

Screening for Cartels in Procurement Procedures and the importance of inter-agency cooperation

Anförande av Dan Sjöblom vid European Competition Day den 7 maj i Riga.

Det talade ordet gäller.

The Swedish Competition Authority's combination of tasks

The SCA has the advantage of being responsible for the enforcement of both competition law and procurement laws.

This combination of tasks brings important synergies and puts us in strong position to handle matters that straddle these two areas which may also expose the procurement process to the risk of corruption.

The procurement work puts us in contact with many procurement specialists around the country and, consequently, enables us to inform and train them on how to detect and reduce the risks of bid-rigging. It also generates a significant inflow of tips related to cartel and bid-rigging matters.

Competition and public procurement are closely linked together, although representing different areas of legislation. Public procurement affects a substantial share of world trade flows and in Sweden it represents nearly 20 % of GDP. In many sectors, therefore, effective public procurement is crucial for well-functioning competition. If contracts are awarded without a fair and transparent procedure, from a tax payer perspective there will be no guarantee that the best deal has been reached and from a market perspective, able suppliers will have no way to compete for such contracts.

Public procurements present particular risks for the emergence of cartels. As procurement transactions have to be clearly defined, it may be easy for firms to anticipate which other firms are interested in the contract. The transparent nature

of public procurements also makes it possible for members of a cartel to monitor each other's compliance with an arrangement.

We generally think that cartels are the worst competition problem and, consequently, put a lot of effort into promoting our leniency program. However, Sweden faces the same situation as many other small economies. We do receive some high quality leniency applications, but perhaps not as many as we should. Experience and research show that the corner stones of an effective leniency program are deterrent sanctions, predictability of the system and a high risk of detection.

To put it bluntly: if cartelists (and would-be cartelists) fear detection and punishment; they are more likely to abstain from cartel behaviour and to apply for leniency for past sins.

Our challenge is therefore to create enough fear of detection and punishment even though we don't have any criminal sanctions and even though our fines, in an international context, appear quite low. So how do we tackle that challenge?

One answer may be econometrics! By developing and using *proactive* quantitative economic methods based on procurement data, as a complement to our other detection methods, we hope to invoke make it less tempting to enter or to stay in cartels.

We think bid-rigging cartels can be found by analyzing procurement data searching for tell-tales of cartel behaviour, such as geographical patterns, price similarities, percentage differences between bids and deviations from competitively optimal bids.

During the past few years, we have developed and used different types of cartel screens. The markets under scrutiny may be selected on the basis of tip-offs which, in their own right, have not been sufficient to launch a formal investigation. Tip-offs can come from market sources, sister agencies, media etc.

The last couple of years we have devoted even more resources to developing our cartel detection methods. In a pilot project focused solely on cartel detection we have analyzed a large data base consisting of information on most public contracts over a multi-year period. The idea is to examine what it will take to identify cartels using proactive econometric methods based only using data from public procurement, without any prior indications such as tip-offs.

In my presentation today I will briefly describe our work with **proactive economic screening methods**, applied to data on procurement auctions, and what lessons that can be learned from the project.

(More information regarding specific economic methods can be found in the CPI article: www.competitionpolicyinternational.com/assets/Uploads/EUSept14-2.pdf)

So, what is a screen?

A screen is a method to flag indications of collusive behaviour in industries and markets through the use of economic theory and statistical analysis of data.

Flags are generated if there are significant deviations from the expected outcome in the data. For example, there may be anomalies in the bidding structure in procurements or price patterns in certain markets.

The purpose can either be to confirm an existing suspicion of illegal collusive behaviour in a certain industry or market, or to screen all markets when there is no prior suspicion of illegal behaviour, in order to get indications of possible cartel activity.

The Swedish screening project

The screened data in the pilot project includes published advertisements for some 97,000 contracts representing virtually all published procurements in Sweden during the period 2009-2013. Each procurement includes information about the procurer, the date, the type of product category (and CPV-code), selection procedure, participating firms, winning firms, bid prices and geographical region.

A number of screening methods has been developed and tested on the data. Common to all the methods is that they can be used in a very simple data set without access to information on company-specific factors, such as capacity and cost factors.

The methods flag improbable events, such as patterns in the bidding structure in procurements or digit distributions in prices. Events that are unlikely to occur in the absence of coordination between firms will be flagged.

Some of the screening methods are developed to detect a specific type bid rigging scheme such as bid suppression, bid rotation or regional division of markets.

It is important to bear in mind that the screens may generate both false negatives and false positives. That is, they will fail to detect some cartels, and will probably also incorrectly flag some industries or markets that are not cartelized. Screening is therefore a good starting point, maybe not the end of the prioritisation of which markets to investigate.

One lesson learned is that the success of proactive screening is dependent on good data sets. We need to improve the quality of the data, which suffers from incomplete and incorrect information. We're also learning and improving our methods in these regards.

The importance of inter-agency collaboration

As you all know, it is difficult and time consuming to investigate and take action against violations once they have already occurred. This makes it all the more important to put emphasis on the early phases of the tender process, before any infringement has occurred, and focus on effectively preventing tenderers from using unfair business practices when entering into contracts with contracting authorities.

National government authorities

Our work in the field of competition and public procurement laws has also brought us in contact with sister government agencies responsible for anti-corruption and bribery legislation, tax evasion and other unsound behaviour that damage the functioning of markets.

In areas where firms resort to bid rigging or where illegal direct awards of contracts take place, such behavior seem to be more common. Despite the risk that the different types of infringements are interlinked, corruption-related crimes are today investigated by the police, whereas cartels and illegal direct awards of contracts are the responsibility of the SCA. Yet other agencies look into tax fraud or work place safety regulations.

Close cooperation with the Swedish National Anti-Corruption Unit

In the past few years the SCA has intensified its cooperation with the Swedish National Anti-Corruption Unit. This cooperation involves the exchange of anonymised information regarding suspected markets and pre-studies conducted by the respective authorities.

We have also jointly published articles conveying the message that if public procurement officials see signs of corruption they should also search for signs of cartel activity and vice-versa. Our experience is that a joint message is more powerful and obtains better media coverage.

The fact that we in our communication work send the message that we have a well-functioning cooperation with the police and tax authorities should also increase the fear factor amongst those that cheat with various rules.

International cooperation

In addition, the SCA is also collaborating with agencies in other European countries. We are now awaiting a decision from the EU to receive funding for a project together with the Italian and Dutch authorities. The project aims at developing methodologies and tools to identify corruption and collusion in procurement procedures (The "KRIPP"-project, "Corruption-Collusion Risk Indicators in Public Procurement"). This project directly addresses the issue of

cooperation between all enforcement agencies with jurisdictions over collusion and corruption practices in public procurement procedures.

Our belief is that by working together with other national and international agencies we will enhance our means for detection of bid-rigging cartels.