialogue and a better understanding of both worlds is therefore essential.

It would be unreasonable to end this reflection without mentioning that there are cases in which the contracting administration (or the official in charge) have prior knowledge of the existence of agreements between the companies and do not act against them (or even in some cases

favors the existence of such conducts or instigates them). Regardless of other consequences that may derive from other branches of the law, it should be remembered that the competition authorities have in their hand the possibility of applying the concept of “facilitator” of the conducts and include them as responsible for the conducts.

Enforcement of competition implies a quasi-criminal procedure that calls for a **maximum zeal in respecting the rights of defense of the companies**. If we really want to stop those behaviors, the decisions of competition agencies need to be upheld by the courts. Therefore, we need strong cases where companies were able to defend against the accusations with arguments that were, however, solvently refuted.

In conclusion, the contracting administrations must be aware of the possible existence of bid rigging practices and not face the processes with excessive innocence. Public procurement needs to create the conditions to offer the best products and services to society and this requires creating the incentives for companies to compete to be selected. Competition authorities need to put all their efforts in fighting these very harmful practices.

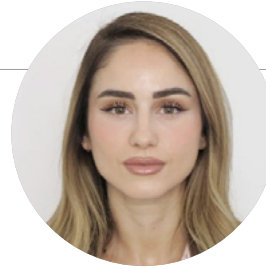
Only **joining forces** will we be able to fulfill our objectives and be truly useful to our society. Together we contribute to a fairer and better society. The OECD publishes country experiences, and help countries all over the world to implement efficient measures to fight this practices in an attempt to contribute to the realization of its motto Better Policies for Better Lives.

## 2. RCC country contributions

### Bid Rigging Cases in the Albanian Experience



**Mimoza Kodhelaj**  
Director  
Albanian Competition Authority



**Anisa Buxheli**  
Director  
Albanian Competition Authority

#### 1. Legal basis

The Albanian law no. 9121/2003 “On competition Protection”, as amended, considers bid-rigging in any of the forms of bid-rigging schemes: cover bidding, bid suppression, bid rotation, market allocation as in violation of article 4 of the law “prohibited agreements”. The Albanian Competition Authority (ACA) has the legal power to investigate and punish bid-rigging cases. Furthermore, the ACA has in force the Guideline (2011)<sup>1</sup> “Fighting bid-rigging in public procurement” which is approximated to the same OECD Guideline of 2009.

Since 2019, the authority has a Memorandum of Understanding with the Agency of Public Procurement (APP), where both institutions aim to cooperate on the fight against bid-rigging in public procurement procedures. Law no. 9643/2006 “On public Procurement” as amended, and other sub-legal acts foresee that economic operators (undertakings) engaged in bid-rigging, may be excluded up to 3 (three) years from tendering in future bids. In 2022 The ACA and APP signed the „Joint Memorandum: „Public Procurement and Protection of Competition, Integrity of the Public Procurement Process.”

Competition Commission may open a preliminary investigation by itself or by a complaint from other interested parties or institutions. Generally, a preliminary investigation lasts 3 (three) months. The Competition Commission may subsequently decide to open an in-depth investigation where there are signs of distortion of competition. In-depth investigations last up to 6 (six) months.

Even though in the Albanian legislation there is in place the Leniency program since 2009, no application is done at the ACA so far, and there is no Whistleblower Program, these result in depending to open cases only by

contracting authorities or the APP to present at the ACA requests or complains to open bid rigging cases.

Bid-rigging cases same as prohibited agreements cases may end up with the Competition Commission (CC) decisions imposing fines, giving conditions and obligations, giving recommendation to public institutions and contracting authorities; or undertakings may voluntarily propose to have commitments. In the following we will present shortly cases on each of those described.

#### 2. Bid rigging cases

- *Bid rigging case ending with conditions and obligations: purchase of instrumentation, electrical and digital tools (equipment for control and measurement of cathodic protection CIPS and DCVG)*

The APP submitted to the ACA a decision requesting the ACA to initiate an administrative investigation procedure against two undertakings that had participated in a procurement procedure with the object: “Purchase of equipment, instruments, electrical and digital tools (equipment for control and measurement of cathodic protection CIPS and DCVG)” conducted by Albanian Gas Services Company JSC and to inform the Public Procurement Commission at the conclusion of the investigation on its results. In July 2023, the CC decided to open a preliminary investigation through decision no. 1000 dated 17.07.2023 “On the opening of the preliminary investigation in the procurement market against the undertakings Raimondo G.P LLC and Li.Bo – Albania LLC”. The investigation lasted 3 (three) months. The ACA performed the necessary down raids on both operators, sent Request for Information to the relevant institutions, and received

<sup>1</sup> <http://caa.gov.al/uploads/publications/brochure.pdf>

documentation on bids from all other economic operators bidding at the same procurement procedure.

At the end of the preliminary investigation procedure, the CC assessed that the conduct of the undertakings in the procurement market with the object “Purchase of equipment, instruments, electrical and digital tools (equipment for control and measurement of cathodic protection CIPS and DCVG)”, raises doubts of possible restrictions of competition through a collusive agreement in their bids. For these reasons, the CC, decided to open an in-depth investigation procedure through decision no. 1026, dated 26.10.2023 “On the opening of the in-depth investigation procedure in the procurement market against the undertakings Raimondo G.P LLC and Li.Bo – Albania LLC”. The investigation lasted 3 (three) months.

Due to the way in which the undertakings carried out their activities in Albania, given that one of the undertakings was a supplier of the other undertaking and also because no direct evidence was found during the down raids to prove the existence of a prohibited agreement between the undertakings, the CC concluded that, despite the existence of suspicions, there is not sufficient evidence to fully confirm that in the procurement market with the object “Purchase of special tools and equipment, instruments, electrical and digital tools (equipment for control and measurement of cathodic protection CIPS and DCVG)”, by the undertakings that were subject of the investigation, there is a violation of Article 4, point 1 of Law no. 9121/2003.

The CC through decision no. 1049, dated 16.01.2023 decided to close the in-depth investigation procedure and imposed the obligation to the undertakings to make the relevant changes within 90 days, to carry out an activity independently of each other and specifically: to change legal premises of the activity; to have e-mail addresses and telephone numbers independent of each other and to bid independently when participating individually in public procurement procedures.

- *Bid rigging case ending with fine: procurement of repair of office buildings in Municipality of Himarë.*

The APP sent a request to the ACA that concerned the examination of “Bid rigging” in the public electronic procurement system relating to “Repairs of office buildings in the Administrative Unit Lukovë”, Municipality of Himarë. The request was based on the audit report of the Supreme State Audit for this procurement, after it was

suspected that there might be a violation of Article 4 (prohibited agreement) of Law no.9121/2003. Four operators participated in the procurement procedure - “Repairs to office buildings...”, Municipality of Himarë. The winning operator was suspected of bid rigging as it had uploaded a document from another operator, to the electronic system from its own account when participating in the same procedure, under the scheme of cover bidding. One of the competitors agreed to submit a bid that was higher than the other bidder’s bid, in order to give the impression of a real offer and sincere competition. In conclusion, from the assessment of the conduct of undertakings and the documents collected during the preliminary investigation procedure, it was found that this was a prohibited agreement. For these reasons the Competition Commission, through decision no. 535 dated 17.07.2018 imposed (2) fines on both operators for serious breaches of competition, to the amount of 100,000 ALL for each of them.

- *Bid rigging case ending with commitments: procurement market of food for Nurseries and Kindergartens at the Municipality of Tirana:*

In March 2021, the CC decided to open a preliminary investigation through decision no.785 dated 25.03.2021 “On the opening of the preliminary investigation in the procurement market with object „Purchase of food for 2021”, Lot I, Lot IV and Lot V, conducted by the General Directorate of Nurseries and Kindergartens, at the Municipality of Tirana”. The investigation would have lasted 3 (three) months. The ACA performed the necessary down raids on both operators, sent Request for Information to the relevant institutions, and received documentation on bids from all other economic operators bidding at the same procurement procedure. During the investigation, the General Directorate of Nurseries and Kindergartens, at the Municipality of Tirana, deposited an official letter stating that there is an emergency and extreme need for daily supply of food to nurseries and public kindergartens in Tirana and is waiting for the ending of the ACA’s investigation to continue the procurement procedures. Under these emergency circumstances, as well as taking into consideration that cases ending with commitments can bring a rapid and effective change in the market, the ACA identified that the above competition concerns can be eliminated if undertakings would be willing to file commitments. In April 2021, the undertakings have voluntarily submitted their commitments to address the

competition concerns in the procurement market under investigation, and their immediate commitment to fulfill these commitments. According to the statements of both undertakings, their behavior in the procurement procedures under investigation has been misinterpreted, due to the family connection they have with each other. The undertakings committed to bid independently, operate with its employees independently, to not bid in any procurement procedure according to the object of activity of the respective undertakings, simultaneously with two different bids, even though they are two independent undertakings from each other. After assessing the commitments, the CC through decision no. 796, dated 29.4.2021 decided to close the preliminary investigation and approve the commitments filed by undertakings.

- *Ongoing cases*

The ACA is also assessing a case of a suspicious agreement between two undertakings in the public procurement market with the object: Expenses for material for the

functioning of office equipment, for which it has decided to open an in-depth investigation through decision no.1122, dated 23.10.2024 “On the opening of the in-depth investigation procedure in the procurement market against the undertakings Adastra LLC and Colombo LLC”. The investigative procedures in this case have not yet been completed.

### 3. Final remarks

Detecting bid rigging by the competition authorities can be particularly difficult due to its covert nature, with parties often using sophisticated methods to conceal their collusion, such as rotating bidders, bid suppression, or market allocation. The complexity of proving such activities, combined with the tendency for conspirators to coordinate in subtle ways, requires competition authorities to employ advanced investigative techniques, such as forensic analysis, data scraping, and whistleblower programs. Besides, the fight against bid-rigging is a challenge that requires close collaboration among public institutions to identify and prevent anti-competitive practices.

# Detecting Bid Rigging in Electronic Auctions for Food Procurement Using Digital Tools in the Republic of Armenia



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## Introduction

In Armenia, public procurement plays a vital role in ensuring that government entities receive the best value for money in acquiring goods and services. However, like many other nations, Armenia faces challenges in maintaining the integrity of its procurement systems, especially when it comes to preventing bid rigging—an illegal practice where competing companies collude to fix prices and manipulate bidding processes.

Bid rigging undermines competition, inflates prices, and compromises the fairness of procurement, which in turn harms both public institutions and the taxpayers they serve. With the increasing reliance on electronic auctions in Armenia's procurement framework, the risk of such anti-competitive behaviour is amplified. This newsletter will explore how digital tools are used to detect bid rigging in Armenia's electronic procurement auctions, using a case study involving food procurement for state institutions.

## Regulatory Framework for Public Procurement in Armenia

Armenia's *Law on the Protection of Economic Competition* includes robust provisions aimed at ensuring competition in public procurement procedures. Among the most crucial stipulations are the provisions that specifically address horizontal anti-competitive agreements, which involve coordination between bidders to manipulate the outcomes of public procurement processes. These agreements may include:

- Fixing prices, terms, or conditions for tenders or auctions.
- Falsifying or distorting the results of a procurement process.

- Unjustifiably increasing, decreasing, or maintaining product prices in a way that harms competition.

Additionally, the law outlines actions by state bodies or officials that could block or restrict economic competition. Examples include discriminatory practices against certain entities or coordinated actions between public officials and private companies to harm market competition. These provisions serve as the legal backbone for addressing bid rigging and ensuring the fairness of public procurement procedures.

## Electronic Auctions and Bid Rigging

In Armenia, public procurement has shifted from traditional paper-based methods to modern electronic platforms. Electronic auctions are now commonly used for procurement processes, offering speed, transparency, and accessibility. However, as the adoption of these digital platforms grows, so too does the potential for bid rigging.

In an electronic auction, participants submit their bids in a time-sensitive, anonymous environment, and the auction concludes with the identification of the lowest bid. While this setup encourages competition, it also presents opportunities for manipulation if bidders collaborate behind the scenes to fix prices or create the illusion of competition.

An important regulatory element in these electronic auctions is that bidders must submit revised price proposals during the auction process, and the system automatically notifies participants of the lowest price bids. The rules also stipulate that each bid reduction should not be less than one percent of the lowest initial price submitted. This structure aims to ensure fair bidding, but it also makes the system vulnerable to collusion.

## The Case of Bid Rigging in Food Procurement

A notable case of bid rigging in Armenia's electronic auctions for food procurement illustrates how the system can be exploited. The procurement in question was conducted by a public authority seeking to purchase food supplies for state institutions. The process spanned over 10 separate procedures, involving approximately 700 lots, with a total estimated value of around 733 million Arme-

nian Dram. This case highlights the vulnerabilities within the procurement system and the potential for manipulation through collusive practices.

Five companies—who were suspected of engaging in bid rigging—participated in this procurement. Their involvement was flagged due to evidence collected from the E-Compete and Armeps digital systems, which monitor and store procurement data in Armenia. These systems allowed investigators to track irregularities and identify collusive behaviour, which would otherwise have been difficult to uncover.

The evidence gathered included:

1. **Family Ties:** Investigations revealed familial relationships between individuals associated with the companies involved in the cartel.
2. **Shared IP Addresses:** Multiple companies were found to have used the same IP addresses to submit bids, suggesting coordinated action.
3. **Co-worker Affiliations:** Evidence of close professional ties among employees of different companies was uncovered, further indicating collusion.
4. **Erroneous Applications:** Several companies submitted applications with deliberate mistakes—such as incorrect contact details—which suggested they were acting in concert.
5. **Shared Phone Numbers and Authorizations:** The companies were found to have shared contact numbers and had granted authorizations to the same individuals, further linking them to a coordinated effort.
6. **Intentional Mistakes:** Many of the companies submitted applications with similar intentional errors, including false contact information and addresses.
7. **Procurement Blacklisting:** Due to their anti-competitive behaviour, all five companies were blacklisted from participating in future procurement procedures.

### Pricing Patterns and Evidence of Collusion

Another crucial aspect of the case was the pricing behaviour exhibited by the bidders involved. Bid rigging often becomes evident through patterns in pricing proposals. In this instance, multiple bidders submitted offers that were strikingly similar or closely aligned, often at significantly lower prices than the estimated procurement value. For example, some bidders proposed unreasonably low prices, such as 240 or 360 AMD for certain food portions, whereas the estimated value for those portions

was approximately 1,225,000 AMD. This stark discrepancy raised suspicions that the bidders were attempting to manipulate the auction process by coordinating their price offers in a way that would unfairly influence the outcome.

In some instances, one of the bidders intentionally lowered its bid to prevent other competitors from winning the auction, only for the bid to be rejected due to inconsistencies in the submission. However, despite the rejection, this bidder was still selected as the winner in subsequent procurement procedures. This pattern of behaviour strongly indicated a coordinated effort to manipulate the bidding process and block fair competition, further supporting the suspicion of collusion among the participants.

### Disruption of the Procurement Process

The collusion among the five companies also disrupted the procurement process in several ways. By inflating the number of false bids and manipulating prices, the cartel caused delays and forced the public authority to allocate additional resources to address the irregularities. As a result, the public authority was unable to procure the necessary food items efficiently, which could have led to supply shortages for the state institutions relying on these products. The wider consequences of this disruption were felt by both the public authority and other potential participants in the procurement process, who were unfairly excluded from competing on an equal footing.

### The Impact of Bid Rigging on the Public Authority

Bid rigging not only resulted in financial harm to the public authority but also significantly undermined the efficiency of the procurement process. The authority had to invest substantial resources—time, manpower, and administrative costs—into investigating and addressing the consequences of the collusion. This diverted attention away from other crucial procurement activities and led to delays in acquiring essential goods for public services.

Furthermore, the reputation of the public authority was at risk. The delays and irregularities in the procurement process cast doubt on the government's ability to manage taxpayer funds effectively and maintain a fair and competitive procurement system. This damaged public trust and raised concerns about the integrity of the procurement system, potentially eroding confidence in future public contracts.



## Penalties and Enforcement

In response to the bid rigging case, the Competition Protection Commission of RA imposed significant penalties on the companies involved. A total fine of approximately 14 million AMD was levied on the five companies, and all of them were banned from participating in future procurement procedures for a set period of time.

While these penalties served as a deterrent to other companies considering similar behaviour, they also highlighted the importance of maintaining a transparent and accountable procurement system. The detection of bid rigging in this case was made possible through the use of digital tools, which allowed authorities to analyse and cross-reference data from multiple platforms in order to uncover the collusive actions.

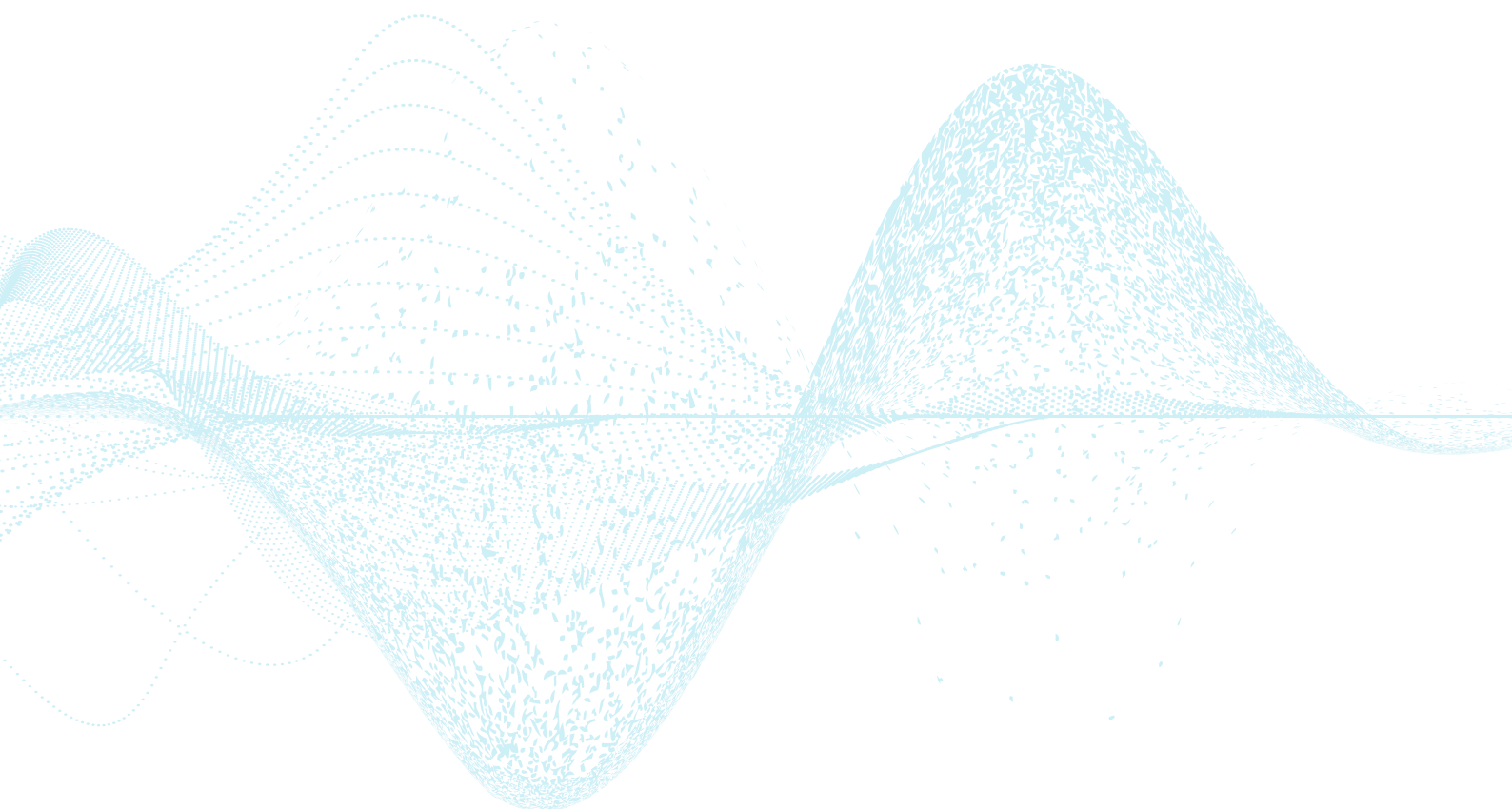
## Conclusion

The detection of bid rigging in electronic procurement auctions for food supplies in Armenia underscores the

need for vigilance in maintaining the integrity of public procurement processes. Digital tools like the E-Compete and Armeps platforms are invaluable in identifying collusive behaviour and protecting market competition. As e-auctions become more widespread, it is essential for both regulatory bodies and procurement officials to continue developing and refining methods for detecting and preventing bid rigging.

While the penalties imposed in this case are a step in the right direction, it is equally important to foster a culture of transparency and fair competition in public procurement. This will not only protect taxpayer money but also ensure that state institutions receive the best value for their purchases, ultimately benefiting the public at large.

Thank you for reading, and we hope this analysis provides valuable insights into the challenges and solutions surrounding bid rigging in Armenia's electronic procurement auctions.



# A Study on the Importance of Usage of Artificial Intelligence in Public Procurement. Case of Azerbaijan



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## Abstract

Public procurement plays an important role in the efficient functioning of state and central governments and public institutions. The huge spending on public procurement, particularly on capital projects, makes it highly inclined to corruption. In other words, cartels in public procurement impose high costs on public budgets. Given the expanding role of technology in an increasingly interconnected world, many leading experts suggest that technology can be a powerful tool to reduce opportunities for corruption in public procurement. In the past three decades, the use of technology, including electronic procurement (e-procurement) and artificial intelligence (AI), in public procurement has globally gained popularity. This paper's main hypothesis is that e-procurement and AI can have an impact on reducing corruption in public procurement. This paper aims to assist public procurement practitioners, government entities, and funding organizations in a better understanding of the technology role, including public e-procurement and AI. The paper provides several countries experiences on the implementation of public procurements. Also, the paper presents new public pro-

curement law of the Republic of Azerbaijan and the ways of digital transformation of public procurement system.

**Keywords:** corruption, procurement, public procurement, technology, artificial intelligence, e-procurement, bid rigging, fraud detection.

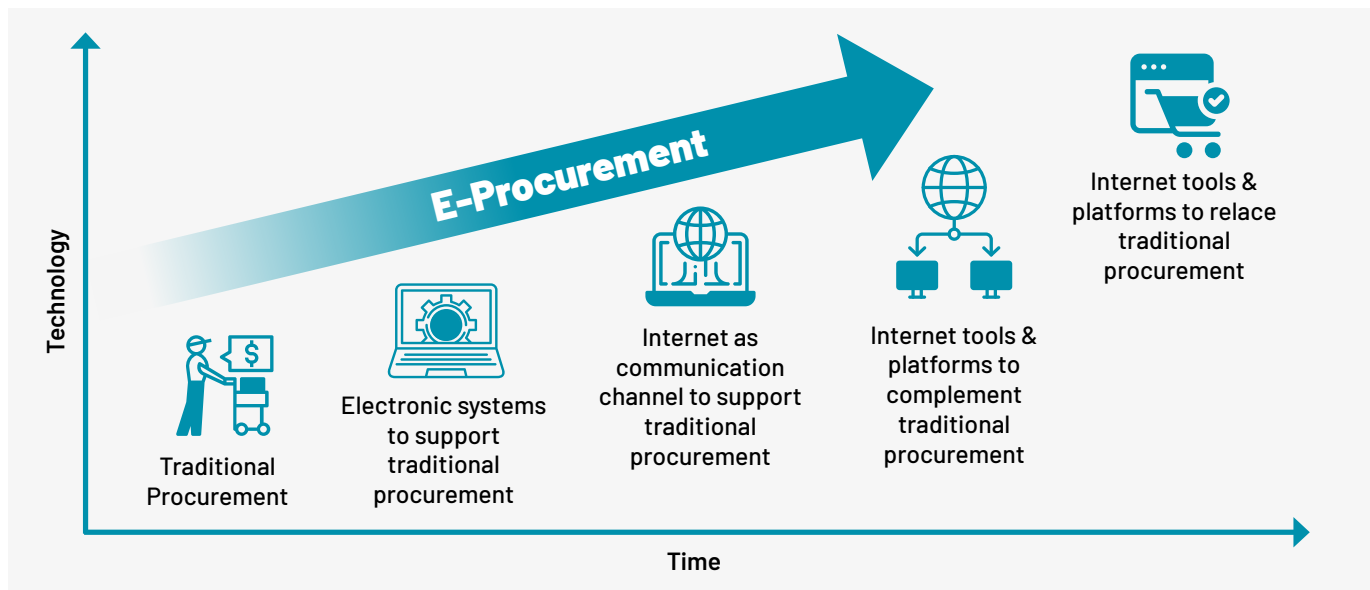
## Introduction

The role of technology is expanding enormously, and nearly every area of our lives and businesses is influenced by the digital revolution. This technological progress has made available a variety of new tools and strategies that can be used to fight corruption (such as collusion to fix prices, maintenance of cartels) in public procurement more effectively. Since the late 1990s, several new electronic-commerce technologies have appeared and revolutionized working practices. As a result, new procurement technology and applications like e-procurement and AI have been significantly adopted by organizations globally<sup>2</sup>. Experts propose that this technology can be an influential tool for enhancing government transparency and accountability, hence preventing corruption<sup>4</sup>. The figure 1 describes the evolution of e-procurement.

<sup>2</sup> Azanlerigu JA, Akay E. Prospects and challenges of E-procurement in some selected public institutions in Ghana. *European Journal of Business and Management*. Available from: <https://www.iiste.org/Journals/index.php/EJBM/article/viewFile/26295/26937>

<sup>4</sup> Schøll A, Ubaydi D. Impact of technology on corruption: A study of impact of e-procurement on prices of various government purchases. *Norwegian School of Economics*. 2017. Available from: <https://openaccess.nhh.no/nhh-xmlui/handle/11250/2487632>

Figure 1. The technological evolution of the procurement process<sup>5</sup>



While AI is not yet used in public procurement in developing countries, e-procurement was slowly introduced. The World Bank states different conceptual reasons for the slow implementation of e-procurement in developing and less developed countries (especially in Africa): 1) required important capacity was not done by governments, 2) lack of information technology infrastructure and lack of internet access, 3) traditional administrative cultures followed by governments<sup>6</sup>.

### Corruption in public procurement: why innovation is important?

Regarding the importance of public procurement, scholars emphasize that the public procurement function is a tool for long-term social and economic growth<sup>7</sup>. Therefore, government's primary tool for assisting in the effective management of public resources is public procurement. According to the Millennium Development Goals (MDG) of the United Nations cannot be reached without a global reduction in corruption. Some researchers<sup>8</sup> suggests that sustainable public procurement is the

top priority for achieving Sustainable Development Goals (SDGs) by 2030. The World Bank describes public procurement as a crucial tool for governments. The World Bank, the UN, and the Asian Development Bank (ADB) state that corruption in public procurement is increasing, especially in developing countries. In recent decades, the phenomenon of corruption in public procurement of products and services has expanded, OECD studied the bribery cases reported from 15 February 1999 to 1 June 2014 and determined that more than half of international bribery instances occurred to gain contracts in public procurement<sup>9</sup>.

According to the UNDP, government procurement of goods and services typically accounts for 10–15% of the GDP of developed countries and 20–70% of the GDP of developing countries<sup>10</sup>. According to the World Bank, public procurement is the largest component of public expenditures after salaries, it accounts for around 15% to 20% of public spending globally and up to 70% in developing countries. A World Bank study disclosed that 50-70% of the national budget is tied to procurement even if it

<sup>5</sup> Addo SK. Challenges of e-procurement Adoption in the Ghana public sector: A survey of in the ministry of finance. *Scholarly Journal of Arts & Humanities*. 2019;1(7):44–80.

<sup>6</sup> Anthony A. The use of E-procurement in south African public procurement law: Challenges and prospects. *Law, Democracy & Development*. 2018;22(1):39–47. <http://dx.doi.org/10.4314/ldd.v22i1.4>

<sup>7</sup> Sharma SK, Sengupta A, Panja SC. Mapping corruption risks in public procurement: Uncovering improvement opportunities and strengthening controls. *Public Performance & Management Review*. 2019;42(4):947–975. <http://dx.doi.org/10.1080/15309576.2018.1535984>

<sup>8</sup> Pavlovic D. Three strategies to combat corruption and reform public procurement. UNDP. <https://www.undp.org/asia-pacific/fairbiz/blog/three-strategies-combat-corruption-and-reform-public-procurement>

<sup>9</sup> Rakhel TM, Putera PB. Corruption in public procurement: A bibliometric analysis. *COLLNET Journal of Scientometrics and Information Management*. 2021;397–412. <http://dx.doi.org/10.1080/09737766.2021.1989990>

<sup>10</sup> Neupane A, Soar J, Vaidya K, Yong J. Willingness to adopt e-procurement to reduce corruption: Results of the PLS Path modeling. *Transforming Government: People, Process and Policy*. 2014: 500–520. <http://dx.doi.org/10.1108/tg-03-2014-0007>

is not a direct public procurement expense<sup>11</sup>. The World Trade Organization (WTO) confirms that public procurement accounts for 10-15% of global GDP and for OECD countries, the percentage is 12%<sup>12</sup>. Public procurement accounts for up to 50% of global government spending annually<sup>13</sup>. The World Bank evaluates that the annual worth of bribes paid worldwide is \$1 trillion<sup>14</sup>. The International Monetary Fund (IMF) states that corruption costs \$1 trillion annually for governments sectors worldwide.

Therefore, scholars and experts on this field suggest that technology and e-procurement system will minimize public procurement corruption<sup>15</sup>. According to their findings, e-procurement offers more transparency, accountability, accessibility, and availability of procurement information and maximizes the value of public funds<sup>16</sup>. They further argue that it minimizes human interference, reduces personal discretion, enhances fair competition, and enables suppliers to access, thus reducing the possibility of monopoly, cartel, collusion, and rigging among the bidders. Thus, investing in AI especially for public procurement system is one of the main objective goals. Due the enhancing efficiency, changing market structure, decline of leniency applications, improvement of reporting competition authorities should build the AI system.

One of the reasons that stimulate the competition authorities to invest digital tools and AI is vast amount data especially in public procurement system then which needs to analyze. AI can enhance efficiency and it is for this reason that governments use it already in many different sectors<sup>17</sup>. Competition law enforcement should not be left behind.

## E-procurement and AI usage in public procurement: Case studies

The UN stated that the numerous technological advancements have created an unparalleled area of potential<sup>18</sup>. The e-procurement system in India (<https://eprocure.gov.in/>) allows bidders to download tender documents and submit bids online for free<sup>19</sup>. Also, the Office of Government Procurement (<https://www.etenders.gov.ie/>), part of the Irish government, established an electronic tendering platform as a single location for all public sector contracting bodies to post announcements of procurement opportunities and award notices.

Some countries have created one single platform for public-private partnerships such as Tendersinfo (<https://www.tendersinfo.com/>) in USA and TED (Tenders Electronic Daily) in the European Union, listing European public procurement opportunities with 746 thousand procurement awards released each year, including 235 thousand requests for tenders valued at around €545 billion. The Singaporean government uses the GeBIZ e-procurement platform to improve government procurement transparency and enhance bidders' competition. The OECD cites the implementation of e-procurement systems in New Zealand, Denmark, and Mexico as instances of creative information technology used to control corruption in public procurement.

Researchers mentioned that in countries like Bahrain, Norway, Italy, Turkey, and Malaysia, e-procurement has increased bidding competition for public projects and services. They add that governments in countries like Peru, Pakistan, New Zealand, Italy, Fiji, and Hong Kong have implemented e-procurement to achieve the highest degree of governance. The Republic of Bangladesh has implemented National e-government Procurement (e-GP) in public auctions to stop collusive bidding and corrup-

<sup>11</sup> Ameyaw C, Mensah S, Osei-Tutu E. Public procurement in Ghana: The implementation challenges to the Public Procurement Law 2003 (Act 663). *International Journal of Construction Supply Chain Management*. 2012;55–65. [https://www.researchgate.net/publication/269610682\\_Public\\_procurement\\_in\\_Ghana\\_The\\_implementation\\_challenges\\_to\\_the\\_Public\\_Procurement\\_Law\\_2003\\_Act\\_663](https://www.researchgate.net/publication/269610682_Public_procurement_in_Ghana_The_implementation_challenges_to_the_Public_Procurement_Law_2003_Act_663)

<sup>12</sup> Maphosa N. The next generation of anti-corruption tools in southern Africa: Big data, open data and artificial intelligence. [https://www.researchgate.net/publication/337256733\\_The\\_Next\\_Generation\\_of\\_Anti-Corruption\\_Tools\\_in\\_Southern\\_Africa\\_Big\\_Data\\_Open\\_Data\\_and\\_Artificial\\_Intelligence](https://www.researchgate.net/publication/337256733_The_Next_Generation_of_Anti-Corruption_Tools_in_Southern_Africa_Big_Data_Open_Data_and_Artificial_Intelligence)

<sup>13</sup> United Nations Office on Drugs and Crime (UNODC). Knowledge tools for academics and professionals. Module Series on Anti-Corruption, Module 4: Public Sector Corruption. <https://www.unodc.org/e4j/en/anti-corruption/module-4/key-issues/corruption-in-public-procurement.html>

<sup>14</sup> Neupane A, Soar J, Vaidya K. An empirical evaluation of the potential of public E-procurement to reduce corruption. *Australasian Journal of Information Systems*. 2014;21–44. <http://dx.doi.org/10.3127/ajis.v18i2.780>

<sup>15</sup> Al-ajwad M, Carr L. An open public e-procurement solution to tackle corruption in Iraq. 2016 International conference for students on applied engineering (ISCAE). [https://www.researchgate.net/publication/312189998\\_An\\_Open\\_Public\\_E-Procurement\\_Solution\\_to\\_Tackle\\_Corruption\\_in\\_Iraq](https://www.researchgate.net/publication/312189998_An_Open_Public_E-Procurement_Solution_to_Tackle_Corruption_in_Iraq)

<sup>16</sup> Ayegba C, Nketiah K, Pasiwe L, Sidat A. E-procurement implementation in the South African construction industry. SACQSP 10th International Research Conference; 2018.

<sup>17</sup> Cary Coglianese and Alicia Lai, 'Antitrust by Algorithm' (2022) 2 *Stanford Journal of Computational Antitrust* 10–11; AlgorithmWatch, 'Automating Society: Taking Stock of Automated Decision-Making in the EU' (2019)

<sup>18</sup> Soreide T. *Corruption in public procurement: Causes, consequences, and cures*. Chr. Michelsen Institute; 2002.

<sup>19</sup> Modrušan N, Rabuzin K, Mršić L. Review of public procurement fraud detection techniques powered by emerging technologies. *International Journal of Advanced Computer Science and Applications*. <http://dx.doi.org/10.14569/ijacsa.2021.0120272>

tion and improve transparency and competition which resulted in saving public money.

From the literature review, it was observed that technology including e-procurement and AI has a lot of capabilities to reduce corruption in public procurement from enhancing transparency and accountability to minimizing human interference. Moreover, the literature review discloses many success stories related to the implementation of e-procurement and AI solutions. These solutions have various benefits, from detecting corrupt possibilities and fostering stakeholders' trust in the public procure-

ment process to the significant contributions to countries' bottom lines, as evidenced by numbers and percentages.

### Artificial Intelligence in Public Procurement

According to international experience and digitalization level, public procurement has been undergoing a digital transformation which increasingly involves the use of deep data analytics process of AI. Thus, the application of AI to public procurement offers tangible benefits and challenges which can be divided into the following categories (Table 1):

Table 1

Adoption of AI to public procurement		
Benefits		Challenges
Categories	Explanation	
Information	AI helps to mining of large amount of big data	Lack of data ecosystem (dataset)
Productivity	Application of AI can help significantly reduce time-consuming tasks such as offer selection	Lack of infrastructure
Efficiency	AI helps government procurement team to use resources effectively	Skills gap and educational challenges
Decision-making	Implementation of AI can help to make decision by analysing large data	Unclear privacy, security and ethical regulations
Quality	Application of AI can provide consistent quality by reducing manual work	High resource cost for adaptation of AI in business and governmental system
Cost	AI can reduce the processing cost	Limited access to technology

### Public Procurement Process in Azerbaijan

The essence of public procurement is to achieve value for money, which manifests in enhanced human welfare and improved economic growth. According to Nkinga (2003)<sup>20</sup>, strong procurement management in the public sector is a tool for achieving political, economic, and social goals. Thus, productive, or sustainable public procurement is one that is growth-promoting and welfare-enhancing. Good public procurement practices are a major determinant of the effectiveness of public expenditure, and governments all over the world typically spend 5 – 30 percent of their gross domestic product (GDP) on procurement of goods and services.

Efficient and fair distribution of public funds is one of the major priorities for Azerbaijan too. Public procurement policies and practices have a direct impact on a country's development and tax policy, especially due

to the revenue required to finance the multiple strategic goals. Therefore, setting up an efficient regulatory procurement process is important for promoting a fair tax system. To have a sustainable public procurement system is crucial for the challenges that government faces. These include - economic growth and job creation, fiscal discipline, modernization of public administration, ensuring competitive market, fight against corruption, ensuring the involvement of small and medium-sized enterprises (SMEs), development of innovations, and care for the environment.

According to the official data 2023, public procurements subjects of Azerbaijan conducted 12,483 procurement procedures involving more than 31.500 suppliers. In total, the government of Azerbaijan spent 7.545.473,9 thousand manats<sup>21</sup> (4.438.514,1 thousand dollars), which represents almost 21 percent of state expenditures of the

<sup>20</sup> Nkinga, N, S, D (2003). Public Procurement Reform – The Tanzania Experience. Paper presented at the joint WTO-World Bank Regional Workshop on Procurement Reforms and Public Procurement for the English – Speaking African Countries held at the Royal Palm Hotel, Dar Es Salaam, Tanzania from 14 – 17th January, 2003

<sup>21</sup> Annual report of implemented public procurements - <https://competition.gov.az/storage/files/files/1908/hesabat-digital-compressed.pdf>

Republic of Azerbaijan<sup>22</sup>. More importantly, Azerbaijan has achieved one of its major priorities in regulation of public procurements – the share of micro, small and medium-sized enterprises in purchases was more than 90%.

Upon realization of the importance of public procurement for the economic development of the country, the government embarked on reforming procurement system. The reforms were aimed at addressing inefficiencies in the use of public resources, weaknesses of government institutions and any potential violations of competition in public procurement system.

Given the importance of the public procurement system, numerous reforms and measures were undertaken both in legislative and institutional area since 1997. The first normative document regulating public procurement in the Republic of Azerbaijan, the Regulation „On Procurement of Goods (Works and Services) by Budgetary Organizations” was approved by the Decree of the President of the Republic of Azerbaijan No. 524 dated December 19, 1996, and later the Law of the Republic of Azerbaijan „On Tender” was adopted on February 11, 1997. The State Procurement Agency, having studied the experience gained in this field, took into account the existing documents on public procurement of a number of European Union countries, the recommendations of the World Bank, and the requirements of the provisions of the agreements on public procurement of the World Trade Organization, and developed a new draft Law „On Public Procurement”, which was enacted on 27 December, 2001. That public procurement law was amended in 2016 and 2018. According to the amendments made to the Law of the Republic of Azerbaijan „On Public Procurement” on December 28, 2018, it is prescribed to hold electronic tenders for all public procurement instances with a potential amount between 50 thousand AZN and 3 million dollars (5.1 million manats). Moreover, the law specified several additional procurement methods, such as open and limited tenders (and some modifications of these methods), requests for proposals and quotations, as well as direct contracting. As a continuation of the ongoing reforms in public procurement, the new law “On Public Procurement” was adopted On July 14, 2023. This new law drafted based on principles of efficient and economical use of financial resources, implementation of procurement based on transparency, openness, fairness, and competitiveness, came into force on January 1, 2024.

As an institutional reform, the State Procurement Agency of the Republic of Azerbaijan was first established in accordance with the Decree No. 583 of the President of the Republic of Azerbaijan dated May 16, 1997, with the aim of implementing state policy in the field of procurement of goods (works and services) at the expense of state funds. Then, by the Decree of the President of the Republic of Azerbaijan dated January 15, 2016, the State Procurement Agency of the Republic of Azerbaijan was abolished, and its duties and functions were transferred to the State Service for Antimonopoly Consumer Market Supervision (State Service) under the Ministry of Economy of the Republic of Azerbaijan. State Service is acting as the regulatory body and oversee the public procurement. The State Service contributes to improvement of procurement laws, rules, regulations, and instructions governing and supervising public procurement, including electronic procurement. As a continuation of institutional reforms, by the Decree of the President of the Republic of Azerbaijan dated August 27, 2024, on additional measures to improve management in the fields of antimonopoly and consumer market control, the State Agency for Antimonopoly and Consumer Market Control under the President of the Republic of Azerbaijan was established on the basis of the State Service for Antimonopoly and Consumer Market Control under the Ministry of Economy of the Republic of Azerbaijan. This step can be characterized for serious incentive to increase the independence and importance of the competition authority.

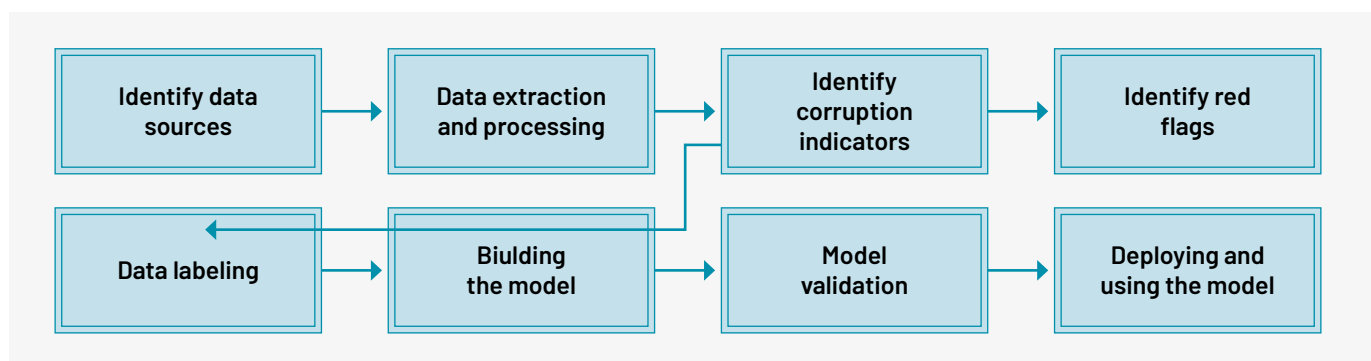
One of the major novelties brought by 2018 amendments was a requirement to conduct all procurements in digital format through publicly available e-Procurement. The adaptation of purchasing systems to technological resources is the most effective tool to achieve efficiency, transparency, and competition in public procurement systems. Based on this, a single internet portal of public procurement (<https://etender.gov.az/>) was built. E-tender enables the suppliers to upload the required documents and then submit the bids online through portal. Also, the portal assists suppliers by integrating relevant information from other government agencies such the State Tax Service. Thus, by means of the single web portal all interested parties of the procurement system have access to the information on the government’s procurement plans and participation in the tenders.

<sup>22</sup> The expenditures of revised state budget were 36.6 billion manats for 2023 - <https://www.cbar.az/page-40/statistical-bulletin>

E-procurement systems currently under operation in Azerbaijan uniquely reduces the need for physical paperwork, making the procurement process faster and more accessible. Additionally, e-procurement platform enables automatically matching government requirements with supplier capabilities, as well as facilitating better decision-making. In parallel, the digital procurement procedure creates massive data which gives us chance to build new machine-readable public procurement data infrastructure. Currently, State Service is working with IT consulting companies to identify possible potential violations of competition in public procurement by adapting disruptive technologies like artificial intelligence (AI), mobile apps, Internet of Things, blockchain, cloud computing, and data analytics.

However, AI stands out as separate instrument allowing automatic data AI consolidation, making the variables of sources, quantity, and system controllable<sup>23</sup>. While analyzing the most relevant AI technologies for procurement process the State Service has expressly identified that machine learning (ML), natural learning processing (NLP) and robotic process automation (RPA) are most common. Therefore, the State Service decided to adapt ML and NLP systems to the public procurement system. In our approach, we are trying to cover four directions in the public procurement fraud detection by using AI - the characteristics of the organizations in which the investigations are carried out, the technological tools, and data mining methodologies and techniques. So, the fraud detection approach will be divided into few steps shown in Figure 1.

Figure 1. Fraud detection model



For the classification and clustering of massive data we will apply linear and logistic regression, neural networks, and Naive Bayes algorithms. The models will be used for several different purposes in the detection of frauds in public procurement and at various stages of the public procurement process. Identified objectives of the model are following:

- Estimating the probability of corruption;
- Predicting the number of bidding tenders;
- Predicting fraud risk in contracts and contractors;
- Anomaly detection;
- Regression analysis to predict more sensitive features of a procurement;
- Cartel detection;
- Collusive behavior;
- Conflicts of interest.

In terms of public procurement, one of the main obstacles that we can find is the format of the available data and the way in which they can be accessed and processed. Currently, a significant part of the relevant contractual information is still contained in documents (specifications, forms, annexes, scanned documents etc.) in an unstructured manner which decrease efficiency and add costs. Therefore, we believe that to adopt of AI can enhance public procurement functions and efficiency through these ways:

- **Automation and optimization:** AI can automate many recurring tasks in the procurement process like Data entry, document verification, etc.
- **Data assessment and governance:** AI can analyze big procurement data to identify patterns, trends, and anomalies. This process will cover data mining, deep learning, and deep data analytics.

<sup>23</sup> Modgil, S., Singh, R., and Hannibal, C., Artificial intelligence for supply chain resilience: Learning from Covid-19, 2021. The International Journal of Logistics Management. <http://researchonline.ljmu.ac.uk/>

- **Supplier selection and evaluation:** AI algorithms can evaluate supplier performance based on various criteria such as quality, delivery, price, and compliance.
- **Fraud detection and risk management:** AI can detect irregularities, anomalies, or suspicious activity in procurement processes, helping prevent fraud and corruption.
- **Contract management (planning and design):** AI can support contract management by automatically monitoring contract compliance, tracking key performance indicators. Also, it frames the activities of planning and contractual strategy.
- **Predictive analytics:** AI can use predictive analytics to forecast demand, optimize inventory, and forecast procurement needs by analyzing e historical data, market trends.
- **Increased transparency and accountability:** AI can improve transparency and explainability which could strengthen accountability, reduce risks, and increase trust in public procurement process.

## Conclusion

AI applications are tackling economic and social challenges facing developing countries. AI has unique mechanisms that allow it to have significant impacts on economic productivity. The true potential of AI comes

from the ability to complement as well as enhance traditional factors of production.

This research finds out how technology can have a big impact on reducing corruption in public procurement. Usage of AI can improve transparency and fairness in public procurement processes. By implementing AI algorithms, businesses can minimize bias and ensure a level playing field for all suppliers. AI systems can evaluate offers objectively and removing human subjectivity from the evaluation process. This helps build trust in the public procurement system among suppliers and stakeholders.

State Service started to adapt AI in public procurement system through several ways. ML and NLP as the most common AI technologies are in the testing phase. Also, one of the main directions of application of AI is to detect frauds in the public procurement process. The fraud detection model based on the international experience.

Digitalization of procurement system will establish an advantage by leveraging big data analytics for better decision-making, fostering innovation, and data integration to improve public procurement user experience and supplier performance. The further development and implementation of electronic technologies will simplify the procedure of government procurement, reduce the risks of violating contract legislation, accelerate the interaction process between the customer and the participant of government procurement.



# Bid Ridding in Bosnia and Herzegovina: Highlights of the Recent Enforcement and Advocacy Activity of the Competition Council



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## Introduction

Public procurement, a significant component of government spending, involves the acquisition of goods, services, and works by government agencies and other public entities. This process plays a crucial role in shaping a country's economic landscape. By channeling public funds, governments can stimulate economic activities, innovation, investment levels and promote market competition.

In general, the efficiency of public procurement depends on compliance with the principles of transparency, accountability and efficiency. Well-managed public procurement can stimulate economic growth and development. Inefficient practices lead to significant economic losses and hinder progress, often resulting in misallocation of funds intended for education, inclusivity programs, and sustainable development projects.

In Organisation for Economic Cooperation and Development countries (OECD), public procurement accounts for a substantial portion of GDP, typically ranging from 12% to 15%.<sup>24</sup> Due to the COVID-19 pandemic, with its associated supply chain disruptions and inflation, fiscal spending has further increased compared to the usual average.

Bosnia and Herzegovina's annual public procurement spending is estimated at 1.5 billion EUR (approximately 9% of the country's GDP). While this represents a slightly lower share of GDP compared to developed countries, the reason for this lies in the structure of spending. Bosnia and Herzegovina institutions typically allocate approximately 15% of their budgetary funds to procurement activities.<sup>25</sup>

Given the significant amount of funds involved, public procurement processes are widely recognized as highly susceptible to corruption, a problem that is pervasive in both developing and developed nations.

## Legal framework – Bosnia and Herzegovina

### Public Procurement

Key institution responsible for overseeing the implementation of the Public Procurement Law in Bosnia and Herzegovina is the Public Procurement Agency. This agency plays a crucial role in ensuring transparency, fairness, and efficiency in public procurement processes. One of its primary responsibilities is to establish and maintain a system for monitoring of public procurement procedures. This includes collecting and analyzing data as well as monitoring compliance with the law.<sup>26</sup>

### Competition

The Competition Council of Bosnia and Herzegovina is mandated by the Competition Act to protect and promote market competition in the country. The Law<sup>27</sup> grants the Council broad mandate to combat anti-competitive practices, including prohibited agreements. According to the Article 4 of the Competition Act, agreements between businesses that could restrict competition, like price-fixing or market sharing are prohibited. For this reason, any agreement between suppliers in public procurement processes (bid rigging) is strictly forbidden, as it could lead to price fixing, market sharing, or other anti-competitive behaviors. If found guilty, companies can face severe penalties, including fines up to 10% of their annual revenue.<sup>28</sup>

### Detection and Proof: An Enduring Challenge

Collusive bidding is notoriously difficult to detect and prove. Participants often rely on verbal agreements and sharing of sensitive information to synchronize their bidding behavior. Such cooperation can persist for many years. Indeed, in free market economy, bid collusion is

<sup>24</sup> Government at a Glance, (2021), OECD

<sup>25</sup> Izvještaj revizije učinka, Problemi i nedostaci institucija Bosne i Hercegovine u sistemu javnih nabavki, (2021), Sarajevo

<sup>26</sup> Retrieved from the Public Procurement Agency's official website.

<sup>27</sup> Available at <https://bihkonk.gov.ba/zakon-o-konkurenciji-neslu%5%bebeni-pre%c4%8di%c5%a1%c4%87eni-tekst/>

<sup>28</sup> Pursuant to Article 48(1)(a) of the Competition Act

such an unlimited phenomenon in terms of its form, the circle of entities it can encompass, and also the sector it can involve.<sup>29</sup>

The most used bid-rigging detection tool is leniency. Unfortunately, many countries with underdeveloped market competition cultures lack a robust leniency system. The Competition Council of Bosnia and Herzegovina has a defined leniency program within its law and by-laws. However, in its previous practice, the Council relied more on other methods for assessing the existence of prohibited agreements such as: systematic market monitoring, public procurement monitoring, and information obtained from different entities (companies, individuals, institutions, and public procurement agencies).

While public disclosure of information is a valuable asset to antitrust agencies, research suggests that a significant portion of individuals would not provide such information, as they doubt the success of investigations.<sup>30</sup>

Fortunately, in Bosnia and Herzegovina, there has been an increasing number of companies willing to come forward. To facilitate the reporting process, the Council have enabled anonymity for whistleblowers.

When applying the aforementioned methods to detect cartels, the Competition Council focuses on identifying behavioral patterns such as joint bids, suspiciously low prices, and sudden withdrawals from tenders as well as other traces recommended by the OECD. The introduction of an electronic public procurement system in Bosnia and Herzegovina has significantly facilitated this type of search.

### Advocacy activities

Recognizing the need to further enhance the work in this area, the Competition Council has initiated a series of activities aimed at detecting a greater number of collusions in the future. These activities are divided into two groups:

- raising stakeholder awareness about the risk of bid-rigging in procurement,
- increased cooperation with other institutions and organizations.

The Competition Council has identified public procurement officials as a crucial target group for this campaign. These officials require continuous training to

recognize indicators of bid-rigging and understand the role of the Council. Additionally, the Council has included companies that appear as suppliers in public procurement as a secondary target group.

Following the definition of the goal and target groups, we have developed new informative brochures and pamphlets with a specific visual identity, divided into three well-known categories: bid-rigging schemes, markets that are conducive to the formation of cartels, and indicators of bid-rigging.

It is planned to distribute them through:

- a network of public procurement officials,
- the Foreign Trade Chamber of Bosnia and Herzegovina and entity chambers of commerce, intended for their member companies,
- the Public Procurement Agency of Bosnia and Herzegovina and the Center for the Development of Media and Analysis (CRMA), to distribute them through their communication channels (this will be further explained).

The next step in this campaign is to create a checklist document designed for public procurement officers which will support their work during procurement procedures to help them quickly identify potential red flags suggesting collusive behavior among bidders. This document will be distributed to public procurement officers through the previously mentioned communication channels.

Considering the significance of inter-institutional cooperation, a joint meeting took place with Public Procurement Agency and CRMA Association regarding the future cooperation. Namely, as the Agency is able to facilitate the access to data through its public monitoring system, this significantly improves the quality of Council's investigations. CRMA, the association specialised in public procurement monitoring, will refer any suspected collusion cases it identifies to the agency and the Competition Council, in the coming period.

### Instead of a conclusion – recent bid-rigging findings

In conclusion, I would like to emphasize that after an extensive investigation, the Competition Council recently issued decisions discovering bid-rigging infringements in two separate cases. In the first case, three companies col-

<sup>29</sup> Skrobotowicz, Martyna. *Ekonomia XXI Wieku*. 2023, Vol. 26 Issue 1, p27-37. 11p. DOI: 10.15611/e21.2023.03.

<sup>30</sup> From silence to vigilance: overcoming barriers in public reporting of bid-rigging and cartel violations, Koki Arai, (2024) *Journal of Antitrust Enforcement*, Oxford University Press.

luded on a road reconstruction tender. In the second case, a much larger group of eleven companies were involved in rigging bids on numerous tenders for computer equipment.

Given that a more thorough analysis of these cases would require additional time, I will briefly explain only one of them on this occasion.

In April 2023, the Competition Council received a complaint from a company, whose identity remains confidential (“Company X”). The complaint concerned a tender for the road reconstruction in a local municipality. “Company X” claimed that other three companies had allegedly entered into a prohibited agreement to exclude competition.

Based on the complaint, the Council initiated proceedings and established the following:

Several companies submitted bids for a road reconstruction tender. During the bidding process two bidders synchronously and significantly lowered their prices in a very short time frame, reducing their prices far below the estimated costs, until they won the tender. These actions, coupled with their subsequent withdrawal from the con-

tract without valid justification, strongly suggest a collusive agreement.

Suspiciously, the third company involved in prohibited arrangement did not change its bid and was awarded a contract in the end. Despite repeated requests from the Council to explain their auction behavior, the companies failed to provide any evidence to justify their conduct with legitimate business reasons.

Furthermore, investigators discovered an additional clue, suggesting that one and the same individual had submitted tender bids as well as signed confirmations for the two companies under investigation. A forensic expert’s analysis confirmed that the signatures on both documents were written by the same person. This finding provided concrete proof of a connection between the two companies.

Ultimately, the Competition Council concluded that the three companies involved had colluded and coordinated their business strategies through direct or indirect exchange of information, thereby entering a prohibited agreement that significantly restricted and distorted market competition. They were fined a total of 209,801.00 BAM (approximately 107,000 EUR).

# Fighting Bid Rigging in Bulgaria: Productive Collaboration with the Contracting Authorities and Successful Enforcement in Recent Years



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## Introduction

Public procurement expenditure as a share of Bulgaria's GDP increased in recent years, reaching approximately 14% in 2023. In that respect bid rigging has been continuously subject of particular attention for continuous efforts and activities from the Bulgarian competition authority (CPC). The Commission's efforts in this area lead to capacity-building, development of a systemic approach and methodology for screening bid rigging and improved cooperation with contracting authorities, with the result that procurers are increasingly identifying red flags and turning to the Commission. The outcome of this cooperation is the increased number of opened proceedings, preliminary investigations and infringement decisions in bid-rigging cases. This kind of infringements has also been the first successful leniency applications at the CPC.

The dual role of the Authority in overseeing public procurement processes and enforcing competition law benefits the CPC's bid rigging investigations through constant interaction within the two competent Directorates at the Commission by exchanging relevant information, providing data of detected suspicious indicators, and carrying out consultations. The implementation of the Bulgaria's centralized automated e-procurement system, fully digitalizing the process from public procurement planning to contract awarding, is another important development improving the detecting process in the last years, allowing the use of specific screening models for bid rigging. The changes in the public procurement process have led to the necessity of exploring new different opportunities for screening methods, including the use of AI and for a forthcoming update of the current CPC's Guidelines for fighting bid rigging in public procurement.

Another recent tool in the Commission's arsenal for detecting bid rigging as well as other types of anticompetitive practices is the new anonymous whistleblowing platform, which has been active on the website of the CPC since October 2022. It provides full anonymity of whistleblowers if they choose so therefore encouraging them to come forward with information on possible bid rigging conduct.

## Legal Framework

By virtue of the Bulgarian Law on protection of competition (LPC), bid rigging in public procurement procedures qualifies as a form of cartel between undertakings that is an infringement under art. 15 of the LPC and/or art. 101 of the Treaty on the functioning of the EU (TFEU). CPC is an independent authority, empowered to investigate antitrust infringements, including bid rigging and impose sanctions and pecuniary fines. Its investigatory powers are broad and include dawn raids, interviews, interim measures and requests for information. In case a bid-rigging infringement is found, the CPC can impose a pecuniary sanction amounting to 10% of the undertakings turnover of the financial year preceding the infringement decision. The infringement decisions of the CPC can be appealed before the Administrative Court and reviewed in second instance by the Supreme Court. Criminal sanctions are not available as a penalty under the LPC.

At the end of 2020, the Bulgarian Competition authority adopted new Guidelines for fighting bid rigging in public procurement, based on the amendments in the public procurement legislation on both national and EU level and the recommendations of the Organisation for Economic Co-operation and Development (OECD). The Guidelines also reflected the good practices of the EC and

other EU member states. The public procurement legislation requires contracting authorities to notify the CPC if there is reasonable suspicion for bid rigging during a tender. To assist contracting authorities, the CPC has ensured that the Guidelines explain the basic principles of competition policy relevant to public procurement and the prohibition in article 15 of the LPC. They cover the factors conducive to market manipulation (e.g. stability of market shares, similarity of products/services), and explain restraints of competition by procurers (e.g. unjustified barriers to entry that narrow the number of potential bidders) and by companies (e.g. price fixing and market allocation). The Guidelines also set out a non-exhaustive list of “tender manipulations” that are prohibited, such as cover bidding, no bidding, bid rotation, allocation of markets etc.

The Guidelines outline the most characteristic indicators that could give rise suspicion of bid rigging. With a view of illustrating the indicators, The CPC has drafted a List of red flags that comprises an inseparable part of the Guidelines. Its objective is to direct the attention of the contracting authorities to those circumstances so that they could be in the condition to counteract such practices effectively and in a timely manner, as well as to help them in assessing when a potential bid rigging should be reported to the CPC. The Guidelines also explain the types of measures that contracting authorities can take to limit the risk of bid rigging in public procurement, (e.g. designing appropriate and transparent selection criteria, awareness campaigns); as well as the actions the CPC may take in relation to bid rigging.

CPC also adopted an internal document called Methods for Detecting Bid Rigging, which describes the rules and stages for screening based on economic and statistical analyses. The developed methodology supports the analytical work of CPC’s experts in detecting bid rigging cases.

## Cooperation

The cooperation of contracting authorities by notifying and providing all the information needed to the Commission is of prime importance for the effective bid rigging investigations. In that respect, the adoption of Easy-to-apply Guidelines for fighting bid rigging and the Checklist for designing competitive procurement process as well as the trainings provided to contracting authorities

in recent years are all in line with the Commission’s anti-trust priority for fighting bid rigging.

For instance, in 2023 the CPC held three trainings on bid rigging. In February, experts from the Social Assistance Agency have been trained. In October and December, the CPC team delivered a bid rigging presentation within a training programme organized by the Ministry of Transportation and Communications. This programme targeted experts from the Ministry, other national institutions benefiting from EU funds, the EU funds management body, and AFCOS (a specialized directorate within the Ministry of Interior, which is the national contact point for the European Anti-Fraud Office, OLAF). In order to detect rigged bids, the competition authority also cooperates with other public authorities, such as the Procurement agency who provides CPC’s investigations with essential evidence regarding IP addresses, profile users and other data on submitted documents. There are memoranda of understanding between the CPC and the National Audit Office, the Public Financial Inspection Agency and the Public Procurement Agency.

## Recent bid rigging cases

- Bid rigging case in the flower sector specific with the role of the consultant as a facilitator of the cartel

Our latest infringement decision is on a bid rigging case in the flowers sector. The undertakings coordinated their behavior so that one of them would always win the tender despite the fact that the other’s offers were usually lower. The common consultant that has been hired by the undertakings to prepare and submit their offers and to communicate with the contracting authorities has executed the cartel. The consultant has been found to act as a facilitator and therefore was liable for the infringement. The challenge that the CPC faced in this case has been the liquidation of one of the undertakings during the course of the proceedings. There were no legal or economic successors so the CPC was not able to sanction it.

- Bid rigging case in the construction sector with a great part of the participants of the cartel acting through joint ventures.

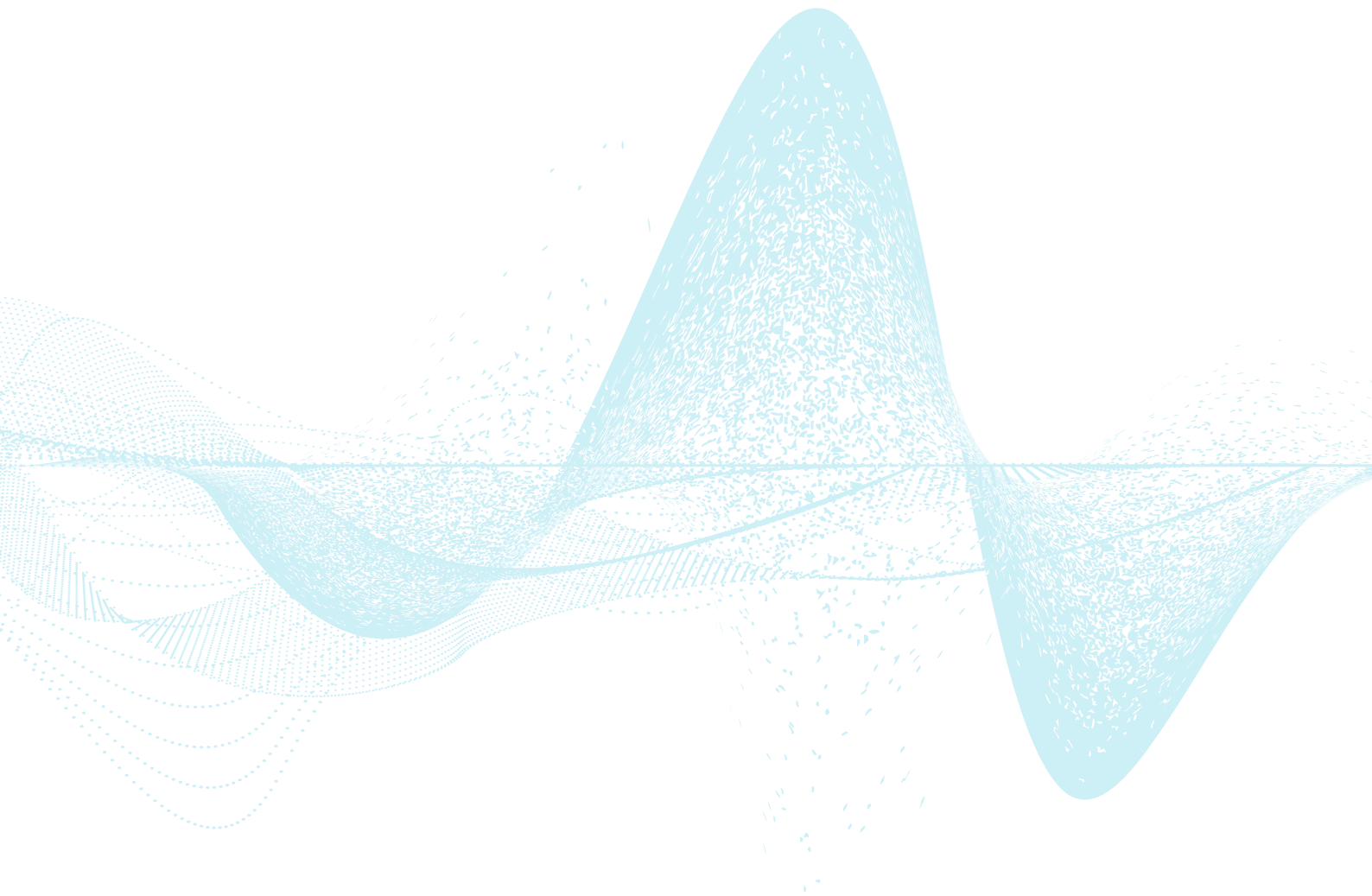
In huge proceedings, the CPC established three separate cartels in the construction sector and sanctioned over

50 companies. It was established that the participants in each of the three tenders have reached an agreement to distribute the tendered lots and to coordinate the prices offered to the contracting authorities. 5 of the participants submitted leniency applications and received immunity or a reduction of fines. Each cartel had different participants and different leaders with only a few of them participating in 2 or 3 of the collusions. A great part of the participants acted through joint ventures. The CPC found that all members of the joint ventures are equally responsible for the infringement irrespective of the internal allocation of functions. The court upheld these conclusions.

Both cases have been initiated ex officio upon receiving a tip-off from the respective contracting authorities, which cooperated with the CPC throughout the proceedings, providing the full documentation of the tenders.

## Conclusion

For the fight against bid rigging to be successful is of utmost importance that the contracting authorities fully understand the harm of bid rigging and together with the CPC find the balance between their aim to ensure smooth and timely tender procedures and the necessity to react against bid rigging in order to have competitive tenders. The improved cooperation with the contracting authorities, the Procurement agency and the CPC in recent years leads to increased number of signals for suspicious behavior, new opened proceedings and better efficiency of the preliminary investigations in bid-rigging cases. The workshops organized by the OECD within the project “Fighting bid rigging in public procurement: improving compliance and competition for public contracts” will further promote bid rigging awareness thus helping both contracting authorities and the CPC in their efforts against this harmful phenomenon.



# Strategic Solutions to Accelerate Success in Fighting Bid Rigging in Public Procurement: A Croatian Approach



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Citizens have the right to expect the benefits of competition, the better quality of goods at the lowest prices. Government and public sector frequently rely on a competitive bidding process to achieve that goal. For the competitive process is damaging and disruptive when competitors collude in advance, prices are higher than it should be and, in the end, the contracting authority and citizens are cheated. All that prevents public organisations to achieve the most economically advantageous tender, the tender which, following assessment of the award criteria, is the most beneficial to the contracting authority and represents value for money. Bid-rigging is a severe form of anti-competitive behaviour, a secret prohibited restrictive agreement between competitors, a hard-core restriction of competition rules and it occurs when there is an agreement among some or all of the bidders who will submit the winning bid. Set of competition rules apply to public procurement procedures to undertakings that act as bidders in these procedures.

## Advocacy matters

The Croatian Competition Agency (CCA) experts prepared the Guide for contracting authorities in detecting and tipping-off bid-rigging cartels in public procurement. The Guide was published in 2016 on the CCA website and as a booklet that was distributed to the contracting authorities involved in public procurement.

The purpose of the Guide was to help contracting authorities and undertakings to spot when businesses are engaging in illegal anti-competitive behaviour. Infringements are illustrated by many examples to understand what arrangements between competitors are illegal and guidelines are given to reduce the risks of bid-rigging in public procurement.

## A case in point

The CCA in 2022 concluded bid-rigging cartel case resulting in fining decision.

In its infringement decision of 28 April 2022, the CCA found that in the period from 4 June 2012 to 1 January 2014 the undertakings Agro-Vir d.o.o., Agrodalm d.o.o. and Diljexport d.o.o., all from Zagreb, concluded a bid-rigging agreement in the public procurement procedure covering 14 groups of food products for the public purchaser – a social care institution providing soup kitchen services “Dobri dom” of the City Zagreb by concluding a four-year frame agreement in the public procurement procedure carried out by the institution “Dobri dom” of the City of Zagreb in 2012.

The CCA found that the bidders concerned concluded a prohibited horizontal agreement in the sense of Article 8 paragraph 1 items 1 and 3 of the Competition Act with the objective of prevention, restriction and distortion of competition, by fixing and coordinating the prices in their bids and by colluding on the allocation of individual contracts with the view to creating a designated winning bidder in the tendering procedure concerned.

The CCA also found that the undertaking Marino-Lučko d.o.o. from Lučko subsequently joined the collusive agreement concerned in the period from 1 January 2013 to 1 January 2014 and thereby concluded a prohibited horizontal agreement with the objective of prevention, restriction and distortion of competition within the meaning of Article 8 paragraph 1 item 3 of the Competition Act.

In the application of the relevant EU criteria, the CCA particularly found in the course of the investigation that the bid-riggers practices, such as submitting tenders with identical or suspiciously similar quotes for the entire duration of the four-year frame agreement and almost identical bids for the conclusion of individual public procurement contracts for 2012, identical bids of different bidders within the same group of products, suspicious and courtesy tenders of the same bidder for individual years within the same group of products, sub-contracting and contract allocation in public procurement agreements and bid suppression schemes, taken together, were all solid indications of the existence of a hard-core restriction of competition and a bid-rigging cartel.

Material evidence of the suspected irregularities in the public procurement procedure concerned was collected by the CCA in the surprise inspections of the premises of Agrodalm and Diljexport.

It was found that the bidders concluded a bid-rigging cartel by fixing and coordinating the prices in their bids conspiring on the outcome of the public procurement procedure and colluding on the allocation of individual contracts with respect to a particular group of products and a particular year with the view to creating a designated winning bidder in the public procurement procedure based on the frame agreement for a particular group of products and a particular year.

The collusive bid-rigging practices in the public procurement procedure concerned eliminated any risk of competition in the bidding procedure. Such collusive cartel practices that result in horizontal price fixing are considered likely to have anticompetitive effects, especially on the price, volume or quality of the products or services concerned and therefore it is not necessary to prove their actual effect on the market for the purpose of the application of Article 8 of the Competition Act.

Agreements on market sharing or market allocation constitute hard core restrictions of competition rules “by object” and they are explicitly prohibited by Article 8 paragraph 1 of the Competition Act.

In other words, the CCA found the prohibited agreement concerned contained restrictions of competition by object where the harmful nature of the agreement by its very nature has the potential of restricting competition where it is unnecessary to demonstrate any actual effects on the market. However, in this case, the CCA also found that the agreement concerned at the same time produced actual and significant anticompetitive effects relating to the subject matter of the prohibited agreement concerned.

### Strategies for a future-focused work

Often public act as if the agency that has legal power to fight cartels drop from the sky and is capable and able to handle fast and efficiently cartel cases.

When it comes to regulator capacity, the agencies and capabilities and staff and knowledge to organize and con-

duct investigations, most competition agencies are probably facing lack of sufficient resources for their cartel policy visions.

The CCA is fully dedicated to detecting as many bid-rigging cartels as possible in the future.

To ensure that and with the view to obtaining more information or knowledge of the existence of a likely infringements of competition law, primarily prohibited horizontal agreements between undertakings, a new digital tool has been introduced this year –digital whistleblowing platform on the CCA website through which individuals (employees, suppliers, buyers, competitors) can anonymously report any pertinent information about prohibited agreements granting the reporters confidentiality and anonymity.

Great emphasis has been put on prohibited agreements in public procurement procedures in Annual priorities in the work of the CCA in 2024 because of their harmfulness to consumers and the economy. The CCA will continue beneficial cooperation with the Ministry of Economy and Sustainable Development, giving the CCA access to the Electronic Public Procurement Data Base of the Republic of Croatia, and the State Commission for Supervision of Public Procurement Procedures.

The sheer volume of data presents challenges as competition authorities grapple with which data creates real insight. To generate meaningful scenarios in fighting cartels, the CCA established a new Digital Affairs Department whose experts will focus on the development and use of algorithms that would help in faster detection of certain suspicious patterns of behaviour based on the insights gained from the Electronic Public Procurement Data Base.

To further improve bid-rigging prevention and detection, the CCA has joined the 2-year project, funded by the European Union, with the OECD and several other EU Member States “Fighting Bid-Rigging in Public Procurement: Improving Compliance with Competition Law for Public Contracts in Austria, Bulgaria Croatia, Cyprus, Greece and Romania”.



# Disclosure and Regulation of Bid Rigging Practices in Georgia's State Procurement Market



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## Abstract

This article examines the practical aspects of legal regulation, detection, and mitigation of bid-rigging practices within Georgia's state procurement market. It highlights the critical role and functions of state procurement in fostering the country's economic development and underscores the principles of maintaining free and fair competition, as outlined by Georgian legislation. These principles aim to prevent unlawful restrictions on relevant market competition.

The discussion also explores the importance of competition law in assessing the overall economic damage caused by concerted practice and non-compliance with competition regulations by undertakings in state procurement processes.

The study draws on local practices to illustrate the regulation, detection, and suppression of concerted practice within the state procurement sector, specifically focusing on the procurement of services for Food Assistance Centers serving vulnerable populations. As a result, it provides practical insights into the challenges and solutions associated with combating bid-rigging in this critical market segment.

**Keywords:** concerted practice, cartel, relevant market, state procurement, bid-rigging, sanctions, business environment.

## Introduction

As Adam Smith noted in the 18th century, *“People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.”*<sup>31</sup> This observation largely pertains to competition-restricting agreements, commonly known as cartels. Competition authorities worldwide prioritize the detection and severe punishment of such practices, particularly the most blatant forms, often referred to as “naked cartels.”<sup>32</sup>

In legal theory and practice, cartels are often described with strong metaphors, such as “the ‘tumor metastases’<sup>33</sup> of the free market” or “the supreme evil of antitrust.”<sup>34</sup> The term “cartel” originated in the late 19th century, derived from the Italian word *cartello*, meaning “paper sheet” or “poster,” which itself traces back to the Latin *charta*, meaning “card.”<sup>35</sup>

Cartels involve collusion among competing undertakings to coordinate their competitive behavior or manipulate competition parameters through illicit means. The primary objective of cartel members is to maximize collective profits and maintain or enhance their market positions. This often leads to artificially inflated or stabilized prices, offering no corresponding benefit to consumers in return.

In countries with advanced competition law frameworks, cartel agreements are classified as illegal activities. Both the United States and the European Union, as well as Georgia, recognize cartel agreements as serious offenses,

<sup>31</sup> The Wealth of Nations, Book I, Chapter X. <https://www.rrojasdatabank.info/Wealth-Nations.pdf>

<sup>32</sup> Whish, Richard and Bailey, David, “Competition Law”, 7th ed., Oxford University Press, 2012, pg. 514

<sup>33</sup> Monti, Mario, „Fighting Cartels Why and How? Why should we be concerned with cartels and collusive behavior?“, 3rd Nordic Competition Policy Conference, Stockholm, 11-12 September 2000, [http://europa.eu/rapid/press-release\\_SPEECH-00-295\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-00-295_en.htm)

<sup>34</sup> US Supreme Court, Verizon Communications Inc. v Law Offices of Curtis V Trinco, LLP 540 US 398, 408 (2004).

<sup>35</sup> DIRECTIVE 2014/104/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0104>

typically punishable through administrative sanctions such as fines. Some jurisdictions, like the United States and the United Kingdom, extend penalties to include criminal liability for engaging in cartel activities.

Before the legislative changes introduced in Georgia in 2005, which significantly weakened widely accepted mechanisms for regulating competition, the Georgian Criminal Code included specific sanctions for violations of competition law. These offenses included monopolistic practices, restrictive agreements, unauthorized use of trademarks, dissemination of false advertisements, and counterfeiting. In some cases, penalties extended to imprisonment for up to two years.<sup>36</sup>

### Enforcement Policy

Current Georgian legislation establishes principles to maintain free and fair competition from unlawful restrictions.<sup>37</sup> These principles form the foundation for developing a competitive market and ensuring the freedom of trade. The scope of the law applies equally to the actions and decisions of undertakings, as well as to those of government bodies, including autonomous republics, municipal authorities, and other administrative entities whose activities may restrict free trade and competition.

Of particular importance is the role of these authorities in organizing state procurements, where public funds are utilized. Reasonable application of public funds is a core responsibility of state procurement organizations. Alongside this obligation, these organizations are required to adhere to the standards set forth by Georgia's Law on Competition.

State procurements account for significant financial expenditures annually. According to the State Procurement Agency's report, the total value of contracts signed under state procurement reached 7.4 billion GEL<sup>38</sup> in 2022, increasing to approximately 10.5 billion GEL in 2023.<sup>39</sup> These figures underscore the critical role and significance of state procurement in supporting the country's economic development.

The authorities outlined in Article 10 of Georgia's Law "On Competition" (Government entities, the government of autonomous republics, municipal authorities, and other administrative bodies)<sup>40</sup> play a vital role in the country's economic development and the promotion of a healthy competitive environment in relevant markets. In the current economic context, state procurements add further importance to the State's role, representing a significantly public management function. „These procurements aim to ensure that their legal outcomes promote lawful governance, the efficient allocation and use of public funds, and the establishment of the State's reputation as a reliable contractual partner. Additionally, they contribute to fostering a competitive environment for businesses, advancing a free market economy, and supporting fair and legal economic transactions“.<sup>41</sup>

Law of Georgia on "Public Procurement" is to ensure the prudent use of public funds allocated for procurement<sup>42</sup>, supply goods required for state needs, promote healthy competition in service provision and construction, and guarantee fair, non-discriminatory treatment of participants in procurement processes. Furthermore, it seeks to enhance the transparency of state procurements through the creation of a unified electronic procurement system<sup>43</sup>, thereby fostering public trust.

Through state procurements, procuring organizations actively participate in the market, which inherently enables them to influence the structure and development of various markets within the country. One such market is the Provision of services for Food Assistance Centers serving vulnerable populations.

On December 18, 2019, a complaint was filed with the National Competition Agency of Georgia (hereinafter referred to as the "Agency") by an undertaking (the "Claimant") operating in the market for services for Food Assistance Centers serving vulnerable populations (the "Relevant Market"). The complaint alleged violations of Articles 7 (Restrictive agreements, decisions and concerted practices)<sup>44</sup> and 10 (Inadmissibility of distortion of competition by the state authorities, authorities of

<sup>36</sup> S. Fetelava [https://dspace.nplg.gov.ge/bitstream/1234/6152/1/Fetelava\\_Slava.pdf](https://dspace.nplg.gov.ge/bitstream/1234/6152/1/Fetelava_Slava.pdf)

<sup>37</sup> Law of Georgia No 2159 of 21 March 2014 – website, 27.3.2014 [https://gcca.gov.ge/uploads\\_script/legislation/tmp/phpYzLKg6.pdf](https://gcca.gov.ge/uploads_script/legislation/tmp/phpYzLKg6.pdf)

<sup>38</sup> <https://procurement.gov.ge/files/showfiles?id=6fb43adb-0b03-41da-9a1a-4a8c6e10ab00> [01.10.2024]

<sup>39</sup> <https://procurement.gov.ge/files/showfiles?id=fb7018f3-6637-4dc3-ae3-8e1f97b3891b> [01.10.2024]

<sup>40</sup> Law of Georgia No 2159 of 21 March 2014 – website, 27.3.2014 [https://gcca.gov.ge/uploads\\_script/legislation/tmp/phpYzLKg6.pdf](https://gcca.gov.ge/uploads_script/legislation/tmp/phpYzLKg6.pdf)

<sup>41</sup> Decision of the Supreme Court of Georgia - 21/07/2014, BS-667-642(K-13)

<sup>42</sup> LAW OF GEORGIA ON PUBLIC PROCUREMENT <https://matsne.gov.ge/en/document/view/31252?publication=58>

<sup>43</sup> <https://tenders.procurement.gov.ge/login.php?lang=en>

<sup>44</sup> LAW OF GEORGIA ON COMPETITION [https://gcca.gov.ge/uploads\\_script/legislation/tmp/phpYzLKg6.pdf](https://gcca.gov.ge/uploads_script/legislation/tmp/phpYzLKg6.pdf)

Autonomous Republic, municipal authorities and other administrative authorities)<sup>45</sup> of the Georgian Law “On Competition.” The Claimant identified certain undertakings within the Relevant Market as respondents under Article 7 and noted that municipal authorities from one of the country’s cities were involved under Article 10.

According to the Claimant, the Relevant Market had been monopolized by the aforementioned respondents, who were allegedly linked through open-ended contracts, with some acting as subcontractors to one another or sharing a common director and full ownership (100%) of shares. The respondents had divided the city’s districts among themselves, resulting in a situation where only the same group of individuals consistently won state procurement contracts issued by the administrations of all districts for several years. The Claimant presented evidence to support these claims.

Based on the materials presented by the Claimant and those collected by the Agency, there was no reasonable doubt regarding the alleged violation of Article 10. Therefore, the application concerning this article was deemed inadmissible. However, regarding the violation of Article 7, the Agency found sufficient grounds to proceed with the investigation against the respondent undertakings. Consequently, the Agency initiated an inquiry into the alleged breach of Article 7 as outlined in National Legislation.

During the investigation, the Agency reviewed all state procurement contracts for the period between 2017 and 2019, specifically focusing on procurements related to procurement of services for Food Assistance Centers serving vulnerable populations. In order to fully understand the conditions and specifics of the Relevant Market, the Agency deemed it necessary to extend its investigation to include data from 2011. To address key issues within the scope of the inquiry, the Agency requested relevant materials from the respondent undertakings, as well as from government bodies and other third parties.

Following the Agency’s established practice (Order No. 113, 07/08/2015)<sup>46</sup>, each tender for the procurement of services for Food Assistance Centers serving vulnerable populations was considered a separate Relevant Market. Additionally, the Agency defined the product market boundary of the Relevant Market as the Provision of services for Food Assistance Centers serving vulnerable populations, with the geographical scope limited to the individual districts of the city in question. Since the

services were continuously provided to beneficiaries, the Agency concluded that the Relevant Market did not have a specific time frame.

Based on the thorough analysis of the information gathered by the investigative team, including confessions obtained during the relevant explanatory sessions, the Agency concluded that tenders manipulation occurred in this case. Specifically, certain respondent undertakings participated in state procurements under prearranged conditions, redistributing the market for providing aforementioned services. This was primarily reflected in the fact that the participants in this market did not compete with each other. In each certain state procurement, only one predetermined undertakings participated without any competition. The Agency obtained confession regarding this during explanatory sessions, which constitutes a violation of the provisions of Article 7 of Georgian Law “On Competition.”

## Conclusion

The case in question was the first ever examined by the Georgian Competition and Consumer Agency in relation to the procurement of services for Food Assistance Centers serving vulnerable populations. As a result, two specific undertakings were fined a total of 40,000 GEL. The Agency’s decision was appealed by the respondent undertakings in the City Court, where the Agency prevailed. However, the case was further appealed to the Court of Appeal, where the dispute is still ongoing. This case is considered precedential for the relatively young Georgian Competition and Consumer Agency (which has been in operation in its current form since 2014). Once the court proceedings are concluded, the case will likely play a significant role in strengthening the enforcement of competition law in Georgia and may serve a preventive function in future cases.

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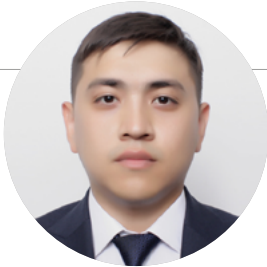
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# Effective Monitoring of the Digitalisation Age: Detecting Bid Rigging in the Republic of Kazakhstan



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The government support of the private sector through the public procurement system plays a significant role in stimulating economic growth and development.

Market players that are executing the supply of the goods and services to the government agencies are given the possibility to expand their business, increase production and create new job opportunities.

As a consequence, it contributes to creating competition in the market, improving the quality of goods and services offered, as well as to innovative development.

In October 2019, the National Chamber of Entrepreneurs of the Republic of Kazakhstan «Atameken» developed the informational digital portal «Single Window of Procurement», which is integrated with the five biggest trading platforms of Kazakhstan.

This information system has enabled businesses to increase their markets, examine their purchasing volume, and evaluate their potential competitors.

At the same time, regular monitoring and investigation of suspicious situations in bidding helps to sustain transparency and justice in Kazakhstan's markets, which is particularly important for stimulating innovation and business development in the public procurement sector.

In its turn, the Agency for Protection and Development of Competition of the Republic of Kazakhstan together with the National Chamber of Entrepreneurs of the Republic of Kazakhstan «Atameken» in November 2021 developed and introduced an information subsystem to identify signs of cartel collusion in tenders called «ORMEK» to the above-mentioned Portal.

The subsystem aggregates sample data and processes it, ultimately providing information to the Kazakhstan antimonopoly authority in the requested form.

In general, the subsystem provides access to information related to the procurement and bidding process (bid-

ders' bidding documents, IP addresses, registration data, etc.), and also allows behavioural analysis and indirect linkage between bidders (matching registration data; IP addresses; location at the same address; use of one EDS in two different organisations; indirect affiliation (by directors, employees, family lineage).

Therefore, the created information subsystem «ORMEK» is a powerful tool for analysing and identifying signs of bid rigging, namely:

- the presence of the companies that often wins bids;
- availability of trades with minimal price reductions;
- the presence of a limited number of the same bidders in the auction;
- repetitive order of winnings in trades of the same bidders;
- the presence of «pocket» supplier who is not interested in reducing the price from the allocated amount of the customer;
- history of companies' participation in the trades for the period.

At the same time, it is essential to consider that the connection of two or more companies in a public procurement identified by the search subsystem cannot unambiguously indicate the existence of an agreement prohibited by antitrust law.

In this regard, the antimonopoly authority identifies the extent to which they are interrelated in order to access the possibility of an anticompetitive agreement.

Identical formatting and content of documents and the presence of identical grammatical errors (with sufficient circumstantial evidence) may indicate the existence of a cartel agreement.

Meanwhile, the identity of the texts of the initial applications, without other circumstantial evidence, including similarity of behavioural features, cannot be indicative of cartel collusion, since the same samples placed in free access could have been used in the preparation of the application.

Similarly, the mere minimal difference in price between two market players participating in a tender cannot fully indicate the existence of cartelisation, without a finding of some form of benefit.

Nevertheless, the systematic establishment of a minimum price difference between the same market players is indicative of an anticompetitive agreement.

Consequently, if a couple of signs indicating the conclusion of a cartel agreement in tenders are identified in the actions of certain companies, they are not sufficient to initiate an investigation procedure.

For instance, since the introduction of ORMEK in 2021, the number of identified cartels has doubled (from 67 to 133).

It is worth noting that the focus of the antimonopoly authority is on “malicious” antitrust violations that cause the most significant economic damage.

In this regard, the antimonopoly authority monitors large purchases. As a consequence, investigations are conducted against large suppliers.

The key result in shifting the focus on large businesses was a 2.5-fold increase in the volume of administrative fines collected (2021 - KZT 2.1 billion, 2023 - KZT 5.8 billion).

At the same time, the dynamic development of digital platforms and the emergence of various new cartelisation schemes creates the need to continuously improve the subsystem and introduce new functionality to detect signs of collusion.

In this sense, the antimonopoly authority is considering a number of issues for further improvement of the subsystem, such as:

- mechanism of automatic notification of the presence of signs of violation according to the established criteria (*matching IP addresses, contact details, no price reduction, etc.*);
- synchronisation with certain government portals to identify indirect affiliation between companies;
- determination of the economic benefits of the colluding parties prior to the procedure for initiating an investigation;
- identification of oligopolistic procurement (large purchases with a limited number of participants).

Furthermore, in addition to the above, consideration is being given to introducing elements of artificial intelligence in certain steps in the detection of bid rigging.

Automated process of data analysis, use of machine learning algorithms and neural networks allows to identify signs of bid rigging quickly and objectively.

Thus, a skilful combination of search technologies and artificial intelligence elements plays a key role in enforcing fair competition in bidding.

## General Overview of Bid Rigging in the Republic of Kosovo<sup>47</sup>



**Adrian Mustafa**  
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Public procurement represents a complicated process through which, most of the public money is spent. Due to its nature, it is highly susceptible to corruption, which can have direct repercussions for taxpayers. Official statistics indicate that in 2023, public procurement represents approximately 7% of Kosovo's Gross Domestic Product (GDP).

Regarded as the second biggest issue by citizens in Kosovo, corruption has infiltrated public procurement, exacerbated by inadequate adherence to the Law on Public Procurement and the low integrity and accountability of procurement officials within contracting authorities.

Additionally, the presence of corruption and abuses in public procurement is concerning, because it diminishes competition for specific for certain works and services, enabling certain undertakings to establish monopolies while discriminating against others. In the Republic of Kosovo, public procurement is recognized as an activity that influences market competition across various sectors. Ensuring effective competition in public procurement, fosters innovation and efficiency in the production and delivery of goods and services, ultimately impacting prices, quality, and benefits for taxpayers.

Prohibited agreements in public procurement are considered a priority for the Competition Authority of the Republic of Kosovo. With the new Commission in place, the topic of Bid Rigging is taking an important and significant place for treatment by this institution. Interaction between competition policies and public procurement is a must. They affect each other for the need to tackle anti-competitive practices or bid rigging in public tenders.

The Competition Authority of the Republic of Kosovo is actively promoting competition policies in public procurement, raising awareness among institutions regarding their impact on the national economy. The Authority has

initiated training for procurement staff across all institutions, that conduct public tenders, including Kosovo municipalities, ministries, and other public entities. This training aims to explain how undertakings can realize bid rigging, the potential harm from such manipulations, and signs and measures in order to prevent them. Additionally, the Authority has partnered with two key institutions in public procurement, Public Procurement Regulation Commission and Procurement Review Body, which oversee and address complaints in this area.

The trainings that were held, promote effective competition, recommending/encouraging officials to carry out appropriate market research, before starting procurement procedures, establishing participant requirements that are transparent and non-discriminatory and that do not unreasonably prevent bidders from participating in public tenders, drafting, as far as possible, tender specifications and terms of reference focusing on functional performance, i.e. what is to be achieved, rather than how it will be done.

Productivity from these trainings is derived, since we now officially have the first notified case of suspicions of Bid Rigging in public tenders. The case has to do with tenders, developed by a corporation which has a great impact in the Republic of Kosovo. The working group has started investigations into the case, in order to reach the epilogue from the well-founded suspicions.

The Competition Authority of the Republic of Kosovo estimates that the main attention should be in institutions where the monetary value intended for the tender is high, such as: Health, Construction, Services, Infrastructure.

These institutions must safeguard the public interest while also fostering an environment that supports existing operators and encourages new entrants into public tenders. If procurement practitioners identify or suspect signs of bid rigging, it is crucial to contact the Competition Authority of the Republic of Kosovo to request an investigation into these signs.

The Authority is fully dedicated to assist procurement practitioners, in detecting bid rigging within public procurement. Our aim is to enhance institutional cooperation both within the country and with Competition Authorities in EU member states to combat bid rigging in public procurement, based on EU best practices.

<sup>47</sup> This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence. Hereinafter referred to as Kosovo.

# Competition Aspects of the Procurement System in the Republic of Moldova



**Dmitrii Padure<sup>48</sup>**

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Competition Council of the Republic  
of Moldova

## Introduction

The successful functioning of a state is directly related to the efficient management of public resources, especially the public budget. At the same time, a country cannot develop without necessary and planned investments with a long-lasting impact, especially on the well-being of the population.

The Republic of Moldova, being a candidate for accession to the European Union, with subsequent access to additional funds - essential for the development of various areas, must focus on the efficient use of the budget and investments, and consequently strengthen the institutional capacities of the authorities responsible for monitoring and investigating possible frauds.

The efficient use of the budget can take place only in the presence of clear rules of the game, starting with the planning, organization, conduct of procurement, resolution of any appeals, contracts awarding and their execution, up to the *ex-post* evaluation of the quality of the performed works and/or provided services. All this is to be achieved by establishing a normative framework, both primary and secondary, which ensures:

- protecting public interests and preventing abuses,
- transparency in the activity of contracting authorities and participants in procurement procedures, and last but not least,
- respecting the rights and obligations of all involved parties.

## Organisational and regulatory aspects

The regulatory framework governing the field of procurement in the Republic of Moldova, aiming to ensure transparency, efficiency, and fair use of funds, while pro-

tecting competition and preventing corruption, can be systematized as follows:

- Law no. 131/2015 on public procurement, which regulates general aspects and principles regarding public procurement.
- Law no. 74/2020 on procurement in the energy, water, transport, and postal services sectors, which regulates aspects and principles regarding sectorial procurements.
- Competition Law no. 183/2012, which regulates the activity of Competition Council regarding the anti-competitive practices in the procurement domain.
- Government Decisions, detailing technical and administrative aspects of procurement procedures.
- Regulations on the procurement of goods, works and services, drawn up by undertakings and institutions (contracting authorities) for the purpose of carrying out procurements.

In order to coherently apply and comply with the legislation in the field, the existence of a complex system of institutions with delegated responsibilities and attributions is imminent. Thus, the relevant institutions in the field of public procurement in the Republic of Moldova are the following:

- *The Public Procurement Agency* is responsible for: implementing policies and normative acts in the field of public/sectorial procurement, monitoring and evaluating the functioning of the public/sectorial procurement system, as well as strengthening the capacities of contracting authorities/entities and economic operators.
- *The Competition Council* is responsible for preventing and countering anti-competitive practices, including in procurement procedures.
- *The Court of Accounts* assesses the legality, compliance, economy, efficiency, effectiveness of the management of public financial resources through procurement procedures.
- *The National Agency for Solving Complaints* examines and resolves the appeals of the economic

<sup>48</sup> The article represents the author's position on the subject and does not necessarily reflect the point of view of the Competition Council.



operators submitted within the public/sectorial procurement procedures.

- *The Prosecutor's Office* investigates the limitation of free competition by participating with rigged bids in tenders or other forms of bidding contests, if this has resulted in a profit in particularly large proportions or damages have been caused in particularly large proportions to a third person.

### National experience

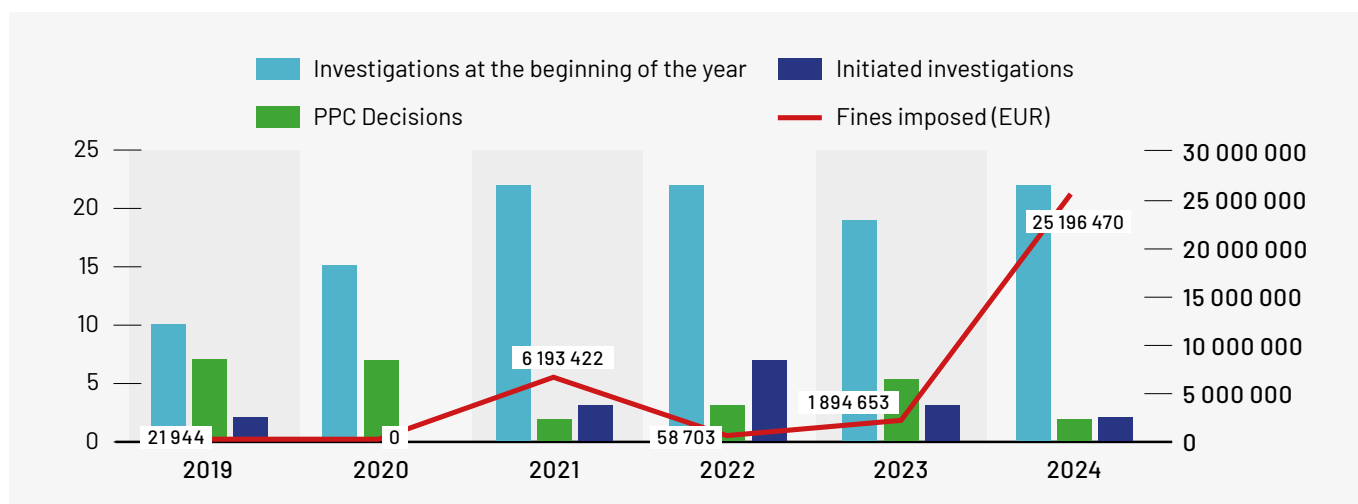
Over the past few years, contracts concluded in the field of public procurement have accounted for about 5% of the country's gross domestic product, with de facto much larger resources being allocated. At the same time, cumulating the financing of some areas (units for the implementation and monitoring of projects in various sectors - energy, environment, agriculture, etc.) without applying the classic public procurement procedures certainly results in a volume of purchases of about 10% of the gross domestic product.

Thus, the exploration of the procurement sector becomes even more important, including to ensure an efficiency of the price-quality ratio in public procurement,

especially in the period of economic recession, which is why for the competition authority the activities of identifying, investigating, and sanctioning anti-competitive agreements by participating with rigged bids in procurement procedures are a priority.

During the last 6 years, 26 investigations have been initiated regarding possible anti-competitive agreements, of which 80% refer to the possible participation with rigged offers in procurement procedures that include the purchase of: energy resources, aqueduct and sewerage works, electronic and security equipment, construction and repair of social infrastructure, works and goods for road and energy infrastructure, medical equipment, etc. The estimated cumulative value of the investigated procurement procedures for the possible participation of bid-rigging undertakings is approximately EUR 200 million.

At the same time, out of the 17 decisions adopted by the Plenum of the Competition Council in the field of anti-competitive agreements, 70% refer to the finding of the participation of undertakings with rigged offers in procurement procedures, the amount of fines being approximately EUR 2 million.



Source: statistics on the activity of the Competition Council – anti-competitive agreements (2019-2024)

### Challenges and difficulties

- **Procurement platforms**

As a considerable part of the national budget is managed through public procurement procedures, every citizen must have unlimited access to such information. Transparency of public procurement information can be achieved easily and at no cost by implementing electronic

procurement systems to provide open access to public procurement information.

The automated information system “State Register of Public Procurement” MTender is an electronic procurement system, consisting of an open web portal and open-data database and accredited private sector platforms to support electronic tenders for both public and private sector users.

The MTender system generates data in real time and allows unrestricted access to public procurement information. Thanks to this approach, every citizen or civil society organization is able to use the information provided by the MTender system to monitor how the government fulfils its public obligations and whether the principles of fair competition and value for money in public procurement are respected in Moldova.

In this context, the authorities have developed an analytical module (<https://bi.open-contracting.org/mol-dova/>) based on data from MTender, with several filtering and analysis facilities, which offers the possibility of a detailed visualization of statistics in the field of public procurement. This module is not operable from the beginning of 2024.

Even if national legislation and practice tends to procurement procedures digitization (with some exceptions), their monitoring remains a challenge, or some contracting authorities/entities have developed internal/dedicated systems for organizing and conducting procurement procedures.

Thus, access to award documentation, information on bidders and financial/technical offers, as well as to undertakings' behavioural data is limited to the maximum, being possible only on request, which leads to the disclosure from the outset of the competition authority's interest in certain undertakings, areas and/or sectors of the economy.

#### • *Low-value procurement procedures*

Both the general legislative framework on public procurement procedures and the sectorial ones provide for value thresholds for the organization of procurement procedures for the purchase of goods and services, works and those for social services and other specific services.

However, it is noted that the thresholds for such purchases are quite high, compared to the budget of some contracting authorities, which may allow participating undertakings to engage in possible anti-competitive agreements.

Although low-value procurement procedures are not an essential part, the lack of transparency in their organisation and conduct is a problem, namely the fact that the existence of effective competition cannot be verified and estimated.

In this context, the competition authority may not examine these proceedings in detail unless it has informa-

tion from within the sector concerning possible infringements of competition law.

#### • *Inter-institutional cooperation*

In order to ensure an honest competitive environment, i.e. efficient activity, the competition authority must establish and exploit cooperative relations with both national institutions and international counterparts.

During the investigation activity, aspects of the competence of other state authorities may be identified, which are to be assessed by the latter. At the same time, within the specific activities, the law enforcement bodies or the state institutions responsible for certain sectors of the economy may discover not only signs, but even evidence regarding possible anti-competitive agreements in the field of procurement, but due to lack of experience and specific knowledge in the field of competition, they do not pay attention and do not submit the respective information to the Competition Council.

There are circumstances when national authorities carry out activities in parallel, without sufficient coordination between them, which thwarts the efficient spending of state resources. At the same time, the confrontation of institutions with the allocation of austere budgets and limited human resources (especially qualified ones), affects the institutional capacities to investigate complex cases and deliver the expected results for the legal beneficiaries and the welfare of the consumers.

Therefore, the development of inter-institutional relations of both official and practical cooperation is imminent, in order to create mutually beneficial information flows for the achieving the institutional objectives and the common goal of ensuring and developing a competitive economy.

## Conclusion

Ensuring the efficiency of public procurement has an importance and a direct impact on the state budget and consumers accordingly, by offering quality services and goods. Procurement procedures are the best way to get fair prices from suppliers.

Respectively, the investigation of bid-rigging by undertakings and their sanctioning is a common inter-institutional objective for ensuring the economic security of the state. This common objective can only be achieved by combining the efforts of state institutions and strengthening the capacities of the Competition Council both from the legislative and financial point of view.

## Bid Rigging in Montenegro



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Bid Rigging ranks among the most severe competition violations and, as a hardcore cartel practice, it is thus also known as „collusive or rigged bidding.” It occurs when market participants engage in public procurement processes together, secretly coordinating or aligning their actions before submitting bids.

The main objective of bid rigging is to raise the price of a product/service or lower its quality, depending on the nature of the procurement, or, alternatively, to divide the market or territory among bidders in public procurement processes. This practice falls under prohibited agreements, which can take various forms, such as prearranging the conditions for bids (especially the price) to influence the outcome of the process, refraining from submitting a bid, dividing the market based on geographic area, clients, or procurement subjects, or rotating bids in public procurement processes. The intention behind all forms of bid rigging in practice is to enable or ensure acceptance of a predetermined bidder’s offer, creating a deceptive impression that the process was conducted competitively. Such agreements between bidders effectively prevent a fair and transparent public procurement market by limiting access to other market participants and reducing options for contracting authorities.

In a public procurement market affected by these secret agreements, other market participants are essentially discouraged from taking part in public procurement processes or investing in certain new projects. This practice is also particularly damaging to emerging market participants, especially small and medium-sized enterprises, as well as to those intending to develop new, innovative solutions. Moreover, whenever bid rigging occurs in public procurement, it also harms consumers, given that public procurements are largely conducted across various sectors of a country’s economy and society.

Experience has shown that the most common forms of this type of cartel activity occur in public procurement processes with a small number of bidders, where there is a greater possibility of colluding on bid rigging. Restricted market entry also indicates the existence of collusion, as a protective barrier prevents new competitors from entering the market.

Another possibility which is conducive to bidder collusion is the repetition of public procurement, which increases the possibility of secret agreements and the frequent appearance of the same bidders, allowing cartel members to divide the public procurement market among themselves. Additionally, if there are identical or similar products or services – where the products or services offered by bidders are the same or highly similar (homogeneous) – it is easier to agree on a common price structure. Moreover, if a public procurement process only involves a few products or services with limited or no available substitutes, participants submitting rigged bids have greater potential to influence the prices of those products or services. Another indicator includes little or no technological change in the market for these products or services, which enables cartel members to easier reach and maintain an agreement over an extended period.

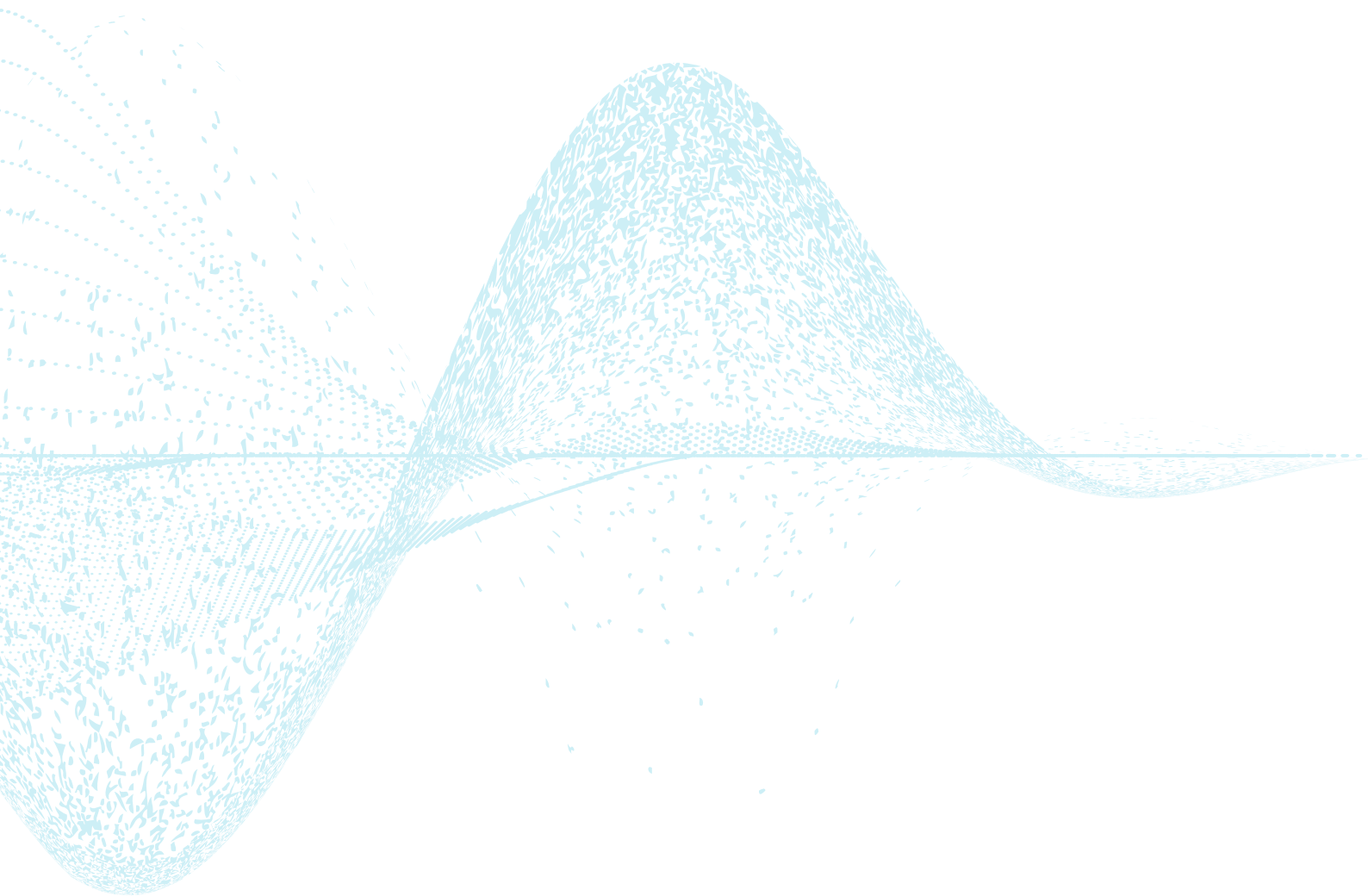
These types of agreements are oftentimes rather difficult to detect, making the role of competition protection institutions, as well as the authorities which have competence to carry out public procurement, extremely important. Through their mechanisms, these institutions can take actions aimed at detecting and preventing new forms of cartels in the affected market. Due to the numerous negative impacts and the significant loss of budgetary funds resulting from bid rigging, every country seeks to act preventively, but also repressively, against this practice. Consequently, Montenegro’s Law on Protection of Competition considers bid rigging a restrictive agreement, punishable by a fine ranging from 1% to 10% of the participant’s total annual revenue.

Additionally, certain actions can be implemented within the public procurement process itself to reduce the risk of bid rigging. These actions include increased awareness about the types of products/services on the market and the suppliers of these products or services. Another strategy is to design the public procurement

process in a way that increases the number of potential reliable bidders. Beyond these measures, it is also essential to clearly define the criteria and conditions of the public procurement process to avoid predictability. The terms in public procurement calls should be comprehensive but not discriminatory. The clearer the terms, the easier it is for potential bidders to understand them, thereby increas-

ing their confidence and likelihood of submitting bids in larger numbers.

Finally, one of the key aspects is raising awareness and providing education to public procurement officials on recognizing and detecting irregularities in bids during public procurement processes, as well as understanding the risks associated with bid rigging in these processes.



## Romanian Bid Rigging Case: M.A.I. HUB Case – Coordinated Bid Suppression



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**ABSTRACT:** *Following a two-year investigation, the Romanian Competition Council sanctioned three companies with fines totaling approximately 4.1 million euros for rigging the tender organized by the Ministry of Internal Affairs for the realization of the center for the provision of electronic services. The Competition Council found that the three companies exchanged sensitive information regarding their intentions to participate in the public tender and coordinated their commercial policies and strategies not to submit bids in order to increase the budget allocated by the Ministry for the realization of the project.*

**KEYWORDS:** *cartel, coordinated behavior, exchange of information, bid rigging, bid suppression*

Last year, the Romanian Competition Council sanctioned three companies with fines totaling approximately 20.5 million lei (around 4.1 million euros) for bid rigging in public tender organized by the Ministry of Internal Affairs.

Following an investigation launched in 2021, the Competition Council found, that the three companies coordinated their behavior during the participation in the public tender for the design and execution of the project „Hub for Services (electronic service provision center) at the level of the Ministry of Internal Affairs”. Thus, the three companies exchanged competitively sensitive information regarding their intentions to participate in the tender and coordinated their commercial policies and strategies not to submit bids, with the aim of increasing the budget allocated by the Ministry for the realization of the project. The objective pursued by the parties was to increase the budget allocated by the contracting authority and, consequently, the price of the products/services/works offered in the market for installation services, communication services, and related activities. This was achieved by limiting or controlling commercialization, including through an exchange of competitively sensitive information, intended

to facilitate coordination of market behavior, ultimately aimed at raising prices.

The involved companies discussed the behavior they intended to adopt and agreed to act in a way that would force the blockage/cancellation of the procedure and its relaunch with an increased budget. The parties involved were fully aware of and leveraged to their advantage the pressure on the contracting authority to carry out the procedure quickly in order not to lose European funding for the investment project. The companies adopted a joint plan aimed at coordinating behavior to refrain from bidding, with the ultimate goal of raising prices in the procurement procedure under investigation. This conduct demonstrates their decision to avoid competing within the procurement procedure, thus distorting competition, with the competitive process being replaced by a form of cooperation that eliminates uncertainties regarding the future market behavior of the parties involved.

This behavior violates Article 5(1) of the Romanian Competition Law and Article 101(1) of the Treaty on the Functioning of the European Union. The jointly decided conduct of withholding bids with the aim of raising prices falls within the category of bid rigging by bid suppression which is a hard-core cartel covered by Article 5(1)(b) in connection with (a) of the Romanian Competition Law and Article 101(1) of the Treaty on the Functioning of the European Union (agreements/concerted practices that limit or control production, marketing, technical development, or investments and directly or indirectly fix purchase or sale prices or any other trading conditions).

The parties involved held significant competitive advantages, such as relevant experience and qualified personnel for supplying products and providing services related to data centre construction. This included participation in bids and securing contracts where the beneficiary was the organizer of the procedures under investigation. Given the importance of the IT and Data Center products and services for the contracting authority, the coordinated behaviour to refrain from bidding had the potential to block the tender, leading to the contracting authority’s cancellation of the procedure and its subsequent relaunch with a revised budget structure (including fewer product quantities).

The relevant product market in this case was defined as a mix of products, services, and works, including construction and installation works, the supply/delivery and installation of information and communication technology equipment (hardware and software), staff training, as well as design services, all intended for the development of the data center. Geographically, the relevant market has a national scope. The contract value estimated by the contracting authority is 66,761,026.63 lei (approximately 13.5 million euros), excluding VAT.

The infringement was established exclusively based on evidence collected during dawn raids conducted at the premises of the parties involved, with no leniency or settlement policies applied in this case. During the dawn raids, evidence was gathered concerning the communication of future behavioral intentions between the involved parties concerning participation in the tender, with the purpose of coordination. The evidence collected during these dawn raids included email communications and WhatsApp conversations through which the parties disclosed their commercial strategies to each other concerning their relationships with other competing companies intending to participate in the same tender, either within the same bid or in separate bids.

Those conversations included the following elements: communication between competitors of the intention not to submit bids; the agreement to send to the client the recommendation to cancel and resume the procedure; acceptance by competitors of this strategic information regarding competitors' future behavioral intentions, without public demarcation/distancing; the satisfaction

expressed by the parties involved regarding the fact that their discussions gave the expected results, as no one submitted a bid and awareness among the parties involved that the contracting authority would therefore be compelled to cancel the procedure.

The coordinated behavior of the parties was achieved through direct and indirect contacts, requests and announcements of future behavior intentions, without public distancing. The joint plan of the parties was to boycott the public tender, as agreed through anti-competitive discussions, to prompt the procurer to increase the project's allocated budget, with the reduction of quantities or the elimination of some equipment to be supplied in the same budget.

As a result of these discussions and anti-competitive coordination, no bid was submitted and this outcome was not the expression of an individual, independent decision by each party but rather the result of anti-competitive practice. At the same time, the parties were aware of and leveraged the contracting authority's constraints to expedite the procedure to avoid losing European funding. Thus, effective competition was reduced by creating an artificial guarantee that all parties would behave similarly, not submitting bids either together or alongside other bidders. This illicit result was achieved through the cancellation of the procedure and its relaunch, following market consultation, with reduced quantities or the removal of some equipment to be supplied within the same budget.

The competition authority's decision (Decision no. 80/2023)<sup>49</sup> has been contested by the parties, and the litigation is ongoing at the Bucharest Court of Appeal.

<sup>49</sup> [https://www.consiliulconcurrentei.ro/wp-content/uploads/2023/09/DECIZIE-80\\_06062023-versiune-publicare-site.pdf](https://www.consiliulconcurrentei.ro/wp-content/uploads/2023/09/DECIZIE-80_06062023-versiune-publicare-site.pdf).

## Bid Rigging in Public Procurement Procedures in the Republic of Serbia



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The Law on Protection of Competition<sup>50</sup> stipulates that restrictive agreements are those agreements between undertakings the object or effect of which is the significant restriction, distortion or prevention of competition on the territory of the Republic of Serbia.

The first Public Procurement Law was enacted by the National Assembly of the Republic of Serbia on July 4, 2002, as an integral part of the reform legislation within the country's public finance system and represents one of significant indicators for evaluating the effectiveness of the implementation of reforms in the Republic of Serbia. By way of this law, competition is promoted, through emphasis on the necessity of ensuring the participation of as many interested bidders as possible (who mutually compete) in public procurement procedures. This competitive process then enables the contracting authority to secure the highest quality products (services, works) for the funds invested.

The current Public Procurement Law<sup>51</sup> establishes the rules governing the procurement procedure for both the contracting authority and the bidders, as well as for other undertakings. Pursuant to the principle of ensuring competition and the prohibition of discrimination, as stipulated in Article 7, this law mandates that contracting authorities prepare public procurement documentation in a manner that does not restrict competition or place any undertaking at an advantage or disadvantage relative to other undertakings on the market.

*The nature and purpose of the public procurement procedure is to conclude a public procurement contract in such a way that the procedure ensures the participation of as many independent bidders as possible, thereby fostering a higher level of competition that enables the contracting authority to select the most advantageous offer. In the course*

*of the public procurement procedure, bidders compete with their bids, which remain confidential until the designated time for the public opening of the bids. The uncertainty and lack of knowledge regarding the terms of competitors' bids serve as the primary incentive for bidders to compete by submitting the most favorable bids in order to secure a contract with the contracting authority. The exchange of commercially sensitive information, as well as cooperation and coordination among competing bidders during the preparation, submission of bids, and selection of the most favorable bid—or the existence of secret agreements between bidders in public procurement procedures—reduces or eliminates uncertainty. As a result, competitors lose the incentive to submit more favorable bids or lower prices, which they would otherwise do if genuine competitive pressure were present. In other words, the necessity for competitors to engage in price competition or offer more favorable business terms (depending on the requirements of the public procurement procedure) no longer exists, thereby undermining the fundamental purpose of public procurement. On the other hand, contracting authorities are placed at a disadvantage compared to a scenario of unrestricted competition among bidders, as they lose the opportunity to choose products or services at varying prices resulting from market competition, that is, from the competitive rivalry among the bidders.*

The submission of rigged bids in public procurement procedures is one of the most severe forms of competition infringements, as it eliminates competition in the procurement procedure. As a result, contracting authorities pay prices higher than the market value and receive products or services of inferior quality.

The methods by which bidders eliminate competition in public procurement procedures may particularly include:

- sham bidding;
- the withdrawal of a submitted bid prior to the contracting authority's decision on the contract award;
- market-sharing among bidders;
- an agreement among bidders to determine which party will submit a bid for each lot, thereby avoiding competition with one another;

<sup>50</sup> „Official Gazette of RS”, no. 51/09 and 95/13

<sup>51</sup> „Official Gazette of RS”, no. 91/19 and 92/13

- the submission of a joint bid in a situation where each undertaking is capable of submitting an individual bid independently;
- the deliberate submission of an unacceptable bid, and similar actions.

The Commission for Protection of Competition (hereinafter referred to as: the Commission), since its establishment in 2006, has conducted numerous proceedings in which competition infringements were established, as a result of collusion amongst bidders in public procurement procedures.

One of the cases in which a competition infringement was established due to bid rigging in public procurement procedures involved the companies *KTG Solucije d.o.o. Subotica* and *Eco Sense d.o.o. Subotica*, which colluded on the terms of participation in procurement procedures for three contracting authorities. The subject of these procurements was the acquisition of hygiene maintenance supplies.

The Commission received the initiative from the Public Procurement Office, which is responsible for monitoring the implementation of public procurement rules and regulations, and managing the Public Procurement Portal.

In the course of the proceedings it conducted, the Commission established that the company *KTG Solucije*, as the more favorable bidder, had withdrawn its submitted bid. As a result, the contracting authorities were forced to procure goods from the second-ranked bidder, *Eco Sens*, whose bid was more expensive and, therefore, less favorable.

The specific case involves the rotation of bidders (undertakings) who submitted bids in the public procurement procedure. Specifically, in these procurement procedures, the subject entities individually met the required criteria for participation, and the contracting authority assessed their bids as acceptable. However, in the proceedings before the Commission, it was determined that the entities had colluded to set the prices for the bids they would submit, and that in the event they were ranked first and second in a specific public procurement procedure, the bidder with the more favorable bid (the first-ranked) would withdraw, forcing the contracting authority to select the second-ranked bidder (the less favorable offer). In this manner, these undertakings manipulated the outcome of the public procurement procedure and effectively

eliminated competition among themselves on the relevant market for the procurement in question.

In public procurement procedures where the two aforementioned undertakings were not ranked first and second following the technical evaluation of bids, the first-ranked participant proceeded to enter into a contract with the contracting authority and did not withdraw their bid.

In these public procurement procedures, the bids of the companies *KTG Solucije* and *Eco Sens* were submitted via the Public Procurement Portal from the same IP addresses, i.e. from the network of a single internet service user, within a few minutes' interval between each bid submission. For the Commission, this was additional evidence that the aforementioned participants had colluded in the submission of their bids in the public procurement procedures.

During a dawn raid, *KTG Solucije* submitted a Request for a reduction of the obligation to pay the monetary amount of measure of protection of competition, in accordance with the provisions of Article 69 of the Law (leniency policy). Thereafter, it was determined in the proceedings that the company met the conditions for such a reduction.

In the course of its competition infringement investigation, the Commission imposed measures of protection of competition on the companies *KTG Solucije* and *Eco Sens*, in the form of obligation to pay a certain monetary amount, as well as a behavioral measure. The latter prohibited them from engaging in any future conduct that could restrict, distort, or prevent competition through collusion on the terms of their participation in public procurement procedures.

Another example of proceedings in which the Commission established an infringement of competition by undertakings due to bid rigging in a public procurement procedure is the case in which several undertakings, or a group of bidders, coordinated their participation in a public procurement procedure. The subject of this procurement was the service of permanent disposal of hazardous waste in the company under bankruptcy, *Magnohrom d.o.o. Kraljevo*. This group of bidders submitted a joint offer, even though they could have formed at least two separate groups from the existing group, each submitting at least two distinct competitive bids. In doing so, they concluded a cartel agreement<sup>52</sup>, by way of which they significantly restricted and distorted competition on the

<sup>52</sup> Article 10, paragraphs 1 and 2, point 1 of the Law on Protection of Competition.



market. The bid submitted by this group of bidders was also the only bid in that procedure.

During its investigation proceedings, the Commission determined that another public procurement with a similar subject matter was conducted in the same period. In this public procurement, a joint bid was submitted by only a few companies from the aforementioned group of bidders.

By comparing the documentation submitted by the bidders in the public procurement procedures, publicly available data, as well as information obtained from the contracting authority, it was established that the members of the first group of bidders who met the requirements for participation in one public procurement procedure did not submit the same evidence or documentation proving with the fulfillment of identical requirements in the second public procurement procedure, despite possessing such documentation.

The Commission established that the members of the bidder group, as direct competitors, had entered into an agreement concerning their participation in the procurement procedure. Specifically, they agreed to submit a joint bid as a unified group of bidders, thereby abstaining from competing against each other with separate bids from smaller bidder groups. Namely, it was determined that there was a possibility to form at least two separate groups of bidders, each of which would also meet the specific requirements set out in the tender documentation and could have submitted competitive bids. The Commission reached this conclusion particularly based on the data on the possession of relevant permits to carry out the work, which was the subject of public procurement.

The group of bidders also entered into an agreement for joint participation in the public procurement procedure, whereby they agreed upon allocation of tasks and pricing for the services covered by the procurement. For the Commission, this represented both evidence and a written record of the conclusion of a restrictive agreement.

Through the described conduct, the parties to the procedure entered into a restrictive agreement, thereby com-

mitting an infringement of competition from Article 10 of the Law on Protection of Competition.

In the specific case, there was a horizontal agreement among undertakings which had as its object direct coordination of their participation in a public procurement procedure, thereby influencing its outcome. If undertakings who meet the requirements for submitting a bid in a particular procurement agree on the prices they will offer, the quality and/or terms of trade, or agree on which of them will submit a bid, such conduct constitutes market sharing or sources of supply, thereby influencing the outcome of the procurement procedure. Thus, their mutual competition in the relevant procurement market is either restricted or entirely eliminated. Such acts and conduct are classified as restrictive agreements which directly or indirectly set purchase or sale prices, or other terms of trade, or divide markets and sources of supply, which all represent an infringement of competition stipulated by the provisions of Article 10, paragraphs 1 and 2, items 1) and 5) of the Law.

In the aforementioned proceedings, the Commission imposed a measure of protection of competition in the form of an obligation to pay a monetary amount, as well as a behavioral measure prohibiting the participants from engaging in any future conduct that could restrict, distort or prevent competition by submitting joint bids in public procurement procedures where there is the possibility of submitting multiple separate bids.

In light of the above, the legal system of the Republic of Serbia, through the Criminal Code<sup>53</sup>, also provides criminal law protection by incriminating certain forms of conduct related to public procurement, including, among others, the submission of bids based on false information, unlawful collusion with other bidders, or other illicit actions intended to influence the outcome of a public procurement.

In its efforts to detect and prosecute cartels, the Commission collaborates with all the relevant state authorities, primarily the Public Procurement Office, and undertakes a range of advocacy activities.

<sup>53</sup> "Official Gazette of the Republic of Serbia", no. 85/05, 88/05 - corrigendum, 107/05 - corrigendum, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16 and 35/19

## Public Procurement Processes in Ukraine



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The Antimonopoly Committee of Ukraine (the AMCU) considered appeals of professional associations of banking services market participants and banking institutions regarding establishment by public procurement contracting authorities of requirements for financial institutions in tender documentation to guarantee fulfilment of the participant's obligations to pay the tender bid security and the procurement contract security, which, in the applicants' opinion, violate the principles of free competition and the principles of public procurement.

The analysis of these complaints shows that public procurement contracting authorities in the tender documentation require that the tender bid security may be provided by a banking institution that meets one of the following requirements:

- a bank in which the state directly or indirectly owns a share of more than 75 (seventy-five) per cent of the bank's authorised capital, or
- a systemically important bank<sup>54</sup> (according to the classification of the national regulator), or a bank of a foreign banking group that has a long-term credit rating of the parent company not lower than BBB- according to the methodology of Fitch Ratings or Moody's Investors Service or S&P Global Ratings, or
- a foreign bank that has a long-term credit rating of at least BBB- according to the methodology of Fitch Ratings or Moody's Investors Service or S&P Global Ratings.

The established requirements for banking institutions that may provide guarantees as a tender bid security violate:

1. **principles of free competition and principles of public procurement;**

2. **restrict the ability of banks to carry out their activities and provide banking services as defined by the banking license;**
3. **the principle of constitutional equality of all subjects of property and economic rights, which is manifested in the privileged support of a certain group of banking institutions.**

National legislation in the field of public procurement provides that:

- the tender proposal is secured by a guarantee, while not limiting the subject composition of guarantors to banks;
- procurement is carried out on the principles of fair competition among participants, non-discrimination of participants and equal treatment;
- contracting authorities have no right to set any discriminatory requirements for tenderers;
- tender documentation should not contain requirements that restrict competition and lead to discrimination of participants.

The provision of guarantees is a financial service that can be provided by financial companies and credit unions in addition to banking institutions.

The position of the national regulator of the financial services market on this issue is as follows:

- the requirement in the tender documentation for the contracting authority to provide a guarantee as a financial security for the tender proposal issued by a bank is not consistent with the requirements of the financial services legislation;
- there are no restrictions for banks to provide bank guarantees.

<sup>54</sup> A systemically important bank is a bank that meets the criteria set by the regulator and whose activities affect the stability of the banking system.

In addition, the current legislation provides that the fulfilment of the obligation under the guarantee may be secured by a guarantee of a bank or other financial institution.

In 2022-2024, 19 banking institutions out of more than 60 met the above requirements for guarantor banks.

At the same time, 111 financial companies were licensed to provide guarantees in 2022, 67 in 2023 and 34 in 2024.

That is, participants of procurement procedures could choose a guarantee provider on terms acceptable to them (price, etc.), but were limited in their choice, taking into account the requirements of procuring entities set out in the tender documentation.

In view of the above-mentioned, the requirement in the tender documents to provide a guarantee as a security for the tender proposal issued by a banking institution is inconsistent with the provisions of the current legislation, according to which the entities that may provide a guarantee are not limited to banks.

Thus, the requirement to provide a bank guarantee exclusively in the tender documentation and the establishment of requirements for banks whose guarantees are accepted as a proper tender security may result in

- limiting the participants of the procurement procedure in choosing a financial institution that can provide a guarantee;

- giving preference to banking institutions that meet the established requirements over other competing banks that can provide guarantees;
- restrictions on the activities of financial institutions licensed to provide guarantees.

This may lead to the prevention, elimination or restriction of competition and violations of the legislation on protection of economic competition.

In view of the above-mentioned, the AMCU, in order to take measures aimed at preventing violations of the legislation on protection of economic competition in the procurement of goods, works and services, provided binding recommendations to the procuring entities to take measures to prevent the establishment of restrictive requirements in the tender documentation for financial institutions that must provide a guarantee of fulfilment of the financial obligations of the procurement participant:

- participants of the procurement procedure in the selection of a financial institution that can provide a guarantee;
- financial institutions licensed to provide guarantees in the provision of relevant services.

The AMCU also addressed the authorised body responsible for the development and implementation of state policy in the field of public procurement with a statement of caution regarding the inadmissibility of this practice.

## 3. External expert contributions

### Detecting Bid Rigging: An Italian Recipe



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Competition authorities worldwide constantly strive to be well-equipped to detect and tackle bid rigging, a form of collusion in public tenders that can lead to major inefficiencies. When companies conspire to fix bids, it results in higher public procurement costs and often compromises the quality of essential services and products in sectors like healthcare and education. This issue has significant implications since public procurement usually represents a considerable portion of GDP.

The Italian Competition Authority (AGCM) has developed a “recipe” to combat bid rigging effectively. Over the past few years, this approach has proven successful but must continually adapt to evolving technology. The AGCM’s toolkit includes partnerships with other national agencies, screening tests, a whistleblowing platform, and collaboration with international entities. Here’s a breakdown of the main components.

#### Teaming Up with National Agencies

In Italy, a wide network of public authorities—like prosecutors, tax police, and procurement bodies—plays a key role in detecting bid rigging. Since 2018, the AGCM has collaborated closely with Rome and Milan’s Public Prosecutor’s Offices. Thanks to Memoranda of Understanding signed with these entities, prosecutors can share evidence related to crimes affecting market integrity (like bid rigging), which allows the AGCM to access otherwise restricted evidence.

Notably, the Prosecutor’s Offices may send to the AGCM, also at the request of the latter, a copy of their requests for precautionary measures or their requests for indictments - accompanied by the consequent decision of the judge and the supporting investigative documents - regarding crimes that might significantly affect the proper functioning of the market (most notably bid rigging).

This type of interagency cooperation has shown to be particularly effective, to the point that it has allowed the Authority to obtain evidence, such as wiretaps, typically found in criminal investigations relating to other areas of law, like bribery, and therefore outside the scope of its investigative powers.

Cooperation with public procurement agencies is well established and effective, too. Fighting bid rigging in public procurement has always been one of the main priorities of the AGCM. In Italy, public procurement is fragmented in a large number of national, regional and local agencies. Therefore, in October 2013, the AGCM launched an initiative to assist procurement agencies in identifying and reporting to the AGCM behavioural anomalies which might be indicative of the presence of bid rigging. In particular, the AGCM addressed to all procurement agencies a handbook (so-called “Vademecum”), based on the OECD Guidelines for fighting bid rigging in public procurement of February 2009, with tips and hints for identifying signals of potential bid rigging

In the handbook, the AGCM suggests considering the economic context first and then possible signals of anomalous conducts. The economics factors usually associated with collusion are the presence of few competitors or competitors characterized by similar size, homogeneous products, a continued participation in the tender of the same companies, the tender subdivided into several lots of similar economic value. Practices typically related to anti-competitive behaviour are: i) boycott of the tender; ii) cover-pricing (including bids made by non-awarded companies characterized by amounts far too high or at least higher than the same companies have offered in similar procedures, or bids containing special conditions which are notoriously unacceptable to the contracting authority, so as to determine their exclusion, or the submission of bids higher than the list prices); iii) subcontracting or use of groups of economic operators, including temporary associations, for market sharing purpose (e.g. in case of undertakings individually able to participate in a tender or performing the same main activity, or in case of withdrawal of the offer by an undertaking, which then benefits from a subcontract relating to the same tendering procedure); iv) rotation of bids; v) “suspicious” conducts in participating to the tender (e.g. same handwriting, similar

estimates or calculation errors, simultaneous delivery or done by same subject, etc.).

### Using Screening Tests

In 2014, the AGCM tried out a “pilot” project with screening tests to pinpoint bid rigging in public contracts. While promising, this effort encountered data issues and was put on hold in 2017. The AGCM found gaps in the procurement database and issues like missing bid information for non-winning participants. Nevertheless, more recent tests have been conducted, both before and after formal investigations, to help identify unusual bidding patterns that can suggest collusion.

In some cases, ex-ante data analysis has led to formal investigations. For example, AGCM identified irregularities in bidding for cleaning and consultancy services, leading to investigations that revealed collusive behaviour. Ex-post analysis has also been useful, such as in water meter and firefighting service procurements, where specific bidding patterns supported evidence of bid rigging.

### Encouraging Whistleblowers

To gather inside information on bid rigging, the AGCM launched a “whistleblowing platform” in 2023, following models used by the European Commission and other competition authorities. This platform allows people who know of collusion—like employees or competitors—to report violations anonymously. Managed by a secure external provider, the platform enables encrypted, two-way communication between the whistleblower and the AGCM, which helps ensure confidentiality and encourages people to come forward.

### International Cooperation

Bid rigging schemes are increasingly sophisticated, often requiring extensive resources and cross-border coordination to address. To stay effective, the Authority actively participates in the European Competition Network (ECN) Cartel Working Group, sharing its experi-

ence and learning from the European Commission and the other ECN competition authorities. Possible joint projects – particularly on the screening of tenders through AI – might see the light in the near future.

Equally important is the debate at the international competition fora, such as the International Competition Network (ICN), OECD and UNCTAD. Both the ICN and UNCTAD created Cartel Working Groups, which have bid rigging as a paramount topic for discussion. The OECD launched several projects on bid rigging and in 2023 adopted a revised Recommendation on Fighting Bid Rigging in Public Procurement.

All these *fora* offer AGCM valuable insights into the latest tools and techniques for detecting bid rigging, including promising uses of AI in screening tenders.

Additionally, the AGCM has signed several bilateral agreements. A Memorandum of Understanding with the Australian Competition Authority (ACCC) provides for opportunities to discuss and exchange views on cases of common interest or cross-border issues, also in order to facilitate the search for convergent solutions. Key areas of interest identified for collaboration between the AGCM and the ACCC include cartels, digital platforms and market studies. Similar agreements are in place with the other European (including France, Spain, Greece) and non-European (e.g. Brazil, Armenia and Albania) competition authorities

### Conclusion

The fight against bid rigging seems destined to remain as long as tenders and competition authorities exist. New technologies, such as AI, will most likely trigger new opportunities and new complexities.

The “recipe” to face these challenges must include modern and effective proactive and reactive tools (including whistleblowing and screening), capable of detecting and punishing bid rigging and, most importantly, credibly discouraging future infringements.

# New Tools against Bid Rigging



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The fight against bid rigging in public procurement is not a new challenge for competition authorities worldwide. Traditionally, it has been one of the primary focuses of competition policies due to the significant weight of public procurement in global economies<sup>56</sup> and the peculiar characteristics of these markets, which make them more susceptible to collusion among bidders.

However, this field is constantly evolving, and the current context presents new opportunities for competition authorities to become more efficient and effective in detecting and sanctioning antitrust violations. At the same time, it also brings new challenges and risks that require proactive adaptation. In this article, we will discuss the new tools available to competition authorities to combat bid rigging, beyond traditional mechanisms such as pro-competitive design of tenders and training materials for public procurement officials<sup>57</sup> (in terms of prevention), leniency programs and dawn raids (in terms of detection) or fines (as coercive measures).

Specifically, we will showcase the new tools used by the Catalan Competition Authority (ACCO)<sup>58</sup> in its fight against bid rigging in public procurement, from both technological and legal-economic perspectives.

## Technological tools: big data and artificial intelligence

The digitization and structuring of public procurement data offer extraordinary opportunities for competition authorities. Having access to massive and structured data

allows for detailed analysis of thousands of procurement procedures, identifying behavioral patterns and potential anomalies that could be linked to anti-competitive practices. Big data multiplies its potential when handled with artificial intelligence technologies, which automate and streamline the analysis of such data for competition authorities. Machine learning algorithms can detect patterns or signs of bid rigging that would be impossible to identify manually, thus facilitating the detection of cartels in public tenders.

The combination of these two tools allows competition authorities to take a more proactive and autonomous role in combating bid rigging. It reduces dependence on complaints from individuals, leniency programs, or direct detection of collusive practices by contracting authorities themselves. The need for mechanisms to actively detect collusive behavior becomes even more evident when, according to OECD data, leniency applications dropped by 58% between 2015 and 2021 in its member jurisdictions<sup>59</sup>.

To address this need, the ACCO launched a project in 2022 called “ERICCA” (Catalan acronym for “Intelligent Tool for Researching Collusion in Public Procurement”). ERICCA is a software tool leveraging artificial intelligence, machine learning and big data to detect anti-competitive practices in public tenders, enabling the ACCO to play a more proactive role in identifying collusive behaviors within public procurement procedures. This project pursues two main objectives:

<sup>55</sup> The opinions of the authors are strictly personal and do not compromise present or future actions of the institution in which they serve.

<sup>56</sup> Public procurement accounts for approximately 13% of OECD member countries’ GDP, according to this same organization. OECD (n.d.). Fighting bid rigging in public procurement. Retrieved November 12, 2024, from <https://www.oecd.org/en/topics/sub-issues/competition-enforcement/fighting-bid-rigging-in-public-procurement.html>

<sup>57</sup> In this light, the Catalan Competition Authority has published several guidelines for preventing, detecting and reporting bid rigging: Guidelines for preventing and detecting bid rigging (2014): <https://acco.gencat.cat/ca/detall/article/20140326-guia-prevencio-deteccio-collusio-contractacio-publica> Guidelines on reporting signs of collusion in public procurement (2024): [https://acco.gencat.cat/ca/detall/article/20230420\\_guia\\_comunicacio\\_indicis\\_collusio\\_cp](https://acco.gencat.cat/ca/detall/article/20230420_guia_comunicacio_indicis_collusio_cp) Guidelines for detecting bid rigging in public procurement (2024): [https://acco.gencat.cat/ca/detall/article/20240109\\_guia\\_deteccio\\_collusio\\_contractacio\\_publica](https://acco.gencat.cat/ca/detall/article/20240109_guia_deteccio_collusio_contractacio_publica)

<sup>58</sup> The Catalan Competition Authority (ACCO) is the public body that ensures the promotion and defense of competition in Catalonia, Spain.

<sup>59</sup> OECD (2023). The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels. OECD Roundtables on Competition Policy Papers, No. 299, OECD Publishing, Paris, <https://doi.org/10.1787/9bc9dd57-en>.

- First, to facilitate the processing of sanctioning cases related to public procurement. ERICCA provides a business intelligence platform that synthesizes a vast amount of information about public tenders and participating companies. It enables quick and efficient consultations for competition officials and incorporates additional functionalities, such as statistical analysis of relevant variables.
- Second, to use artificial intelligence to detect potential anti-competitive practices in public tenders. The tool identifies the public tenders in which bidding companies are more likely to have colluded when submitting their economic bids.

The most innovative feature of the tool is its use of artificial intelligence to facilitate the detection of bid rigging. Specifically, ERICCA employs an unsupervised self-learning model based on non-Euclidean distances to identify clusters among companies. This behavioral screening operates in two phases:

1. **Clustering Companies:** In the first phase, the artificial intelligence algorithm groups companies (clusters) based on the public tenders in which they have participated as bidders.
2. **Statistical Analysis:** In the second phase, various statistical parameters are calculated to identify clusters of companies and tenders where collusive behavior is most likely. Many of these statistical parameters have been identified in specialized literature, such as the dispersion between winning and losing bids, cyclicity among winners, etc.

Starting in 2024, ERICCA also integrates a neural network to identify anti-competitive behaviors. This method is based on the research of David Imhof and Martin Huber<sup>60</sup>, with whom the ACCO has collaborated to improve its proprietary neural network. This neural network graphically identifies behavioral patterns of companies competing against those colluding, based on the bids submitted in analyzed public tenders.

Thanks to the development of this tool, the ACCO has been selected to participate in Stanford University's

“Computational Antitrust Project”<sup>61</sup>, an innovative initiative exploring how legal informatics can enhance and automate analysis and processes in the field of competition law.

### Legal-economic tools: bans on public contracting and damage claims

Traditionally, the primary deterrent tool employed by competition authorities to prevent bid rigging in public procurement has been the imposition of fines. However, these administrative sanctions often have a legal cap and may not suffice to render violations unprofitable for offenders. In Spain, for example, fines cannot exceed 10% of the offender's turnover in the year preceding the sanction resolution. In practice, imposed fines are often significantly below this threshold, and offenders frequently appeal the sanction in court to reduce it further.

Thus, it becomes evident that additional deterrent measures are necessary to ensure collusive practices are unprofitable for tempted undertakings. Two additional tools to prevent bid rigging are bans on public contracting and claims for antitrust damages by public administrations.

On the one hand, public procurement bans are considered, in Spanish law, an accessory sanction for infringements of competition law, such as bid rigging or abuse of dominant position. This prohibition prevents infringing companies from participating in public procurement processes for a defined period, achieving two objectives: preventing the perpetuation of collusion and deterring potential offenders. This measure is particularly effective against companies whose business heavily relies on public procurement.

A critical aspect of the contracting prohibition is determining its scope and duration. Spanish regulations allow competition authorities to define these factors in their resolutions or delegate the decision to the State Public Procurement Advisory Board (*Junta Consultiva de Contratación Pública del Estado*)<sup>62</sup>. The ACCO was the first authority in Spain to set the scope and duration of a contracting prohibition in a sanctioning resolution<sup>63</sup>. The Catalan High Court of Justice has repeatedly upheld the

<sup>60</sup> Huber, M., & Imhof, D. (2023). Flagging cartel participants with deep learning based on convolutional neural networks. *International Journal of Industrial Organization*, 89, 102946. <https://doi.org/10.1016/j.ijindorg.2023.102946>

<sup>61</sup> More information about the project on the following webpage: <https://law.stanford.edu/codex-the-stanford-center-for-legal-informatics/computational-antitrust/>

<sup>62</sup> The Junta Consultiva de Contratación Pública del Estado is an advisory body on public procurement in the state public sector.

<sup>63</sup> Resolution of file no. 94/2018 (tenders of the Meteorological Services of Catalonia), dated December 23, 2019. It can be retrieved at the following link: [https://accogencat.cat/ca/detall/article/20200121\\_resolucio-exp.-94.18-PUB](https://accogencat.cat/ca/detall/article/20200121_resolucio-exp.-94.18-PUB)

ACCO's competence to impose such measures and determine their parameters, recognizing its superior position to assess the overall impact on the market of sanctioned behaviors: "the competition authority is in the best position to jointly assess the totality of the sanctioning measures that may be adopted in view of the facts established and is in the best position to weigh the consequences on the market of the conduct sanctioned"<sup>64</sup>.

On the other hand, competition authorities should also focus more on encouraging antitrust damage claims, especially by the public administration, due to their significant potential in both reparative and deterrent terms. The immediate purpose of damage compensation is to restore economic balance in affected markets by directly compensating harmed companies or consumers. This compensation also serves as a powerful deterrent due to the significant litigation costs and damages offenders face.

The deterrent effect is particularly pronounced in public procurement. An administration will be far more effective in preventing bid rigging in its procurement procedures if it demonstrates proactive and efficient detection of collusion signs and subsequent damage claims. Moreover, the lack of effective competition in markets where the administration procures goods or services undermines efficient allocation of public resources. In this context, damage claims are the only tool public administrations have to recover losses and any incurred overcosts due to anticompetitive behaviors.

Given this enormous potential of damages claims to prevent bid rigging, it is surprising that competition authorities (at least in Spain and Europe) have not devoted more efforts and resources in this direction. In the case of Spain and Catalonia, it should also be taken into account

that there has been (and persists) a clamorous lack of antitrust damage claims by public administrations.

To revert this situation, in 2023 the ACCO published a study with recommendations to promote and facilitate antitrust damage claims by administrations<sup>65</sup>. These measures are gradually being implemented in Catalonia's public sector. Notably, in December 2023, the Catalan Government passed an agreement to boost damage claims for competition infringements affecting the Catalan Administration<sup>66</sup>. This agreement establishes a working group within the Catalan Administration to identify, analyze, and claim economic damages suffered by the administration. The ACCO is a member of this committee and is tasked with identifying potential cases where a competition infringement may have affected the Catalan Administration and issuing a preliminary report analyzing the case in question and providing an initial estimation of the damages, in addition to the subsequent follow-up of the claim within the working group.

## Conclusion

In conclusion, the fight against bid rigging in public procurement is a monumental task for competition authorities, both due to its significant impact on public budgeting and the proper functioning of the public procurement market, and due to its unfortunate frequency. Faced with such a challenge, the ACCO believes that competition authorities must enhance the effectiveness of their policies and go beyond the tools traditionally employed in this regard. To this end, this article has briefly presented some resources that could have a significant positive impact on both deterring and detecting collusion in public procurement.

<sup>64</sup> Judgement no. 3273/2023 of the Catalan High Court of Justice, dated September 28, 2022 (ECLI:ES:TSJCAT:2022:9189). [https://acco.gencat.cat/web/contenut/80\\_acco/documents/arxius/actuacions/sentencies\\_fermes/20221213\\_STSJ\\_CAT\\_29\\_2020\\_MCV\\_SA.pdf](https://acco.gencat.cat/web/contenut/80_acco/documents/arxius/actuacions/sentencies_fermes/20221213_STSJ_CAT_29_2020_MCV_SA.pdf)

<sup>65</sup> This study is available, also in English, at the following link: [https://acco.gencat.cat/ca/detall/article/20230208\\_estudi\\_reclamacio\\_danys](https://acco.gencat.cat/ca/detall/article/20230208_estudi_reclamacio_danys)

<sup>66</sup> Government Agreement GOV/261/2023, dated December 12, 2023. <https://dogc.gencat.cat/ca/document-del-dogc/?documentId=974059>



## Indirect Bid Rigging: Collusion in Related Markets and Collusive Chains



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Collusion in public procurement, bid rigging or fraudulent bidding is, strictly speaking, an agreement (or concerted practice) reached by those who participate or intend to take part in a tender (bidders or candidates) to predetermine the award of the contract in their favour, by means of fixing the price or any other commercial condition or by sharing the market, so that the cartel limit or eliminate both competition between members of the group and that from other bidders.

However, several types of cartels operate outside of tenders but influence on the distortion of competition in public procurement because of their ability to condition the bids. These cartels make up the indirect bid rigging. In short, *indirect collusion* does not affect the body or the contracting procedure, but rather the bidders and their bids. Based on their proximity to collusion in public procurement, we distinguish three models of indirect bid rigging: a) collusion in related markets; b) ordinary cartel that can be activated in a tender; c) cartel of private operators that act within the scope of the contracting authority's powers. Only the first one is the subject of our analysis<sup>67</sup>.

**Collusion in related markets** takes place in markets different from the one where the tender is carried out. More specifically, cartelization infects the upstream market where links the providers of the bidders. Whether the subcontractors cartelize, collusion impacts on the downstream market.

Collusion in related markets and collusion in public procurement are not necessarily interdependent, nor do they must have any causal relationship between them.

A cartel of providers or subcontractors can operate in a competitive tender or in the context of bid rigging. In the second case, the upstream or downstream market cartel and the cartel of bidders do not coalesce but intersect with one another. This produces a collusive chain.

A **collusive chain** is the subtype of collusion present in a marked related to the one whose tender is being rigged, whose main feature is that the cartelization in the upstream or downstream markets is followed by tenderers' bid rigging. In other words, it means the concatenation of a cartel of suppliers and/or subcontractors with a cartel of bidders; both collusive rings are linked to each other.

A relevant example of a collusive chain was the so-called **Bitumen Netherlands case**. Between 1994 and 2002, eight Dutch tarmac companies (who made up 85% of the market) made up an upstream market cartel that fixed the price of this product and negotiated discounts on the sales price with a cartel gathering six companies engaged in road construction (40-50% of the downstream market)<sup>68</sup>. The vital space for any road construction company is public procurement. For this reason, the members of the cartel necessarily participate in tenders for public works contracts and concessions for public works during the period of validity of the conspiracy. The vital space for any asphalt company is public procurement, as well, since most if not all their output is sold to road-building firms.

The deals between the two rings – implemented in the so-called “bitumen consultations” – resulted in three agreements: (1) the selling price of the input; (2) a discount on the input price in favour of the members of the construction cartel; (3) a lower discount for construction companies not belonging to the cartel. The implementation of these agreements yielded very significant benefits to both cartels. The bitumen producers guaranteed themselves a high selling price for asphalt without generating competitive pressures in the upstream market or resistance in the downstream. The cartelised construction companies obtained an essential competitive advantage

<sup>67</sup> An ordinary cartel that can be activated in a tender is a cartel operating in markets where the public client is not exclusive or even not principal in terms of purchase volume. However, public contracts constitute a “safe haven” or a very attractive source of stable income for the cartel, which pays special attention to rig tenders (car renting, car purchasing, etc). A cartel of private operators that act within the scope of the contracting authority's powers is an agreement between firms that harm the interests of the public contractor and disrupt its management; it may make public procurement less competitive and thus harm public interests.

<sup>68</sup> Commission Decision C(2006) 4090 final of 13 September 2006 relating to a proceeding under Article 81 [EC] (Case COMP/F/38.456 — Bitumen (Netherlands)). On 19 December 2013, the ECJ dismissed an appeal by Koninklijke Wegenbouw Stevin BV (C612/12 P) against a General Court judgment that dismissed its appeal against the EC decision (T361/06).

in the contractual procedures. The agreed discount on the price of bitumen allowed them to present a (much) lower economic offer than their rivals and thus increase their chances of being awarded the contract. It is likely that in many cases this circumstance served to de facto eliminate any external competition to the cartel and left the choice of the successful bidder in its hands<sup>69</sup>.

From the case above we can come up with several findings on the **nature and treatment** of a collusive chain: (1) features of a collusive chain; (2) vertical relationship but probable 'supercartel'; (3) issues with the designments of tenders; (4) treatment as a cartel on the upstream/downstream market, not as a bid rigging case.

Some features help to discover the existence of a collusive chain between a cartel of upstream/downstream operators and a cartel of bidders. We must consider the interplay of five factors: first, sectors where public procurement is widely present; second, activities that require inputs whose control is in a small number of suppliers; third, areas in which law or custom has imposed subcontracting; fourth, pre-existence of cases of bid rigging sanctioned (repeatedly) by competition authorities in the same or different jurisdictions; fifth, concurrence in the markets of suppliers or subcontractors of factors that favour the creation and stability of cartels. If the evidence is strong, the contracting and competition authorities should take advantage of it to investigate possible cartels between bidders or direct their investigations to suppliers and subcontractors.

A collusive chain like the one describe above means a vertical relationship between the upstream or downstream market cartel and the bidders cartel. But, regarding the manipulative effects on the rigged tender and the economic damages to the contracting authority, this kind of association forms either one 'supercartel' (both rings are in good terms, share information or even make up

a coalition) or a 'double cartel in mutual discord' (both cartels battle for having the upper hand in their deals).

The Dutch bitumen cartel exemplifies how the design of public procurement systems may contribute to the creation and stability of two cartels and their association with the aim of draining public resources. Not only the producers of bitumen profit from the high price of that input. The construction companies do it as well, because the contracting procedures included a kind of price revision clause. It consisted of a compensation mechanism for the successful bidder to make up for the extraordinary expenses derived from the increase in the price of inputs with respect to the price initially set in the contract documents. The successful bidder took the latter into account when designing its winning bid. The contracting authority should offset the increase in price during the execution of the contract. But the latter was unaware that the contractor had not included in its bid the discount on the price of bitumen set by the cartel. Hence, public clients paid unjustified and misleading compensations to the construction companies during the years of the collusive chain<sup>70</sup>.

It is important to note that the Commission did not treat *Bitumen Netherlands* as a case of bid rigging. The Decision set out that the behaviours were single but linked parts of a general anti-competitive practice materialized in the upstream and downstream markets. In fact, the complaint, accompanied by a request for leniency, was submitted to the Commission by a bitumen producer, not by a road construction company<sup>71</sup>. This view should be reconsidered. In an area already very prone to cartelization such as public contracting, collusive chains can be used by bidders to gain muscle in their vertical relationships. The discovery of a pre-cartel may constitute a warning to contracting authorities and competition agencies about the advisability of analysing the market in search of cartels in contracting.

<sup>69</sup> The asphalt producers' cartel did not seem to be in a position of manifest superiority over the construction companies' cartel. Quite the contrary, as a deterrent (and punitive) measure, the former were to pay the latter extraordinary discounts retroactively if they granted larger discounts to non-cartelised construction companies. NUIJTEN, J. y VAN BARLINGEN, B., "Commission fines fourteen undertakings a total of € 266 million for participating in a cartel for road pavement bitumen in the netherlands", Competition Policy Newsletter, no. 1, spring 2007, p. 71-73.

<sup>70</sup> HEROLD, D. and PAHA, J., Predicting cartel Formation, SSRN: <http://ssrn.com/abstract=2740528>.

<sup>71</sup> The bitumen market appears to be conducive to the formation of cartels. in its decision c(2007) 4441 final of 3 October 2007 (case comp/38.710-bitumen Spain), the Commission sanctioned a set of agreements and concerted practices in Spain between 10 companies in the marketing of penetration bitumen used for road surfacing. the Commission found that the infringement consisted of two facets: on the one hand, a sharing of the market and, on the other, a coordination of prices consisting of agreements to increase or reduce bitumen prices by the same amount applied simultaneously. the decision was ratified by the general court in its judgment of 16 September 2013, T-497/07, CEPSA v European Commission. unlike the Dutch bitumen cartel, in bitumen Spain the bidders are not among the infringers. Therefore, it is not a collusive chain but a pre-cartel of suppliers.

# Fighting Bid Rigging through Advocacy: OECD Perspectives and Recent Initiatives



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## The OECD's Role and Experience in Fighting Bid Rigging through Advocacy

The OECD's experience in fighting bid rigging combines legal instruments, practical guidance, and capacity-building initiatives. Through its Competition Committee, the OECD has for decades consolidated international best practices in fighting bid rigging. This led to the adoption of the Council Recommendation on Fighting Bid Rigging in Public Procurement in 2012, and its recent revision in 2023<sup>72</sup>. The Recommendation is a high-level legal instrument urging governments to review procurement systems at all levels to identify vulnerabilities and implement safeguards against collusion. It emphasizes the need for public procurement officials to be aware of suspicious behaviours and unusual bidding patterns that may signal collusion. To achieve this, the Recommendation calls for awareness-raising materials on fraud and collusion, training programmes, and continuous relationships between competition and contracting authorities.

Accompanying the Recommendations are the 2009 Guidelines<sup>73</sup>, currently under revision, which provide practical guidance for public sector authorities on the detection of bid rigging and the pro-competitive design of tenders. Many OECD Members have developed their own national guidelines and awareness materials aligned with the Recommendation. These materials, such as brochures and newsletters, are often distributed through competition authority websites and training events<sup>74</sup>.

The OECD Recommendation and the Guidelines have been instrumental in shaping OECD capacity-building activities across the world. They have also been applied in several in-country projects, in which the OECD designed and led training programmes for public officials from a diverse set of authorities, to enable them to recognise and respond to bid rigging.

## Fighting Bid Rigging through Advocacy

Competition authorities worldwide have made enforcement against bid rigging a priority<sup>75</sup>. However, enforcement alone is not enough. Advocacy is also essential to prevent and detect bid rigging, build institutional capacity to prevent collusion and foster competition law compliance. Advocacy and enforcement are two sides of the same coin, which can and should be used together to fight bid rigging<sup>76</sup>.

In the field of competition, advocacy is commonly defined as *“those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition”*<sup>77</sup>.

In the context of bid-rigging, a usual advocacy channel is for competition authorities to advise on the procompetitive design of tenders to minimise the risk of collusion, by encouraging broader bidder participation, and

<sup>72</sup> Recommendation of the Council on Fighting Bid Rigging in Public Procurement (2023), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0396>

<sup>73</sup> Guidelines for Fighting Bid Rigging in Public Procurement (2009), [https://www.oecd.org/en/publications/guidelines-for-fighting-bid-rigging-in-public-procurement\\_8cfeafbb-en.html](https://www.oecd.org/en/publications/guidelines-for-fighting-bid-rigging-in-public-procurement_8cfeafbb-en.html)

<sup>74</sup> OECD (2016), Report on the Implementation of the Recommendation of the Council on Fighting Bid Rigging in Public Procurement [C(2012)115 – C(2012)115/CORR1 and C/M(2012)9, Item 137] <https://www.oecd.org/daf/competition/Fighting-bid-rigging-in-public-procurement-2016-implementation-report.pdf>

<sup>75</sup> The OECD noted an increase of 9.7% in bid-rigging cases across many jurisdictions between 2021 and 2022. Source: [OECD Competition Trends 2024](https://www.oecd.org/en/publications/2023/09/oecd-competition-trends-2024)

<sup>76</sup> OECD (2019), Review of the Recommendation of the Council concerning Effective Action against Hard Core Cartels [OECD/LEGAL/0294], [https://www.oecd.org/en/publications/2019/09/review-of-the-1998-oecd-recommendation-concerning-effective-action-against-hard-core-cartels\\_23b865d3.html](https://www.oecd.org/en/publications/2019/09/review-of-the-1998-oecd-recommendation-concerning-effective-action-against-hard-core-cartels_23b865d3.html)

<sup>77</sup> ICN (2002), Advocacy and Competition Policy, <http://www.internationalcompetitionnetwork.org/uploads/library/doc>

avoiding practices that inadvertently facilitate coordination. Another advocacy tool are public events and capacity-building workshops (often to procurers, but also to public sector auditors and anti-corruption enforcers) that raise awareness about the risks and harms of bid rigging, its warning signs, and thus help the reporting of suspicions to competition authorities.

### The EU/OECD Bid Rigging Project: Improving Compliance and Competition for Public Contracts in Austria, Bulgaria, Croatia, Cyprus, Greece and Romania

Drawing from its extensive experience on fighting bid rigging through advocacy, the OECD is leading an EU-funded project<sup>78</sup> to support the competition authorities of Austria, Bulgaria, Croatia, Cyprus, Greece, and Romania in strengthening their bid-rigging advocacy efforts and institutionalizing their co-operation with procurement authorities, auditors and judges. The project aims to enhance compliance with competition law in public procurement.

While all six authorities have undertaken enforcement against bid rigging, they face challenges regarding advocacy, outreach and inter-institutional cooperation. Across the six countries, there is insufficient understanding among key stakeholders (such as contracting authorities, private sector entities, judges, auditors, and other oversight bodies) regarding the risks and costs of collusion, which limits their ability to recognize and respond to bid rigging. Moreover, competition authorities lack systematic co-operation and information-sharing with other public bodies.

The project seeks to address these challenges through a combination of capacity building activities, training materials and recommendations on good advocacy practices. The objective is to raise awareness among contracting authorities, businesses, and other relevant stakeholders (such as auditors and judges) about the application of competition law in public procurement and the actions that can be taken to ensure it. There are workshops in each beneficiary country designed to provide participants with practical tools to detect and prevent collusion. The project also aims to bridge gaps in ways and extent of sharing

information between competition and other public sector authorities. It can be unclear under which conditions the authorities communicate, the possibility of informal contacts, and what can be expected. For example, whether competition investigations stop procurement processes, or whether reporting suspicions of bid rigging requires public purchasers to provide proof, or the extent of personal involvement of the reporting official.

The OECD has already conducted two workshops in Austria and Bulgaria based on these objectives, training over one-hundred competition and procurement officials on topics such as bid-rigging red flags, reporting mechanisms, damages claims by contracting authorities, pro-competitive tender design, and exclusion of bidders suspected or convicted for bid rigging from public tenders (debarment). A recurring challenge highlighted during the workshops is the access of competition authorities to comprehensive procurement data to investigate bid rigging. Many participating authorities emphasized that centralized procurement databases are critical tools for detection. However, for these databases to be genuinely useful, they must include not only the winning bids but also the losing bids in each tender. Historical data on losing bids is essential for identifying patterns of collusion such as identical pricing, bid rotation, or market allocation. Contracting authorities play a vital role in storing and organizing procurement information in ways that support bid-rigging investigations. For example, centralized automated e-procurement systems in Bulgaria<sup>79</sup> and Greece<sup>80</sup> were highlighted as promising examples.

Additionally, the workshops stressed the need to raise awareness about the contracting authorities' right to claim damages if they have been victims of bid rigging. Although EU Member States have legislation in place to encourage compensation lawsuits by harmed parties, there are few such actions in most jurisdictions. The workshops also looked at private enforcement versus the attractiveness of leniency programmes: namely, the risk of a leniency applicant being sued for damages can significantly weaken incentives to apply for leniency. It is worth noting that the Recommendation on Fighting Bid Rigging in Public Procurement recommends that sanctions for bid rigging should take into account the applicable leniency

<sup>78</sup> More information on the project available here: <https://www.oecd.org/en/about/projects/fighting-bid-rigging-in-public-procurement-in-austria-bulgaria-croatia-cyprus-greece-and-romania.html>

<sup>79</sup> The Public Procurement Portal (PPP) is hosted by Bulgaria's Procurement Agency. More information about the Portal available at: <https://www2.aop.bg/en/ppa/about-ppa/>

<sup>80</sup> The Greek e-Public Procurement Portal is overseen by the Hellenic Single Public Procurement Authority (HSPPA). More information about the Portal available here: <https://portal.eprocurement.gov.gr/webcenter/portal/TestPortal>

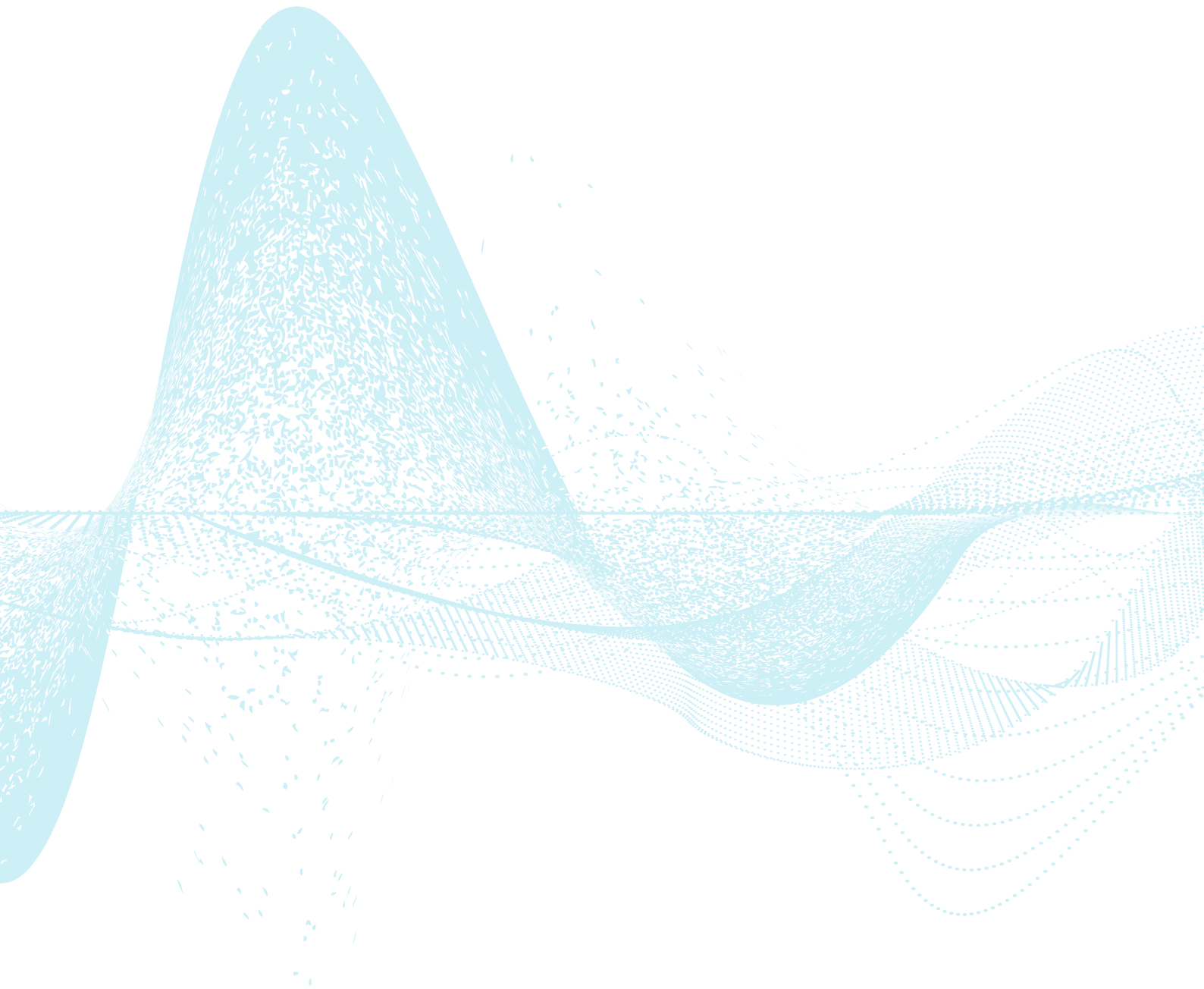
policy, and advises considering the exemption of successful first-in leniency applicants from damages claims.

### Conclusion and Next Steps Ahead

In the upcoming months, there will be similar trainings in the other four countries. These workshops are prepared in close cooperation with the hosting competition authority to ensure that they adapt to the national context and leverage both local and international perspectives on fighting bid rigging. These events provide a platform for dialogue and networking and aim to build lasting links between competition authorities and other public bodies, and in particular contracting authorities. This co-oper-

ative approach is essential for ensuring that all relevant stakeholders work together to address collusion in public procurement, and that there is a solid basis to address current challenges and enable long-term inter-institutional co-operation and advocacy.

The OECD project is grounded on the conviction that advocacy is a necessary complement to enforcement in the fight against bid rigging. By leveraging the existing efforts of the six participating authorities and delivering targeted support, it aims to create lasting advocacy strategies against collusion that are adapted to local contexts and different audiences.



# Rigging the Game: Unmasking Anti-Competitive Practices in Lithuania's Public Procurement



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Considering that public procurement represents approximately €2 billion annually, or around 14% of the GDP of EU Member States<sup>81</sup>, it is a significant driver of economic growth and employment, making effective competition in this area crucial. Therefore, bid rigging cases repeatedly fall under scrutiny of the Lithuanian Competition Council. Until recently, bid rigging cases accounted for approximately half of all investigations into anti-competitive agreements conducted by the Competition Council. This note reflects on two key aspects of such investigations: the prioritisation of significant cases and the optimisation of resource utilisation.

## Construction Companies' Conduct in Public Procurement and the Priority of the Competition Council

In January 2024, the Competition Council received a referral concerning a potential restrictive agreement between two undertakings involved in a public procurement for the repair and maintenance of street as well as courtyard pavements for the Vilnius City Municipality<sup>82</sup>. The complainant alleged that two companies participating in the procedure may have coordinated their commercial offers and prices in advance, agreed not to compete with each other, and divided the share of the contract on a territorial basis, thereby infringing the Law on Competition.

In light of the documentation provided, the Competition Council determined that the applicant had filed a formal complaint with the Vilnius City Municipality before referring the matter to the Competition Council. This complaint, pertaining to the alleged infringement,

had prompted the Municipality to request clarifications from the parties involved.

In accordance with the priority of the Competition Council within the framework of the supervision of the Law on Competition<sup>83</sup>, pursuant to which investigations or other interventions in the market are carried out if they could significantly contribute to the effective protection of competition and thus ensure the greatest possible consumer welfare, the Competition Council decided that, in this particular case, it was unlikely to find the necessary data to prove a possible infringement, as the undertakings had been already aware of the Municipality's suspicion. It also stated that conducting such an investigation would require disproportionate resources compared to the likely results, and thus would not comply with the principle of the rational use of resources.

The Competition Council has relatively recently begun to prioritise complaints concerning anti-competitive agreements when relevant, given limited resources, the large volume of potential cases, and the fact that not all of them are of significant scale or generate substantial benefits for consumers. This case provides a compelling example of the importance of prioritising investigations, including those related to bid rigging.

The Competition Council's decision is also intended to convey to the public that, in the event of suspected anticompetitive conduct, complainants should preferably contact the Council directly rather than disclose the information to the suspected undertakings or publicly, providing potential infringers with an opportunity to destroy the evidence of suspected infringement.

## The Purchase of Food Products by Public Institutions

In contrast, the circumstances differed regarding the procurement of food products by public authorities, which prompted an investigation.

In July 2019, the Competition Council opened an investigation into the conformity of the actions of undertakings participating in the procurements of food products by

<sup>81</sup> [https://www.eca.europa.eu/ECAPublications/SR-2023-28/SR-2023-28\\_LT.pdf](https://www.eca.europa.eu/ECAPublications/SR-2023-28/SR-2023-28_LT.pdf)

<sup>82</sup> <https://kt.gov.lt/lt/naujienos/konkurencijos-taryba-netirs-statybos-bendroviu-veiksmu-vilniaus-miesto-savivaldybes-organizuotame-konkurse>; <https://kt.gov.lt/uploads/docs/docs/2024-03/5f794fefa2450cc3ec0d8fbc6ff842d5c7551aae94e94ba0c7dfb2ed5ef23df.pdf>

<sup>83</sup> Article 18(2)(4) of the Law on Competition of the Republic of Lithuania empowers the Competition Council to prioritise complaints, a discretion that is consistent with the ECN+ Directive.

public authorities with the Article 5 of the Law on Competition (prohibition of anti-competitive agreements<sup>84</sup>). The investigation was triggered after the two largest municipalities in Lithuania confidentially shared their suspicions of bid rigging with the Competition Council.

During this investigation, the Competition Council examined the procurements of food products by educational and social institutions, which are obligated to cater to the needs of the public, as well as by the municipal administrations of the cities of Vilnius and Kaunas, for the benefit of the aforementioned institutions operating in their territories.

In December 2021, the Competition Council adopted a final decision<sup>85</sup> stating that the five undertakings operating in the wholesale food supply market in the Republic of Lithuania had entered into a restrictive agreement with the objective of coordinating their actions and submitting coordinated commercial offers, including prices. The five undertakings engaged in a large-scale, systematic coordination of their commercial offers across 101 public procurement procedures, spanning nearly four years. The coordination was carried out through the preparation of commercial bids by the participating entities and the submission of these pre-agreed bids to the relevant contracting authorities. Additionally, the process involved determining which entity should withdraw its bid, with the objective of limiting competition between the entities in the submission of the bids and allowing a pre-determined entity to secure the contract.

In this manner, the aforementioned undertakings contravened the provisions set forth in Article 5(1)(1) of the Law on Competition, namely, they entered into an agreement to fix prices that restricts competition by its object.

In this large-scale case, each undertaking admitted the infringement and agreed to pay the imposed fines, with one company being fined €12.6 million – the largest fine ever imposed on a single company for participating in a cartel agreement. This behaviour on the part of the undertakings played a significant role in the more efficient resolution of the case and resulted in additional resource savings for the authority.

Nevertheless, despite acknowledging the infringement and filing the settlement application, one of the sanctioned undertakings contested the decision of the Competition Council and sought judicial review, challenging the severity of the imposed fine as well as its legal and rational basis<sup>86</sup>. The applicant contested the individualisation of the fine, arguing that the Competition Council had failed to comply with the principle of non-discrimination and had not properly assessed the role of the undertakings involved in the infringement.

In August 2022, the Court of First Instance held that there were no grounds for annulling the Competition Council's decision and rejected the applicant's complaint. In 2024, the Court of Appeal concurred with both the conclusions and the reasoning of the Court of First Instance<sup>87</sup>.

### Final notes

It is evident that bid rigging has a detrimental impact on both competition and consumers. In light of this, the Competition Council stands ready to intervene and, if necessary, deploy its investigative tools. It is therefore encouraged that any instances of such behaviour be reported to the Competition Council.

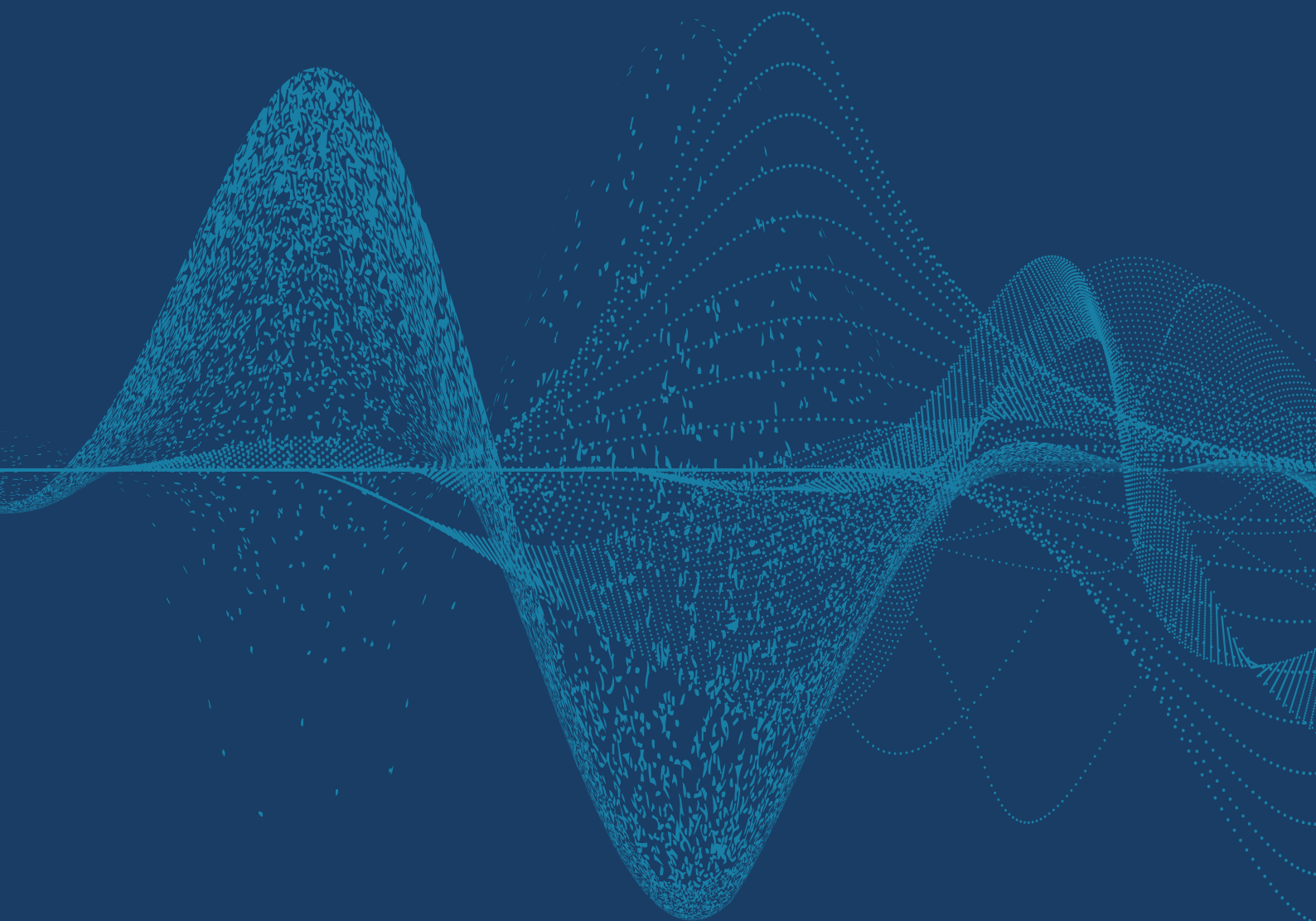
<sup>84</sup> Equivalent of Article 101 of the Treaty on the Functioning of the European Union.

<sup>85</sup> [https://kt.gov.lt/uploads/docs/docs/5060\\_3c349fe89b09debc3eb71b3a3ef03723.pdf](https://kt.gov.lt/uploads/docs/docs/5060_3c349fe89b09debc3eb71b3a3ef03723.pdf) (the Competition Council's decision in Lithuanian) <https://kt.gov.lt/en/news/konkurencijos-taryba-reduces-fines-for-food-wholesalers-for-cooperation-and-settlement-in-bid-rigging-case> (press release in English);

<sup>86</sup> <https://kt.gov.lt/lt/dokumentai/teismo-sprendimas/id.447>;

<sup>87</sup> <https://kt.gov.lt/lt/dokumentai/teismo-sprendimas/id.448>;

# IV. CONFERENCES IN THE PAST SEMESTER





# 1. RCC seminars

## Seminar Summary “Enhancing Compliance and Enforcement in Competition Law”

This seminar, organized by the **OECD-GVH Regional Centre**, focused on enhancing competition law compliance and enforcement through practical tools and strategies used by competition agencies. Participants from 17 beneficiary countries across Eastern Europe and Central Asia explored key methods for increasing deterrence, improving market studies, enhancing dawn raid procedures, and calculating sanctions effectively. The seminar provided a platform for knowledge sharing and discussions aimed at refining enforcement approaches, drawing on real-world experiences from across Europe.

### Key Themes and Sessions:

#### 1. Opening Remarks and Tour de Table (24 September 2024)

The seminar commenced with opening remarks by key stakeholders:

- **Dragan Damjanović**, President of the AZZK (Montenegro)
- **Maida Gorčević**, Ministry of European Affairs of Montenegro
- **Attila Sippos**, Secretary General of the GVH (Hungary)
- **María Pilar Canedo**, Academic Director of the OECD-GVH Regional Centre.

These remarks highlighted the importance of improving competition enforcement and fostering regional collaboration. A tour de table followed, allowing participants to introduce themselves and share their expectations for the seminar.

#### 2. Key Elements for Increasing Effectiveness of Competition Enforcement

**María Pilar Canedo** discussed the broader framework for enhancing the effectiveness of competition enforcement. Key points included the need for stronger deterrence mechanisms, more robust competition cultures within agencies, and the importance of cooperation between competition authorities to address cross-border issues effectively.

## Focus Area 1: Market Studies

Market studies play a crucial role in detecting potential competition issues and informing policy development. These studies allow competition agencies to understand market dynamics, identify barriers to entry, and uncover anticompetitive practices before they become widespread.

### Session Highlights:

- **Zombor Berezvai**, Chief Economist of the Hungarian Competition Authority, presented on the relevance of market studies in both enforcement and advocacy. He emphasized the importance of using sound economic methodologies to detect market failures and anticompetitive behaviors.
- **Renato Ferrandi**, Head of International and European Affairs at Italy’s Autorita Garante della Concorrenza, discussed how to effectively manage market studies, offering examples from Italy. He provided practical insights on how to avoid common pitfalls and ensure that studies are impactful.
- A session on **experiences with market studies** featured contributions from **Vuk Leković** (Montenegro) and **Carmen Zanfin** (Romania). These experiences underscored the value of tailored approaches in market analysis while respecting the diverse regulatory environments in each country.
- The final segment on deterrence, led by **Renato Ferrandi** and **María Pilar Canedo**, emphasized how well-executed market studies can serve as powerful tools for competition agencies to detect and prevent anti-competitive conduct.

## Focus Area 2: Dawn Raids

Dawn raids are one of the most powerful tools at the disposal of competition agencies to combat anti-competitive practices, especially cartels. The seminar dedicated significant time to discussing the design, implementation, and legal considerations associated with dawn raids.

### Session Highlights:

- **Zombor Berezvai** discussed a **particular example of a market study**, showing how coordinated raids were preceded by comprehensive market analysis to ensure that evidence of wrongdoing would be gathered efficiently.

- **Jutta Wimmer**, from the **Bundeskartellamt** (Germany), offered expert tips and tricks for conducting successful dawn raids. Her session addressed common challenges, strategies for maintaining operational secrecy, and best practices for effective investigation.
- **Alfonso García Jimenez**, from Spain's **CNMC Intelligence Unit**, presented on the digital tools used to support dawn raids. He highlighted how new technologies, such as AI and data mining, help agencies identify suspicious activities and gather critical evidence more effectively.
- **Jutta Wimmer** also led a session on the **application for judicial warrants** and procedural aspects connected with dawn raids. She shared practical insights into the legal processes that underpin a raid, ensuring that investigations are both efficient and legally sound.
- The seminar included a hands-on **hypothetical case study**, where participants were tasked with solving a cartel case based on real-life data, simulating the complexities of implementing dawn raids.

### Focus Area 3: Sanctions and Deterrence

A critical element of competition compliance is the imposition of sanctions that both deter illegal practices and ensure fairness. The seminar explored the controversial methodologies used by agencies to calculate sanctions while maintaining proportionality and respecting companies' rights to defense.

- During the **Deterrence and Competition Law** session, **Renato Ferrandi** and **María Pilar Canedo**

addressed the delicate balance between effective deterrence and legal safeguards for businesses. They discussed various approaches to calculating fines, considering both the scale of the infringement and the company's ability to pay.

### Final Remarks and Kahoot Game (25 September 2024)

The final day of the seminar included a **Kahoot game**, engaging participants in a fun and interactive review of the seminar's key takeaways. The game allowed participants to test their understanding of competition law tools in a light-hearted environment, fostering continued collaboration and learning.

The **delivery of certificates** marked the conclusion of the seminar, where participants were commended for their engagement and contributions.

### Conclusion

The seminar provided a comprehensive and interactive platform for discussing critical tools and methodologies in **competition compliance and enforcement**. By focusing on **market studies**, **dawn raids**, and the **calculation of sanctions**, the event facilitated important exchanges of knowledge and best practices. The active participation of 18 beneficiary countries highlighted the strong regional commitment to strengthening competition enforcement and creating fair, transparent markets. Moving forward, the insights gained from this seminar will be essential in refining practices and enhancing the effectiveness of competition authorities across the region.



# Seminar Summary: “Competition Law and Enforcement in a Changing World”

## Dates: 6-7 November 2024

The seminar gathered experts from around the world to discuss key issues in competition law and enforcement. It featured a keynote address, invited speakers, and interactive workshops on critical topics such as judicial review, investigation management, the role of artificial intelligence in antitrust, and sector-specific consumer protection tools.

## Day 1: Wednesday, 6 November 2024

### Opening Remarks (09:00–09:15)

- **Csaba Balázs Rigó**, President of the GVH, and **María Pilar Canedo**, Coordinator of the OECD-GVH Regional Centre for Competition, opened the seminar with brief remarks.

### Keynote Address (09:15–10:15)

- **William Kovacic** (USA) delivered a keynote on “**Key Elements to Consider in a Competition Agency**”, exploring the core functions and responsibilities of competition agencies in ensuring effective enforcement and maintaining market fairness.

### Sessions:

- **10:30–11:15 – Judicial Review and Competition Enforcement Efficiency** **Francisco Marcos** (IE Law School) discussed how judicial review can impact the efficiency of competition enforcement, emphasizing the balance between legal scrutiny and agency independence.
- **11:15–12:00 – Investigation Management: From Mega Cartels to Minor Offenses** **Assaf Dahan** (Israel) examined the practical challenges and strategies for managing investigations, from large-scale cartel cases to minor violations, stressing the importance of efficient and proportionate enforcement.
- **13:30–14:15 – Institutional Framework/Legal Consequences of Infringements** **María Pilar Canedo** (OECD) provided insights into the legal and institutional frameworks that support competition law enforcement and the consequences of anti-competitive behavior.

- **14:15–15:00 – The Italian Specific Consumer Protection Tools** **Paola Sfasciotti** (Italy) presented the unique consumer protection tools used in Italy, with a focus on how competition law intersects with consumer interests in the Italian context.
- **15:15–16:00 – Protecting Competition in a Changing World: The Evolution of EU Competition Over 25 Years** **Thomas Deisenhofer** (EU) analyzed the evolution of competition policy within the European Union over the last quarter-century, addressing key milestones and challenges.
- **16:00–16:45 – Artificial Intelligence in Antitrust Investigations** **Tamir Reindel** (Israel) discussed how artificial intelligence (AI) is transforming antitrust investigations, from data analysis to predictive models, and the implications for the future of competition enforcement.

### Closing Remarks (16:45–17:30)

The day concluded with final thoughts and reflections on the topics discussed, setting the stage for further exploration the following day.

## Day 2: Thursday, 7 November 2024

### Plenary Session: Fireside Chat with William Kovacic (09:00–10:00)

- A candid discussion led by **Francisco Marcos**, **Paola Sfasciotti**, and **María Pilar Canedo** with **William Kovacic** on broader trends and challenges in competition law and policy.

### Workshops and Sessions (10:30–12:30)

- Various specialized sessions were held, including:
  - **Tech in Investigation and Questioning Methods:** A session with **Francisco Marcos** and **María Pilar Canedo** focusing on innovative technologies in investigative practices.
  - **Antitrust and Cartel Investigations:** Led by **Assaf Dahan** and **Tamir Reindel**, exploring effective approaches to cartel detection and enforcement.
  - **Economics and Merger Analysis:** **Thomas Deisenhofer** shared insights into economic tools used in merger analysis and their impact on competition.

**Consumer Protection:** Paola Sfasciotti discussed the role of competition law in safeguarding consumer interests.

### Lunch Break (12:30–13:30)

#### Plenary Session: Round Table on Success and Failure Cases (13:30–15:00)

- **Assaf Dahan, Thomas Deisenhofer, and Paola Sfasciotti** reviewed notable case studies of competition law enforcement, discussing both successful outcomes and lessons learned from failures.

#### Closing Remarks (15:00–15:30)

- The seminar concluded with reflections on the discussions held over the two days, reinforcing the importance of cooperation and knowledge-sharing in competition law enforcement.

#### Overall Themes:

1. **Institutional and Legal Frameworks:** Effective competition law enforcement requires robust insti-

tutional structures and clear legal consequences for anti-competitive behavior.

2. **Judicial Review and Enforcement:** The role of judicial review in balancing enforcement actions with legal scrutiny is crucial for maintaining efficiency and fairness in competition law.
3. **Technological Advances:** The integration of artificial intelligence and technology in investigations is transforming the landscape of antitrust enforcement.
4. **Sector-Specific Tools:** Consumer protection tools, like those used in Italy, highlight the intersection of competition law and consumer welfare.
5. **International Perspectives:** The event provided a global perspective, with contributions from experts in Europe, the United States, Israel, and Italy, showcasing different approaches to competition law enforcement.

This seminar served as a valuable platform for discussing contemporary challenges and innovations in the field of competition law, fostering cross-border dialogue and collaboration among experts.



# Summary of the COMP LAB FOR JUDGES – Seminar on European Competition Law

**Dates:** Thursday, 12 December 2024 – Friday, 13 December 2024

## COMP LAB FOR JUDGES: Seminar on European Competition Law

The COMP LAB FOR JUDGES seminar aims to deepen judicial understanding of cartel enforcement under **European competition law**. This seminar covers a range of critical issues related to cartels, from economic theories and legal frameworks to practical enforcement challenges. The content is structured around lectures, case studies, and interactive exercises designed to help judges assess and decide cartel cases effectively.

### Key Topics and Areas of Focus

#### 1. The Economics and Impact of Cartels

A foundational understanding of the **economic theory behind cartels** is essential for effective competition law enforcement. This topic introduces participants to the negative effects of cartels on markets, consumers, and the broader economy. Judges learn how cartels manipulate market conditions by fixing prices, limiting supply, or dividing markets, and how these practices harm competition and economic efficiency. The seminar focuses on how economic concepts such as **market power**, **price distortions**, and **consumer welfare** are central to understanding cartel behavior.

#### 2. Anticompetitive Agreements, Decisions by Associations, and Concerted Practices

The seminar explores the different **types of anticompetitive behavior** that are subject to enforcement, particularly focusing on **cartels**, **concerted practices**, and **decisions made by trade associations**. Judges are introduced to the legal criteria for determining when cooperation between competitors crosses the line into illegal collusion. Key concepts such as **horizontal agreements** and **collective decision-making** are discussed in detail, with case studies to illustrate how these practices are detected and prosecuted in real-world scenarios.

#### 3. Price-Fixing Cartels: Analytical Framework and Case Examples

**Price-fixing** is one of the most common and harmful forms of cartel behavior. This section delves into the **analytical frameworks** used to detect price-fixing cartels, such as **economic evidence**, **market behavior analysis**, and **pricing patterns**. Judges are presented with **case studies** from the OECD and other competition authorities that show how price-fixing cartels operate and the challenges involved in proving such cases. The seminar also covers how to interpret evidence of tacit or explicit collusion in pricing practices.

#### 4. Collusive Tendering Cartels: Analytical Framework and Case Examples

**Collusive tendering** or **bid-rigging** cartels involve competitors secretly coordinating their bids in public or private tenders to undermine the bidding process. This segment explains the **legal and economic analysis** used to uncover bid-rigging, highlighting key indicators like **unusual bidding patterns**, **rotating winners**, and **suspicious bid similarities**. Judges learn how to assess evidence and identify **collusive behavior** in competitive tendering scenarios. Case examples from national competition authorities help illustrate how these cartels are investigated and prosecuted.

#### 5. Buyers Cartels and Labor Market Cartels

While cartels are often associated with product markets, **buyers cartels** (where companies coordinate to suppress the price paid for inputs) and **labor market cartels** (where firms conspire to fix wages or restrict employment opportunities) also have significant economic impacts. This topic introduces participants to the analytical tools used to identify these types of cartels, including the effects on both suppliers and employees. Real-world case studies provide insight into how competition authorities tackle these less commonly understood forms of collusion.

## 6. Consequences of Cartel Infringements: Sanctions and Restrictive Measures

A central theme of the seminar is understanding the **sanctions** imposed on cartel participants, both at the **EU** and **national levels**. Judges are guided through the process of **calculating fines** and considering other restrictive measures such as **leniency** or **settlements**. The seminar covers key factors that influence the size of fines, including **turnover**, **duration of the infringement**, and **cooperation with authorities**. Special emphasis is placed on **legal principles** governing the imposition of sanctions and how these align with the broader goals of deterrence and market correction.

## 7. Hypothetical Case Exercises

Throughout the seminar, participants engage in several **hypothetical case exercises**. These practical exercises involve simulated cartel cases where judges must apply the concepts they have learned to analyze evidence, evaluate economic impact, and make legal determinations. These exercises allow judges to hone their skills in identifying cartel behavior, assessing the credibility of evidence, and determining appropriate sanctions. By working in groups and engaging with real-world scenarios, participants gain practical experience in applying complex legal and economic principles to cartel cases.

## 8. Evidentiary Issues in Cartel Cases

A significant challenge in cartel cases is the **evidence** required to prove collusion. This session focuses on the

**types of evidence** typically used in cartel investigations, including **documents**, **witness testimonies**, and **economic data**. Judges are introduced to the intricacies of evaluating **circumstantial evidence** (e.g., email communications, meeting notes) and **direct evidence** (e.g., whistleblower statements, cartel member confessions). The session also covers how evidence is handled in court, with particular attention to how **judicial review** impacts the evaluation of evidence in cartel cases.

## 9. Kahoot Game: Interactive Learning

To wrap up the seminar, participants take part in an interactive **Kahoot quiz**, designed to test their knowledge and reinforce key concepts learned during the course. This fun, competitive element helps solidify understanding while also fostering group engagement.

## Conclusion:

The **COMP LAB FOR JUDGES** seminar provides an in-depth examination of cartel enforcement from both a **legal** and **economic** perspective. Judges are equipped with practical tools and knowledge to assess complex cartel cases, including various analytical frameworks, case studies, and insights into evidence assessment. By combining theory with practice, the seminar enhances judicial competence in addressing cartel behavior, sanctions, and judicial review, ensuring fair and effective competition law enforcement across Europe.



## 2. Conferences in the region

### Advancing Innovation and Fair Markets: Insights from the III International Conference on Competition and Consumer Protection held in Georgia

The III International Conference on Competition and Consumer Protection, held on November 20-22, 2024, in Tbilisi, Georgia, marked a significant milestone in advancing global collaboration on competition and consumer protection issues. Organized by the Georgian Competition and Consumer Agency (GCCA) in partnership with the National Bank of Georgia, the National Energy and Water Supply Regulatory Commission of Georgia, the Communications Commission, and the State Insurance Supervision Service, the event attracted over 300 delegates from 15 countries. These experts and stakeholders convened to address evolving challenges and discuss innovative solutions in the fields of competition policy and consumer protection.

This high-profile conference served as a crucial platform for dialogue, knowledge sharing, and capacity building. Featuring eight different panel discussions, the program brought together both local and international experts to examine challenges, achievements, and best practices in competition, consumer protection and anti-dumping policies. Key representatives from international organizations such as the International Competition Network (ICN), the United Nations Conference on Trade and Development (UNCTAD), the Organisation for Economic Cooperation and Development (OECD), and the European Commission actively contributed to these discussions alongside local stakeholders.

The conference commenced with an opening address by Irakli Lekvinadze, Chairperson of the GCCA, who underscored the agency's achievements between 2020 and 2024. He noted that public trust and competitive market conditions had markedly improved during this period. According to Mr Lekvinadze, "Assessments from the EU Twinning Project revealed remarkable progress

in Georgia's competition legislation compliance with the EU relevant legislation, which rose from 60% to 75%, and consumer protection alignment, which increased from 70% to 85% over the past two years."

Andreas Mundt, President of the Bundeskartellamt and Chair of the ICN Steering Group, also delivered remarks. He commended Georgia's significant strides in competition law enforcement over the past decade. He emphasized the crucial role of competition policy in creating a transparent and fair market economy that benefits both consumers and businesses.

Teresa Moreira, Head of the Competition and Consumer Policy Branch at UNCTAD, delivered a keynote speech address emphasizing a holistic approach to competition and consumer protection. She highlighted the importance of international cooperation among regulators in addressing challenges posed by digital markets and the global economy's rapid

transformation. Ms Moreira called for competition laws to be updated to address emerging issues, such as online trading and the role of artificial intelligence in market dynamics.

Angelo Grieco, Acting Head of the Consumer Enforcement & Redress Unit at DG JUST of the European Commission, emphasized the European Commission's role in ensuring that effective competition and consumer protection policies strengthen market competitiveness and protect consumers.

Cristina Caffarra, Co-Founder and Vice Chair of the Steering Committee at the Competition Policy Research Network highlighted the necessity of robust competition enforcement amid global challenges. "Amid challenges such as economic crises, the COVID-19 pandemic, and the dominance of digital monopolies, effective competition enforcement remains crucial for safeguarding



democracy and strengthening the political economy. To address these complex issues, there is an urgent need for more advanced research and innovative tools to enhance its effectiveness and impact,” she remarked.

Over the three-day event, a series of panels and workshops provided valuable insights into a range of topics, including the challenges posed by new technologies such as artificial intelligence and big data. Speakers from various local and international organizations shared their expertise, offering practical solutions for addressing these complex issues.

Digital markets emerged as a central theme of the conference. Delegates discussed the prevalence of unfair practices, such as fake reviews and data manipulation, and stressed the urgency of updating regulatory frameworks to address anti-competitive behaviour on online platforms. Transparency and accountability in digital transactions were identified as critical priorities for ensuring consumer trust and safeguarding rights in the digital age.

Speakers underscored the importance of consumer education in fostering awareness of rights and building trust in marketplaces. Efforts to enhance consumer knowledge were deemed essential, particularly in the context of online shopping and digital services, where consumers often face complex challenges. Christine Riefa,

Professor of Law at the University of Reading and an expert in e-commerce law, focused on the vulnerability of specific consumer groups. “When we talk about vulnerable consumers, children are a key target group, especially in the digital e-commerce landscape. It is essential for policymakers to empower and educate them today, equipping them with the skills and knowledge needed to navigate the marketplaces of tomorrow,” she stated.

The conference also celebrated recent awards received by the Georgian Competition and Consumer Agency. In 2024, the World Bank Group and the International Consumer Protection and Enforcement Network (ICPEN) recognized GCCA for effective case handling. These prestigious awards highlight the agency’s leadership in implementing effective policies, fostering transparency, and aligning with international best practices. Such achievements further underline Georgia’s commitment to fostering a competitive and consumer-friendly market environment.

The conference played a pivotal role in advancing global competition and consumer protection policies by promoting collaboration among regulators, experts, and stakeholders from various countries. It provided an exceptional platform for sharing best practices, addressing emerging challenges, and exploring innovative solu-





tions to ensure fair competition in both traditional and digital markets. By incorporating diverse perspectives, the event emphasized the critical role of international cooperation in resolving global competition issues, promoting transparency, and protecting consumer rights. The discussions and partnerships formed during the conference will shape the future of competition and consumer protection policies, contributing to fairer and more efficient global markets.

The conference strengthened international collaboration by bringing together policymakers, regulators, academics, and industry leaders from across the world, fostering collective efforts to tackle shared challenges in competition policy and consumer protection. It served as a platform for knowledge sharing, enabling participants to exchange insights, best practices, and innovative solutions for addressing both emerging and ongoing issues in these fields.

Through discussions and panel sessions, the event bolstered the capacity of agencies and organizations to implement effective competition policies and robust consumer protection mechanisms. It also played a vital role in policy development by highlighting priority issues and achievements refining both national and international frameworks. Additionally, delegates gained opportunities to build networks, learn from diverse perspectives, and create synergies to benefit their respective jurisdictions.

For Georgia, hosting the conference underscored its dedication to aligning its policies with international standards and showcased its progress in competition and consumer protection. This event reaffirmed the growing importance of global collaboration in achieving shared goals in competition law enforcement and consumer rights protection, ensuring that consumers everywhere benefit from fair, open, and competitive markets.



## Budapest in the spotlight: The 50<sup>th</sup> European Competition Day



**Benedek Dankó**  
Case Handler  
Hungarian Competition Authority

On 22 October, **nearly 30 national competition authorities and more than 200 experts gathered for the 50<sup>th</sup> European Competition Day** in Budapest. Prominent figures in European competition enforcement, including Natalie Harsdorf, Director-General for Competition of the Austrian Federal Competition Authority, Benoît Cœuré, President of the French Competition Authority, and Ori Schwartz, Head of the OECD Competition Division, were among the attendees. The GVH also ensured that candidate member states of the EU received an invitation from Csaba Balázs Rigó, President of the Hungarian Competition Authority.

Balázs Péter Molnár, Deputy State Secretary for European Policy, highlighted that the Hungarian Presidency of the Council has identified competitiveness as its overarching priority. *„An effective competition policy that preserves its strict foundations while remaining responsive to changing market conditions is one of the pillars of the thriving economy,”* said the Deputy State Secretary underlining the importance of competition enforcement. *„Competition boosts competitiveness by encouraging businesses to innovate and develop, while ensuring consumer welfare,”* he added.

When discussing EU competitiveness, Mario Draghi's report is impossible to overlook. *„I fully adhere to the reasonable approach put forward by Mario Draghi, in that competition law should accommodate a more proactive industrial policy, without losing its soul in the process. Achieving both the consolidation of industries and robust competition is doable, and desirable,”* stressed Benoît Cœuré, President of the French Competition Authority, in his opening remarks.

*„The challenges facing the European Union are greater than perhaps ever before. The European family can only respond effectively to these challenges by work-*

*ing together as one,”* added President Rigó in his opening speech.

On the occasion of this unique event, the Hungarian Competition Authority (GVH) **published both the results of its recently launched sector inquiry, “The impact of artificial intelligence on market competition and consumers”**, and the latest volume of its book series *Competition Mirror*, entitled *“Twenty Years of EU Competition Law in Hungary”*. The latter examines the impact of EU competition law on Hungarian competition policy and Hungary's contributions to the development of EU competition law during its two decades of EU membership.

In addition, President Rigó shared the Hungarian Competition Authority's experience in fighting inflation, since the GVH played a key role in reducing inflation through the introduction and operation of the Price Monitoring Database. This unorthodox tool increased transparency in the retail market by tracking the daily price changes for FMCG (Fast-Moving Consumer Goods) products across various retailers. In doing so, the GVH contributed to easing inflation in Hungary, which significantly dropped by the end of 2023.

In the first panel discussion of the event, András Tóth, Vice-President of the GVH and Chairman of the Competition Council; Tihamér Tóth, Judge of the Court of Justice of the European Union; Gábor Fejes, Attorney at Law and Partner at DLA Piper; András Osztoivits, Judge of the Hungarian Curia; and Zoltán Hegymegi-Barakonyi, President of the Hungarian Competition Law Association, shared their experiences on the twenty years of EU competition law enforcement in Hungary.

The Digital Markets Act (DMA) is a crucial piece of legislation aimed at reshaping the digital landscape in the European Union. It represents a significant step towards fostering a fairer, more competitive, and more innovative digital economy. By addressing the challenges posed by large digital platforms and protecting consumer interests, the DMA has the potential to shape the future of digital commerce and ensure that the benefits of the digital economy are more widely shared.

After a short break, Natalie Harsdorf delivered her keynote speech on the challenges of competition enforcement, which was followed by a panel discussion featuring

Gábor Gál, Member of the Competition Council of the GVH, alongside Assimakis Komninos, Attorney-at-Law and Partner at White & Case; Simon Reetz, Case Handler at DG COMP; Giorgio Monti, Professor at Tilburg Law School; and Marco Botta, Professor at the European University Institute. The discussion focused on perhaps **the most exciting issue of recent times in the EU.**

Artificial Intelligence (AI) is one of the most promising technological developments of our time and a major focus of attention in many countries. The development and deployment of AI-based technologies can lead to many economic and social benefits, but they also pose significant risks. In sectors where AI is used, the rapid pace of technological advancement and diffusion can distort competition and increase consumer vulnerability.

***“The widespread and correct adoption of artificial intelligence can have a significant positive impact on the productivity and competitiveness of Hungarian companies,”*** emphasized President Rigó. In the afternoon, participants also heard from Ori Schwartz, Head of the OECD Competition Division; László Bak, Vice-President of the GVH; Guillaume Lorient, Deputy Director-General for Mergers at DG COMP; Christophe Carugati, Founder of Digital Competition; Ana Sofia Rodrigues, Member of the Board at the Portuguese Competition Authority; and Frederike Bröhl, Deputy Head of Unit for Digital Economy at Bundeskartellamt.

Sustainability has become a buzzword in recent years, and many of the participating experts emphasised the urgent need for cooperation and practical measures

within competition policy to enforce transparent market conditions, raise consumer awareness, and support informed decision-making. The GVH has already conducted a [market inquiry into the use of environmental claims by market players, aiming](#) to tackle greenwashing and contribute to the fight against climate change. Among its recommendations, the GVH has proposed the development of a life-cycle-based approach to sustainability and the implementation of environmental impact labelling for various market players. This would provide consumers with transparent and trustworthy information, enabling informed purchasing decisions based on overall environmental performance.

The event concluded with a thematic speech by Christina Volpin, Competition Policy Expert and Seconded to DG COMP, on the links between sustainability and antitrust, followed by the closing remarks from Guillaume Lorient. **President Rigó then passed on the European Competition Day (ECD) to Daniel Mankowski, Vice-President of the Office of Consumer and Competition Protection (UOKiK) in Poland.** Following Hungary, Poland will hold the Presidency of the Council of the European Union, and the Polish competition authority will organise the next European Competition Day on 26 May 2025.

A short recap of the 50<sup>th</sup> ECD is available at the following [link](#).

**It was a pleasure to meet you all in Budapest.  
„Competition unites us all.”**



## 3. OECD Conferences

### The OECD Competition Week. December 2024

The **Competition Week** took place on 2-6 December 2024, which included the meetings of the **Competition Committee, Working Party on Competition and Regulation (Working Party 2), Working Party on Co-operation and Enforcement (Working Party 3), and the Global Forum on Competition.**

Meetings of The Global Forum on Competition took place on 2-3 December 2024. Highlights include:

- **The opening plenary session on Competition and inequality:** The panel on competition and inequality examined the relationship between market competition and various inequalities, including wealth, income, and opportunity. There was consensus that while competition policy cannot fully resolve inequalities, it can mitigate disparities by curbing market power abuses and ensuring equitable access to goods and services. Experts debated whether competition law should tackle inequality directly or focus on fostering fair markets. The discussion highlighted approaches like South Africa's public interest-driven competition law, focusing on the trade-offs of integrating equality into competition frameworks, and alternative tools like market inquiries to enhance competition's impact on inequality.
- **Roundtable on Cross-Border Mergers:** the discussion focused on the complexities and challenges of managing cross-border mergers which now represent over 50% of merger volume. Key points discussed included the sources of divergence in competitive conditions, such as legal frameworks and factual interpretation, which may complicate the notification and approval processes. Delegates emphasised the importance of strengthening cooperation among authorities. The session took the form of an opening plenary discussion among experts from competition authorities, government and the private sector, before delegates split into two breakout rooms to share their contributions and hear more from the experts.
- **Peer review of Thailand:** The Secretariat presented the main findings, and the Thai delegation spoke on the challenges and on-going actions to improve

competition law in Thailand. Korea, Singapore and Sweden led the examination, and other delegations participated in the discussion. The GFC deliberated and concluded that the Secretariat will circulate a revised version of the recommendations for approval by written procedure.

- **Roundtable on Food supply chain:** The roundtable on competition in the food supply chain focused on the set of transactions that make up the food supply chain. The expert speakers and country contributions considered concentration, competition concerns, and enforcement experiences at each stage. There was consensus on the following points. First, competition in food supply chains is invaluable to ensuring food security, health, and development through increased quality, choice, and the availability of lower prices. Second, given that food supply chains in one jurisdiction may affect global supply chains and vice versa, national competition enforcement matters across borders, and thus, increased international cooperation is required. Third, information on the architecture of differing supply chains is key and often lacking.
- Four regional side meetings with delegates from LAC, MENA, Africa and Asia-Pacific.

The Competition Committee includes mostly heads of competition authorities. Working Party 2 deals with issues of regulation and policy. Working Party 3 deals with issues of enforcement and international cooperation. The Global Forum on Competition is open to competition authorities and policy makers from all over the world.

Meetings of Working Party 2 and Working Party 3 took place on 4 December 2024. Highlights include:

- **WP2** held a discussion on the Care Industry, that focused on long-term care and early childhood education and care services, with interventions from delegates, external speakers and ELS. The discussion covered the economic characteristics of these services, debates on how competition authorities could contribute to improve market functioning through advocacy. These included improving affordability and the challenges in promoting quality, such as moving from strict regulation of inputs to more

meaningful measures of outputs and initiatives to provide consumers with information on quality to support choices. The WP also saw a presentation from ECO on the Product Market Regulation Indicators and the revised OECD Guidelines on Corporate Governance of State-Owned Enterprises from DFA/CM.

- **WP3** hosted a roundtable on structural presumptions, where delegates discussed the pros and cons of using structural presumptions in the context of their antitrust enforcement experience. While structural factors are good initial indicators for identifying cases to review, many emphasised that high market shares and concentration do not always lead to anticompetitive harm. On the other hand, even if market conditions for applying a structural presumption are not met, there could still be a competition problem. WP3 also discussed the revision of the Merger Control Recommendation. Following the discussion, the Chair invited all delegates to send comments by 15 January 2025 and encouraged them to submit a final draft to the Competition Committee. He presented the possibility of having the revised Recommendation approved in the next MCM.

Meeting of the Competition Committee took place on 5-6 December. Highlights include:

- **Accession review of Peru:** The Competition Committee conducted the accession review of Peru, led by the heads of the competition authorities of Chile, France and Mexico. The Director for Competition of Peru's competition authority INDECOPI and the Peruvian Delegation to the OECD took part in person. INDECOPI's executive president and mem-

bers of the telecommunications regulator OSIPTEL participated online. The Committee concluded that Peru should implement certain priority actions and instructed the Secretariat to draft and submit them to the Chair and the Committee for approval.

- **Roundtable on the standard and burden of proof:** delegates discussed the evolution of evidentiary standards, challenges in enforcement, and potential future developments. Key challenges were explored, such as diverging judicial standards, complexities introduced by sophisticated economic analyses, and the growing prevalence of indirect evidence. Delegates shared their perspectives and experiences, emphasising the need to adapt investigative tools and analytical frameworks to meet judicial expectations effectively. The session concluded with reflections on the balance between robust enforcement and procedural fairness.
- **Roundtable on competition and democracy:** the session explored the links between competition and democracy, including their shared values and concerns that ineffective competition contributes to the accumulation of economic power that poses risks to democracy. The discussion emphasised the importance of independent and transparent competition authorities as part of building trust in public institutions. Finally, it considered the role of democracy in competition policy, noting that while democracy was not directly considered in competition enforcement decisions often, enforcement may benefit democracy indirectly and could be supported through prioritisation. The discussion benefited from the participation of three external speakers and a presentation by GOV.

**V. INSIDE A  
COMPETITION  
AUTHORITY: REPUBLIC  
OF KAZAKHSTAN**



## 1. Relevant competition legislation

In October 2015, the Entrepreneurial Code of the Republic of Kazakhstan (hereinafter referred to as the Code, EC RK) was adopted, implementing provisions from the previous Law “On Competition.” The Code introduced innovations aimed at liberalizing antimonopoly regulation, aligning current antimonopoly legislation with best international practices (OECD recommendations), and reducing administrative barriers and the burden on businesses.

In accordance with Article 160 of the Code, the objectives of state regulation of competition are to protect competition, maintain and create favourable conditions for fair competition in the commodity markets of the Republic of Kazakhstan, and ensure the effective functioning of these markets. The goals include ensuring the unity of the economic space, the free movement of goods, and the freedom of economic activity in the Republic of Kazakhstan. Additionally, the Code seeks to regulate and restrict monopolistic activities, promote fair competition, prevent violations of the legislation of the Republic of Kazakhstan in the field of competition protection, suppress anticompetitive actions of state and local executive bodies, as well as organizations vested with functions to regulate market entities, and combat unfair competition.

## 2. Agency’s competencies

- Antimonopoly legislation (agreements and abuse of dominant/monopoly position)
- Mergers and acquisitions (economic concentration)
- Inter-sectoral coordination of government agencies and other organizations in the field of competition protection
- State control over compliance with the antimonopoly legislation of the Republic of Kazakhstan
- Exchange control
- Suppression of acts, actions (or inaction) of state and local executive bodies and organizations vested by the state with functions of regulating the activities of market entities aimed at limiting and/or eliminating competition
- Suppression of anticompetitive agreements and concerted actions of market entities and unfair competition
- Analysis of the state of competition in commodity markets
- Analysis and monitoring of the activities of conglomerates

- Expertise of prices for goods produced and/or sold by a subject of a state monopoly, special law, etc.

## 3. The institution

### A. Structure of the Agency

#### a. The Chairperson

**Name:** Mr. Marat Omarov

**Term of office:** 16.08.2022 – present

**Education:** In 2010, he graduated from the University of York in the United Kingdom under the Bolashak program, specializing in philosophy, political science, and economics. In 2011, he earned a master’s degree in social sciences from the London School of Economics and Political Science (LSE). He began his career in 2012 within the Ministry of Economic Development and Trade, where he oversaw issues related to competition policy in the Republic of Kazakhstan. From 2012 to 2020, he worked in national companies of Kazakhstan. He returned to the antimonopoly system in 2020.

#### b. Members of the Board (Deputies)

**Name:** Mr. Rustam Akhmetov, First Deputy Chairman

**Term of office:** 21.10.2020 – present

**Education:** In 1999, he graduated from the Kazakh State Law University with a degree in Jurisprudence. In 2018, he graduated from KAZGUU University named after M.S. Narikbayev with a degree in finance.

He began his career in 1999 within the Ministry of State Revenues of the Republic of Kazakhstan. He has been working in the antimonopoly system since 2014.

**Name:** Mr. Bolat Sambetov, Deputy Chairman

**Term of office:** 21.10.2020 – present

**Education:** In 2005, he graduated from the College of Economics and Law with a degree in Jurisprudence. In 2008, he graduated from the Almaty Law Academy of KazGUU with a degree in Jurisprudence. In 2012, he graduated from the Kazakh Engineering Finance and Banking Academy with a degree in Economics and Business.

He began his career as a chief specialist in the department for control over compliance with legislation and litigation work at the Department of the Agency of the Republic of Kazakhstan for Regula-

tion of Natural Monopolies in Almaty. He has been working in the antimonopoly system since 2015.

**Name: Mr. Erlan Alzhan, Deputy Chairman**

**Term of office:** 09.01.2023 – present

**Education:** In 2008, he graduated from the Karaganda Institute of Contemporary Education “Bolashak” with a degree in Jurisprudence. In 2014, he graduated from Karaganda University “Bolashak” with a degree in finance. In 2018, he earned a Master of Laws degree from the Regional Social and Innovative University.

He began his career in 2009 within the Justice Department of Karaganda. He has been working in the antimonopoly system since 2012.

#### c. Key persons in the direction of the Agency

**Name: Mr. Almas Isakov, Chief of Staff**

**Term of office:** 13.01.2023 – present

**Education:** He graduated from the Kazakh Economic University named after T. Ryskulov and the University of Exeter in the UK (University of Exeter) under the presidential program “Bolashak,” earning a Master of Public Administration degree. He began his career in 2009 within the Customs Control Department of Astana. He has been working in the antimonopoly system since 2023.

#### d. Staff of the authority

The Agency’s staff consists of 391 employees (138 in the Central Administration, 253 in the Territorial Divisions), of whom 341 are engaged in carrying out the main tasks. The remaining 50 employees work in financial, legal, personnel, documentation, organizational, and information services, as well as in areas related to state secrets, international cooperation, ethics, and internal audit. To strengthen the analytical division, the Analytical Research Center for Competition Development (ARCDD) was established at the Agency, with a staff of 40 people.

Field of work (HQ)	Number of case handlers/managers
Analytics	43
Mergers and acquisitions	14
Exchange Control	5
Investigation	12
Administration	5
Other	59
<b>TOTAL</b>	<b>138</b>

### B. Level of independence

#### a. System of appointment and detachment for the Chairperson and other key roles

The Head of the Agency (Chairman) and his deputies, as political officials, are appointed and dismissed by the President at his discretion (the term of office is not regulated). Political civil servants appointed to positions by the President of the Republic of Kazakhstan (Deputy Chairmen) are not subject to rotation. The Head of the Agency’s office (who is not a political official) is appointed by the Chairman of the Agency in agreement with the Presidential Administration.

#### b. Budgetary and structural issues

The Agency is technically dependent on the decisions of the Government of the Republic of Kazakhstan regarding the formation and approval of the budget (financial support for the Agency’s activities). According to the Budget Code, the Agency’s budget is determined based on the staffing limits approved by the President and the Government. The budget is approved for a three-year period, with annual re-approval through a Government Resolution upon the submission of the Ministry of Finance of the Republic of Kazakhstan.

#### c. Relation with other institutions

The Agency is not subordinate to the Prime Minister and is not part of the Government, which includes all the ministries of the Republic of Kazakhstan.

#### d. Accountability

The Agency is directly accountable to the President of the Republic of Kazakhstan. The President, in the manner and within the timeframes deter-



mined by him, hears the report of the Chairman of the Agency on its current work. Additionally, the Agency annually submits, no later than June 1, a report to the President and the Prime Minister on the state of competition in individual commodity markets and the measures taken to limit monopolistic activity. The report is also posted on the Agency's website.

### C. Decision making

#### a. Internal procedure on competition cases

Decisions on key issues are made by the Agency's Board, while control functions are carried out by the Agency's Chairman.

#### b. Control of the decisions taken

Final decisions are made by the Agency. At the same time, decisions can be appealed in accordance with the Administrative Procedure and Procedural Code of the Republic of Kazakhstan.

Orders to initiate an investigation, approve a conclusion based on the results of an investigation, or any actions (or inactions) that may be considered as burdensome are reviewed by Specialized Interdistrict Administrative Courts, with the possibility of appeal and cassation.

There are no specialized antimonopoly courts; however, as a rule, there are judges in the courts who handle antimonopoly cases.

## 4. Enforcement over the last 24 months

### A. Cartels

#### a. Leniency applications

Although the current competition legislation includes provisions for the mitigation of punishment, the Agency has not received any applications for such mitigation.

#### b. Dawn raids

Unannounced inspections (dawn raids) are conducted exclusively in cases of cartel investigations. In accordance with the legislation of the Republic of Kazakhstan, a copy of the order to investigate is sent to the applicant and the subject of the investigation no later than 3 working days from the date of its signing, except in cases where the subject of the investigation is suspected of cartel activities.

A copy of the order to investigate is provided to subjects of the investigation suspected of cartel activities at the time of the investigation.

This measure is actively used to prevent the loss of evidence, its destruction, concealment, etc.

### c. Main cases

In 2023, an antitrust investigation was completed against pharmaceutical companies, revealing the existence of a cartel agreement.

The subject of the agreement involved a collusion to avoid competition during their participation in the procurement of services for the transportation and storage of medicines, conducted by a single distributor of medicines and medical devices.

Specifically, the pharmaceutical companies, when participating in the procurement of services for the transportation and storage of medicines by a single distributor, created the illusion of competition by pre-agreeing on and distributing lots; victory in the procurement process was secured by a minimal price reduction (by 0.0006% or 50 tiyn).

As a result of the court proceedings, the participants in the cartel agreement were held liable for a total of 342 million tenge.

### d. Fines

The total amount of fines for anti-competitive agreements (cartels) is 502,274,514.96 tenge.

### e. Number of cases

Infringement decisions	36
<i>With fines</i>	32
<i>Without fines</i>	4
Non-infringement decisions	6
Other (transferred to and accepted by law enforcement agencies for pre-trial investigation)	2
<b>TOTAL</b>	<b>44</b>

### B. Non-cartel agreements

#### a. Dawn raids

The Agency did not conduct unannounced inspections for anticompetitive agreements.

## b. Main cases

In December 2023, the Agency completed an investigation into a violation of the competition protection legislation of the Republic of Kazakhstan against a taxi aggregator. The investigation revealed that the taxi aggregator coordinated the economic activities of taxi companies by imposing technical support services for cash register software. As a result, the taxi aggregator was held administratively responsible for this anti-competitive behavior.

Additionally, the taxi aggregator was held accountable for failing to provide required information to the antimonopoly authority of Kazakhstan. As part of the investigation, the Agency also reached an agreement with the taxi aggregator on antimonopoly compliance, which outlined a set of measures aimed at improving the situation. The implementation of these measures led to the reduction of tariffs and an increase in the level of remuneration for drivers.

## c. Fines

The total amount of fines for anticompetitive agreements (excluding cartels) is 5,155,500 tenge.

## d. Number of cases

Infringement decisions	4
<i>With fines</i>	2
<i>Without fines</i>	2
Commitment decision	-
Non-infringement decisions	2
Other (specify)	-
<b>TOTAL</b>	<b>6</b>

## C. Abuses of dominance

### a. Dawn raids

The Agency does not maintain statistics for individual companies.

### b. Main cases

In 2023, 31 investigations into the abuse of a dominant or monopoly position were completed. For example, the Agency investigated jointly with the prosecutor's office into the abuse of a dominant/monopoly position, which involved the unjustified

application of a fuel surcharge by a national airline. An administrative fine was imposed.

## c. Fines

The total amount of fines for the abuse of a dominant position is 5,386,432,857.79 tenge.

## d. Number of cases

Infringement decisions	47
<i>With fines</i>	46
<i>Without fines</i>	1
Commitment decision	-
Non-infringement decisions	12
Other (specify)	3
<b>TOTAL</b>	<b>62</b>

## D. Other cases (unfair competition)

### a. Dawn raids

The Agency has not conducted any unannounced inspections in the last 24 months.

### b. Main cases

The Agency has taken antitrust measures against car dealers for forcing additional equipment, accessories, and other services during car purchases. As a result of the Agency's intervention, these measures helped reduce the practice of forced sales, which had increased the overall cost of cars and limited consumer choice.

## c. Fines

The total amount of fines for other cases is 67,914,755.51 tenge.

## d. Number of cases

Infringement decisions	27
<i>With fines</i>	23
<i>Without fines</i>	4
Commitment decision	-
Non-infringement decisions	9
Other (specify)	-
<b>TOTAL</b>	<b>36</b>

## E. Merger review

### a. Number of cases

	2023	2024 (10 months)
Blocked merger filings	-	-
Mergers resolved with remedies	-	-
Mergers abandoned by the parties	4	1
Unconditionally cleared mergers	61	35
Other (specify)	-	-
<b>TOTAL CHALLENGED MERGERS</b>	<b>2</b>	<b>2</b>

### b. Main cases

One of the notable cases involved the consideration of an application for the acquisition by Company A (a wholesale and retail trade entity for consumer goods in the Republic of Kazakhstan) of a 99% stake in the authorized capital of Company B (a wholesale and retail trade entity for consumer goods in the North Kazakhstan region).

According to calculations, Company A's dominance in the segment of retail trade in food products through retail chains and large facilities amounted to 34.3 billion tenge.

As a result of the transaction, the company's share in the market of Petropavlovsk (North Kazakhstan region) increased to 72.6%, while other chains and supermarkets accounted for 27.5%.

Given the dominant role of organized trade, represented by retail chains and large facilities, the transaction was approved by the antimonopoly authority with a number of conditions:

- Development of a system of measures to prevent violations of competition law (external and internal antimonopoly compliance) and submission to the antimonopoly authority in accordance with Article 195-1 of the Entrepreneurial Code of the Republic of Kazakhstan within two months from the date of the transaction;
- Reduction in the number of services provided by Company A to its suppliers;
- Prevention of unjustified increases in retail prices for food products;
- Ensuring equal and non-discriminatory conditions at the stage of selecting a counterparty and concluding contracts when providing services to suppliers.

Another significant example involved the transaction of Company A (wholesale sugar trade) acquiring 100% of the shares in the authorized capital of Company B (sugar production).

The media had previously reported on the purchase of a stake in Company B by Group of Companies C. In accordance with national legislation, such transactions require prior consent from the antimonopoly authority. As a result, the Agency conducted an investigation to clarify the circumstances surrounding the completed transaction. It was established that Company A's acquisition of 100% of the shares in Company B required prior consent from the antimonopoly authority. Due to the violation of legal requirements, Company A was held administratively responsible.

Additionally, on October 17, 2023, an order was issued requiring Company A to petition the antimonopoly authority for approval of the transaction. On November 24, 2023, Company A submitted the corresponding petition.

Following the consideration of the petition for economic concentration, the antimonopoly authority granted consent, subject to the fulfilment of several obligations, including preventing abuse of a dominant position, submitting an external antimonopoly compliance act by June 30, 2024, and developing a five-year investment program for the modernization of the plant.

Thus, the transaction was approved, considering the conditions aimed at maintaining competition and ensuring socio-economic stability.

## 5. Judicial review over the last 24 months

### A. Outcome of the judicial review by the Supreme Courts

Entirely favourable judgements (decision entirely upheld)	26
Partially favourable judgements	5
Negative judgements (decision overturned)	17
<b>TOTAL</b>	<b>48</b>

## B. Outcome of the judicial review by the first instance Courts

Entirely favourable judgements (decision entirely upheld)	158
Favourable judgements but for the fines	-
Partially favourable judgements	2
Negative judgements (decision overturned)	44
<b>TOTAL</b>	<b>204</b>

### c. Main judgements

Following the court proceedings in the appellate instance, the results of investigations regarding anticompetitive vertical agreements and abuse of dominant position in relation to large entities in the markets for the primary sale of combines, construction and installation works in the gas supply sector, and medical information systems were upheld as legal.

Overall, the duration of court proceedings in these cases is significant, averaging between one and two years. In practice, challenging the Agency's decisions often goes all the way to cassation, which is considered by the Supreme Court of the Republic of Kazakhstan.

## 6. Advocacy over the last 24 months

### A. Initiatives related to public bodies

The Agency's initiatives are primarily developed within the framework of ongoing studies of commodity markets. In 2024, the Agency conducted approximately 10 analyses of the state of competition in commodity markets, for 7 of which draft Roadmaps for the development of competition were created. The Roadmaps define key mechanisms for influencing the competitive environment, which must be implemented by government agencies.

The Agency, together with government agencies, takes measures to foster competition in the implementation of state policy in various industry sectors.

One such initiative of the Agency is a proposal related to the draft Construction Code developed by the Government. The draft includes a provision for expanding the state monopoly on the examination of construction projects due to violations by private experts. This may reduce the share of private

examinations from 80% to 20%, potentially leading to the closure of more than 200 organizations and the loss of 1,300 jobs. The Agency proposes to address this issue by strengthening state control rather than redistributing work between the public and private sectors.

In July 2024, the National Development Plan for the country until 2029 was adopted, which, among other things, includes initiatives proposed by the Agency. These include important areas such as transitioning from the principle of general subsidization through pricing to targeted subsidization for socially vulnerable segments of the population, ensuring a homogeneous competitive environment, and developing exchange trading and the principles of "open markets."

The corresponding implementation of these areas is being carried out by the Agency in collaboration with industry government agencies.

The Agency introduces initiatives through legislative amendments that require the mandatory open consideration of recommendations by industry government agencies, with the invitation of entities in the relevant commodity market and representatives of the antimonopoly authority. Based on the consideration of the recommendations, the government agency will send a response to the Agency indicating whether it agrees or disagrees with the recommendations, along with justifications.

For example, the Agency has currently initiated legislative amendments to introduce the institution of class action lawsuits in the Republic of Kazakhstan. This initiative is under consideration in collaboration with industry government agencies.

One of the key areas of the Agency's activities in 2024 is the establishment of the National Privatization Office, which will oversee the large-scale and accelerated reduction of the public sector's share in the economy. By the end of 2024, the Office will compile a list of state-owned enterprises for transfer to a competitive environment, following an analysis of state-owned enterprises to assess the possibility and feasibility of such transfers.

### B. Market studies

Information on the implementation of annual measures by the antimonopoly authority is reflected in the annual reports on the state of competition in

individual commodity markets and the measures taken to limit monopolistic activities in Kazakhstan (the annual reports can be read on the Agency's website).

According to the annual report for 2023, the Agency conducted 16 scheduled analyses in key commodity markets (including the fuel and energy complex, agro-industrial complex, communication services, pharmaceutical services, mortgage lending, etc.), based on the results of which recommendations were made to government agencies on amending regulatory legal acts.

For example, in the petroleum products market, the Ministry of Energy's forecasts suggest that by 2030, the volume of oil produced will decrease by 15%, which will increase the "social burden" of subsidizing the domestic market from 55% to 77% by that time. In this regard, the Agency recommended:

- Revising the rules for determining maximum prices for petroleum products;
- Developing transparent mechanisms and rules for equal access to oil transportation and its processing at refineries;
- Initiating regulatory amendments governing quotas for oil supplies.

Another example: the telecommunications services market is characterized by a low level of competition, with a duopoly persisting. This has led to reduced competition for customers and maintained high prices. In this regard, the Agency recommended:

- Amending the qualification requirements for participation in tenders;
- Revising the rules for the distribution of radio frequency spectrum (RFS), including mandatory joint use of RFS and communication equipment by operators;
- Speeding up the decision-making process for bringing one of the mobile communication operators into a competitive environment.

### C. Initiatives related to the general public

The Agency actively conducts information and outreach events aimed at the legal and business community, the public, and the media.

Active engagement with the media is ongoing, with press releases and materials published on the offi-

cial website of the Agency, as well as on its social media accounts (Facebook, Instagram, Telegram). One of the significant international events hosted by the Agency was the Central Asian Round Table on Competition in April 2024. This event was attended by representatives of government agencies, the business community, and associations from 20 countries, along with 7 international organizations.

These included countries such as the United Kingdom, China, Egypt, Malaysia, Iran, Brazil, India, Hungary, Georgia, and CIS countries, as well as international organizations like the OECD, UNCTAD, ASEAN, CUTS, CEPR, BRICS, and the EAEU. Among the invited speakers were distinguished professors: Frederic Jenny (Chairman of the Competition Committee), Eleanor Fox (New York Law School), Cristina Caffarra (CEPR UCL London Competition Policy Research Center), and others.

This event provided an opportunity to discuss trends in competition law and the most pressing issues and cases, considering law enforcement in different countries, and to exchange best practices among participants.

Training specialists with knowledge of the fundamentals and mechanisms of effective competition is crucial for implementing proactive competition policy in the country. At the initiative of the Agency, Kazakhstan's first master's degree program in Competition Law was registered in the register of educational programs. In 2021, a master's degree department was opened at the M.S. Narikbayev Kazakhstan Humanitarian Law University.

In connection with the launch of this educational program, experts from neighbouring countries, scientists, lawyers practicing in the field of antitrust law, as well as the management of the Agency, were involved. Furthermore, a textbook titled "Competition Law and Policy of the Republic of Kazakhstan" was developed, with a preface written by the Head of State.

On February 1, 2022, the first cohort of master's students began their training in the "Competition Law" program. Among the students were 24 mid-level managers of quasi-state companies and 3 specialists from the Agency for the Protection and Development of Competition.

## Biography – Mr. Marat Omarov



**Chairman of the Agency for Protection and Development of Competition of the Republic of Kazakhstan**

### Personal Information

Date of Birth: in 1988

### Education

2010: Bachelor's degree in Philosophy, Political Science, and Economics from the University of York, UK (Bolashak International Scholarship Programme)

2011: Master's degree in Social Sciences from the London School of Economics and Political Science (LSE)

### Professional Experience

2012 – 2014: Advisor to the Minister of Economic Development and Trade, Economy and Budget Planning, National Economy of the Republic of Kazakhstan. 2014 – 2016: Deputy Director, Department for Tariff and Institutional Policy Formation, Ministry of National Economy. 2016 – 2017: Managing Director, Kazakhtelecom JSC. 2017 – 2019: Chairman of the Board, JSC National Agency for Technological Development; Chairman of the Board, JSC QazTech Ventures. 2019 – October 2020: Managing Director, Member of the Management Board, NMH Baiterek JSC. Served on the Boards of Directors of Housing Construction Savings Bank, Kazyna Capital Management, and Development Bank of Kazakhstan. October 2020 – August 2022: Deputy Chairman, Agency for Protection and Development of Competition of the Republic of Kazakhstan. 16 August 2022 – Present: Chairman, Agency for Protection and Development of Competition of the Republic of Kazakhstan.

## Interview with the Chairperson

### Mr. Omarov, how would you describe the mission of your Agency and its impact on society and the economy?

The work of the antimonopoly agency is crucial for establishing and fostering market relations based on fair competition. Our primary task is to create equal conditions for market participants by protecting and promoting competition, limiting monopolistic practices, and preventing unfair competition.

If we assess the Agency's performance through specific indicators, annually, as a result of commodity market analyses and investigations, more than 10 barriers hindering competition development in sectors such as healthcare, housing and communal services, telecommunications, electricity, petroleum products, air transportation, and others are eliminated (*12 barriers in 2023, 10 barriers in the first 10 months of 2024*).

Another key area of our work is reducing the state's share in the economy and addressing violations of antimonopoly legislation in highly concentrated markets. According to OECD experts, weak competition can lead to price increases averaging 10%. In the first nine months

of 2024 alone, fines amounting to 3.16 billion tenge were imposed for violations of competition legislation in Kazakhstan, with 2.91 billion tenge (92%) already paid.

The Agency has also initiated efforts to introduce the institution of collective (group) lawsuits. We believe this is an effective mechanism for compensating losses to a wide range of individuals harmed by the actions of specific companies or groups.

Overall, I am confident that the Agency significantly contributes to creating a favorable competitive environment, resulting in the efficient utilisation of resources, which positively impacts the economy and society.

### What is the level of awareness about competition in your country? Do politicians address competition issues? Is competition compliance a major concern for businesses?

The business community in Kazakhstan is quite active, well-informed about its rights, and aware of the state of competition and the measures being implemented. As a government agency, we strive to ensure our activities are as transparent and open to the public as possible. For

instance, an annual report on the state of competition in specific commodity markets and measures to limit monopolistic activities is published. News and updates on these topics are regularly shared on the Agency's official website, and conferences and forums are held frequently. Additionally, all draft regulations are thoroughly discussed with the professional community during their development stages.

Regarding compliance with antimonopoly legislation, I can confidently say this is not a significant issue for bona fide businesses. Even when violations of competition protection laws occur, they are not critical for most businesses. This is because we have implemented a system of notifications (*except for certain types of violations*) based on the principle of "soft law." Businesses are typically given a grace period (*usually one month*) to address and rectify violations independently, without the imposition of penalties by the Agency. This approach allows conscientious market participants to correct mistakes proactively.

As for the role of government agencies, their representatives, including political officials, are actively involved in competition development. In 2022, under the instructions of the Head of State, the Commission on Demonopolisation of the Economy was established under the Government of the Republic of Kazakhstan. This commission, comprising representatives from nearly all government agencies, focuses on developing proposals to demonopolise commodity markets. Additionally, as part of the implementation of the Presidential Decree issued this year on measures to liberalise the economy—where competition development is a key priority—almost all government agencies are actively engaged in these efforts.

### **Has the situation changed significantly since your Agency began its work, publishing reports, and introducing sanctions?**

The publication of reports and the imposition of sanctions, along with public disclosure of these sanctions, have undoubtedly brought significant changes. First and foremost, the level of public trust in the Agency has increased, as people see tangible results of our work and, more importantly, qualitative changes in the structure of market relations. Additionally, our professional dialogue with the business community has improved. Businesses now view us not as adversaries but as partners, equally invested in building a robust and fair market system in the country.

We are not resting on these achievements. One of the main challenges facing the Agency today is the timely detection and suppression of violations amid the rapid advancement of digital technologies and increasingly complex market processes. Challenges arise with companies employing new business models, which require innovative approaches to assessment and the application of legislation. Further complexities exist in controlling supply chains. Ensuring that domestic agricultural producers can sell their products freely and transparently, without dependence on large processors and intermediaries, remains a critical objective.

Our priority tasks include developing digital tools for market monitoring and identifying violations, as well as enhancing cooperation with regional and international antimonopoly authorities to exchange experiences and best practices. These efforts aim to address emerging challenges and foster a competitive and fair market environment.

### **What decisions made by the Agency over the past two years are you particularly proud of, and what could have been done better?**

One of the most significant achievements is the systemic resolution of implementing antimonopoly compliance systems. In today's environment of rapid technological advancement and increasing user demands, companies providing real-time services must adapt quickly to dynamic market conditions. One essential tool that ensures flexibility and efficiency is dynamic pricing, which optimizes operations, balances supply and demand, and maximizes company revenues.

In 2023, the Agency approved antimonopoly compliance measures with Air Astana JSC, the national air carrier. These measures included provisions to prevent violations of competition protection laws in Kazakhstan, particularly on monopoly or dominant domestic routes. The compliance agreement excluded the use of a fuel surcharge and introduced measures to prevent sharp increases in domestic air ticket prices during periods of high demand. Additionally, the agreement granted the Agency access to the PROS program for study and monitoring purposes.

A similarly rigorous effort was undertaken with Yandex.Taxi Corp. LLC, culminating in an antimonopoly compliance agreement in 2023. This agreement considered the interests of both drivers and passengers. For

drivers, it included the cancellation of Yandex's commission if an order exceeds twice the base trip cost, a measure designed to enhance drivers' earnings. The Agency also proposed legislative amendments to allow drivers to work directly with Yandex, bypassing taxi companies (which typically charge commissions of 4–8%). Drivers already have the option to operate as individual entrepreneurs without going through taxi companies.

For passengers, the agreement introduced restrictions on fare increases during peak demand periods, enabling them to order taxis at lower costs even during times of high demand. Compliance with these obligations is monitored by a special group under the Agency, which includes representatives from industry ministries and professional communities to address emerging challenges promptly.

The antimonopoly compliance agreement with Yandex.Taxi Corp. LLP also grants access to its algorithms and information systems, enabling audits of the effectiveness of algorithmic pricing. These audits examine pricing strategies, including those influenced by weather conditions and fluctuations in demand.

Another noteworthy accomplishment was integrating specific companies into a competitive environment. In October 2024, FlyArystan JSC (*a division of Air Astana*) completed its registration as a separate legal entity and obtained its own operator certificate from the Aviation Administration of Kazakhstan. Additionally, a decision was made to transfer up to 100% of Qazaq Air shares into a competitive environment through a direct targeted sale to SOVICO Group.

These initiatives demonstrate the Agency's commitment to fostering fair competition, enhancing transparency, and addressing the interests of all market participants.

### **Such changes must have required adjustments to the regulatory framework. What other key changes have been made to Kazakhstan's competition legislation over the past two years?**

Indeed, the legal framework has undergone significant changes that have greatly contributed to the development of competition. Most notably, this includes reducing the role of the state in the economy. Two years ago, legislation was enacted to limit the creation of state monopolies. Amendments to the Entrepreneurial Code introduced a

prohibition on state economic functions being carried out by private monopoly operators.

At the beginning of this year, a substantial package of legislative amendments was adopted to improve business conditions, focusing on key areas in competition policy. One significant change was the introduction of conglomerate regulation. The concept of a conglomerate, highly relevant for antitrust regulation, was legislatively introduced. Conglomerates often lead to high market concentration, barriers to market entry, selective patronage, and favoritism by the state. Monopoly groups of companies, leveraging limited resources and infrastructure, restrict access to related and dependent markets for other entities. To address these issues, clear and transparent rules were introduced to regulate economic concentration. The legislation now requires conglomerates to obtain permission for economic concentration, maintain a register of conglomerates, and undergo analysis and monitoring of their activities, including vertical mergers and acquisitions. These measures help prevent unjustified price increases for monopoly products produced by large holdings, thereby reducing costs for small and medium-sized businesses that rely on these products for goods and services.

Another major change focused on reducing the administrative burden on businesses. The number of transactions requiring preliminary approval by the antimonopoly authority has been reduced, and certain transactions, such as those involving specific assets like land plots, buildings, and unfinished non-industrial construction projects, have been exempted from regulation altogether. Additionally, threshold values for transactions that require antimonopoly authority approval have been significantly increased. The required documentation for transaction approvals has been reduced by nearly half, procedural deadlines have been streamlined, and reporting requirements for tenders and purchases submitted to the antimonopoly authority have been minimized.

Finally, legislative amendments were also introduced to enhance the efficiency of the antimonopoly authority and ensure its ability to take timely measures to address violations. In his Address to the People of Kazakhstan, President Kassym-Jomart Tokayev highlighted the issue of the authority's limited ability to act swiftly, noting that two-thirds of antimonopoly investigations are appealed in court before they even begin, often resulting in years of litigation. This delays decisions critical to fostering market



competition. To address this, new legislation prevents the suspension of administrative acts by the antimonopoly authority—such as notices of inspections or investigations—when they are appealed. This ensures that necessary actions to protect competition are not artificially delayed.

These legislative changes mark significant progress in creating a more competitive, transparent, and business-friendly environment in Kazakhstan, while also strengthening the antimonopoly authority's ability to act effectively.

### **Do you believe international and regional cooperation is useful? Does it function effectively?**

Of course, international and regional cooperation is extremely useful and effective. The exchange of experiences, the opportunity to study practical examples, and the ability to borrow and adapt best international practices for the domestic market are all possible only through active engagement at the international level. Particularly valuable are the programs implemented in cooperation with the OECD-GVH. We remain open to dialogue and look forward to further developing such programs, including deeper integration with other countries.

### **What is your opinion of the OECD-GVH Regional Centre for Competition? Do you have any suggestions for improvement?**

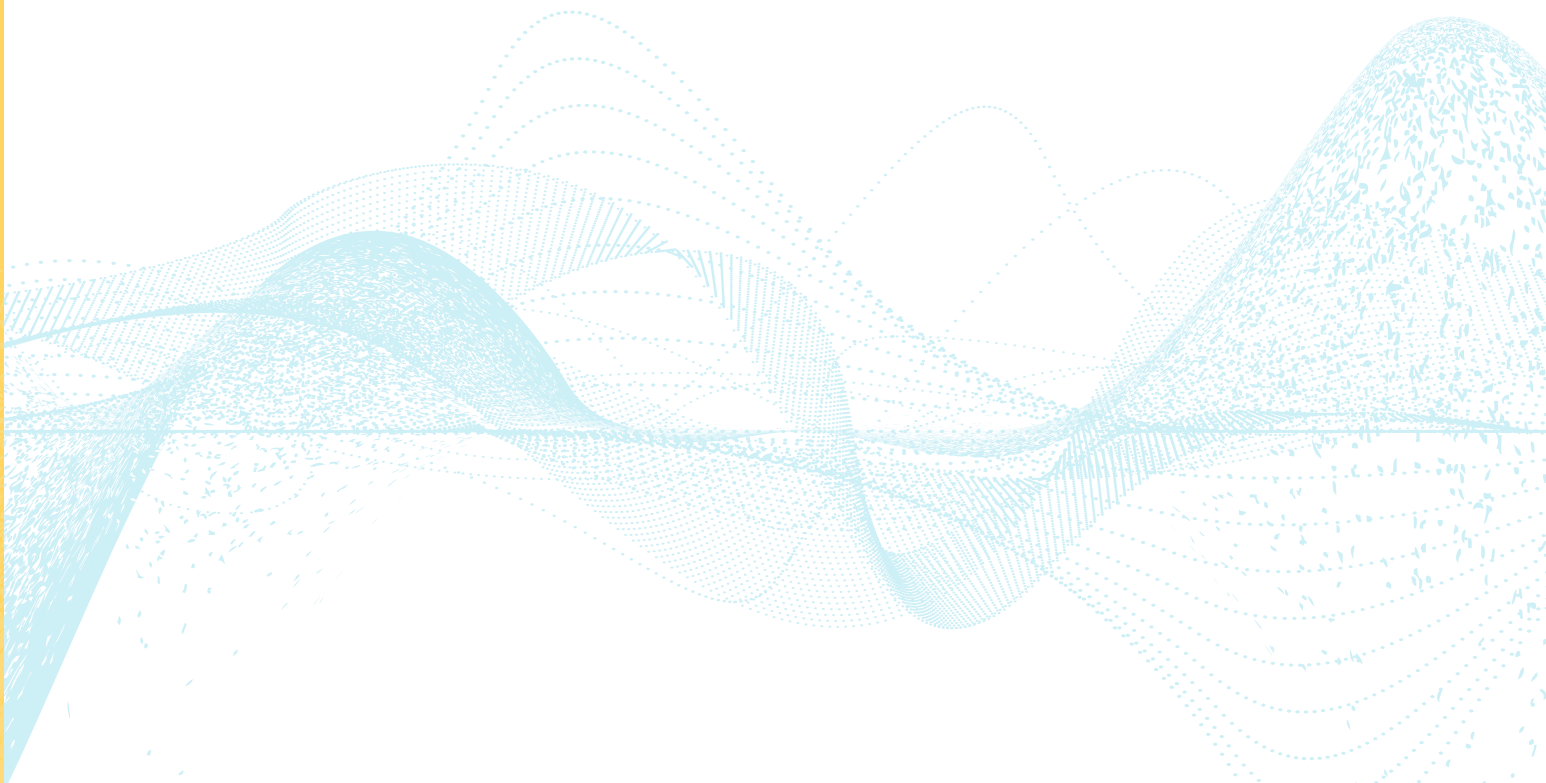
The OECD Regional Centre for Competition (OECD RCC) serves as an excellent platform, offering special-

ists the opportunity to undergo extensive training and exchange experiences on various key topics, not only in the field of competition protection (*such as investigations, abuse of dominance, litigation, etc.*) but also in promoting fair competition (*including preventive tools, compliance, advocacy, and more*).

The trainings, seminars, and consultations with leading antitrust experts greatly contribute to the implementation of best practices and the enhancement of the legal framework. Additionally, the research and reports on competition issues regularly published by the OECD RCC provide valuable data and analytical materials. These resources support not only policy development but also the evaluation of the effectiveness of existing competition control mechanisms.

Every year, the Agency's staff actively participates in OECD RCC events, and articles are published in the journal *Competition Policy in Eastern Europe and Central Asia*. This allows a broader audience to gain insight into the activities of Kazakhstan's antimonopoly authority in protecting and promoting competition.

Overall, we highly value the work of the OECD RCC and recognise its special role in strengthening regional cooperation among competition authorities in Eastern Europe and Central Asia.



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