

Cartels, corruption and the importance of inter-agency cooperation in the fight against unfair practices in public procurement

Speech of Ms. Hanna Witt, Director of Enforcement of the Swedish Competition Authority, at the ICN Cartel Workshop, 1 October 2014 in Taipei.

The task of the Swedish Competition Authority is to safeguard and increase competition and supervise public procurement in Sweden. The authority is also responsible for providing advisory support for procurers.



Although representing different areas of legislation, competition and public procurement are closely linked. The Swedish Competition Authority's combination of policy, support, and enforcement matters for both competition law and procurement, and the resultant sharing of knowledge and experience between our departments puts us in a strong position to handle matters that straddle the two areas, such as bid-rigging cartels and other forms of cooperation in procurement. In our view, this triple set of responsibilities creates important synergies. For instance, our procurement work generates a significant inflow of cartel and bid-rigging matters, and the procurement expertise that we have within the authority is extremely useful when investigating bid-rigging cartels. It also gives us easy access to procurers and, consequently, vast possibilities to inform and train them on how to reduce the risks of bid-rigging.

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Corruption in Sweden

- Larger and more complex infringements
- Increased awareness
- New legislation and increased specialisation



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Sweden has historically been considered relatively spared from corruption, and has continuously been ranked among the countries most resistant to corruption in various comparative studies and indexes. Regrettably, recent surveys and reports challenge that image. The number of suspected bribery cases brought to court has not increased significantly, but the suspected infringements tend to be larger and much more complex than was previously the case. The increased size and complexity of the cases brought to court is, however, probably not due to the fact that municipalities and other government agencies in Sweden are actually more corrupt today than they were a few years back, but rather because we are now better equipped to detect and investigate bribery. The Swedish National Anti-Corruption Police Unit has become more specialised and is now a dedicated unit completely at the disposal of the prosecutors at the National Anti-Corruption Unit. We also have new and better legislation. Swedes in general have become more aware of the problem and, consequently, are more likely to detect such behaviour and blow the whistle. The media-coverage of bribery, especially in municipalities and municipally-owned companies, has opened our eyes and today we are no longer under the impression that bribery does not occur in our country.

I am convinced that competition authorities have an important role to play in the fight against corruption, especially in the area of public procurement. Like bid-rigging, corruption is also an anti-competitive conduct which can be used to eliminate competition and counteract the very purpose of public procurement.

Possible links between different types of infringements

Bribes may for example be used to...

- ... influence the procurer not to publish a contract notice, resulting in an illegal direct award of the contract at stake
- ... make the procuring officer reveal secret information about the tender, or
- ... convince the procurer to turn a blind eye to a cartel

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Bribes can, for example, be used to influence the procurer to entirely forego competition in a tender, resulting in an illegal direct award of the contract at stake. Another way for a company to eliminate competition is to combine corruption with its involvement in a bid-rigging cartel: It may use bribes to make the procuring officer reveal secret information about the tender, or to convince him or her to turn a blind eye to the cartel. Or, quite simply to establish a good relationship with the procurer – if they keep her happy they can probably gain from it.

The SCAs cooperation with the Swedish National Anti-Corruption Unit

- Training
- Exchange of information
- Articles
- Detection methods



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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. Because of the likelihood of connections between these different types of infringement, 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 published articles conveying the message that if public procurement officials see signs of corruption they should also search for

signs of cartel activity. We have organised mutual educational activities where staff from the SCA has educated police officers who investigate bribery in how to recognise signs of bid-rigging. Similarly, staff from the Anti-Corruption Unit has taught case-handlers at the SCA how to recognize signs of corruption. So far, we have had suspicions in some cases, but we have no statistics or actual cartel cases to show that both types of infringement exist in the same case. What we have gained so far from our cooperation with the Anti-Corruption Unit is more related to advocacy than to actual tip-offs regarding competition law infringements. It is, however, both the SCA's and the Anti-Corruption Unit's conviction that if we cooperate in every way possible – i.e. subject to rules on secrecy –we can improve the chances to prevent, discover and efficiently investigate a greater number of suspected infringements in both our areas of responsibility and expertise.

SCA report

- Unfair competition can involve several different types of infringements, such as bid-rigging, corruption and tax-evasion.
- Survey among procurement officials
- Results presented in a report



**Unfair competition
in public
procurement**



Since it is part of the SCA's mission to prevent competition problems and inform the public, we engage in different forms of dialogue with stakeholders. We frequently give presentations and arrange seminars not only for procurement officials, but also for companies, trade associations and the public with the purpose of educating them, for instance on how to recognise signs of anticompetitive behaviour.

Through that interaction we have received the message that companies need authorities to send a broader message than has previously been the case – at least in Sweden. Companies want to talk about unfair practices in the market place in a much wider sense than we have been able to do in our training sessions and speeches. This made it clear to us that – even though our primary responsibility is the enforcement of competition and procurement rules – we need to interact with other authorities and that we – at least in our advocacy work – need to focus more on the wider concept of *unfair competition*. Unfair competition involves not only bid-rigging and corruption, but also for example tax-evasion and infringements of working environment rules. Last year we therefore carried out a survey among procurement officials to find out more about their experience of different types of

infringements in their procurements. We also interviewed representatives of the Swedish branch of Transparency International and the Swedish Anti-Corruption Institute in order to learn more about the possible links between corruption and other types of unfair practices. The results of that survey have been published in a report with the wider focus of unfair competition and I want to take this opportunity to present to you some highlights of the conclusions of the report.

Results of the survey

- Nepotism and favouritism the largest problem
- Subcontractors
- Need for coordination of society's anti-bribery efforts
- The importance of contract performance evaluation
- Need for increased knowledge of how to prevent and detect signs of corruption and bid-rigging in procurements



As I mentioned earlier in my speech, the image of Sweden as a country free from corruption has been challenged. Maybe another reason for this is that many people's definition of corruption has traditionally been the handing over of money, trips or other types of gifts to a government official in order to achieve benefits for your company. However, there are signs that indicate that different types of favouritism and cronyism might be a larger problem in Sweden than we have previously been aware of. In the survey we asked procurers what they consider constitutes the largest risk of corruption. The answer was family and friendship ties.

If corruption in the form of bribery is hard to detect, nepotism and favouritism is even harder. It is difficult for the management of the procuring authority to keep track of different types of personal connections between the procuring authority and the companies participating in the tender. It is also very hard to conclude to what extent a personal relationship has actually affected the procurer's impartiality. A good relationship between the procurer and a contractor is also often encouraged by the contracting authority, since it may in many ways be an advantage that facilitates the contractual relationship.

If public procurement is a risk area for corruption-related crimes and other types of manipulation of the tendering process, then one would think that the procurement officer must surely be one of the positions most exposed to attempts of bribery. According to the survey, however, that does not seem to be the case. Procurers, at least in larger tenders, often work in teams. Also, they more often

handle tenders where a contract notice has been published and such tenders are less exposed to attempts of bribery than direct awards of contracts.

Other conclusions in the report were that society's anti-bribery efforts should be coordinated and that authorities need to prioritise different means to prevent unfair competition in their tenders. Contracting authorities also need to improve the follow-up of contracts and monitor not only their contractors, but also subcontractors. They also need to increase their knowledge of how to detect and prevent signs of corruption and bid-rigging in their procurements.

Illegal direct awards of contracts

- Involves an increased risk of bribery
- Detection methods also interesting for other government agencies; – articles in local media often trigger the initiation of an investigation





One area where we put a lot of effort into both support and enforcement is direct awards of contracts. Procuring authorities want information about under what circumstances they do not need to publish a contract notice. And for the enforcement department the detection and investigation of illegal direct awards is a high priority.

A 'direct award of contracts' can be used for contracts below a certain value or where competition is non-existent and means a procedure without special requirements for tenders. In the event of illegal direct awards of contracts, we may apply to court for the imposition of a public procurement fine. The fine may not exceed ten percent of the value of the contract in question and the maximum penalty that can be imposed is SEK 10 million, or approximately 1 million Euros. Of course, it is not only the size of the penalty that matters to the authority facing a procurement fine, but also –probably even more so - the negative publicity resulting from the imposition of a fine.

Direct awards generally expose the procuring authority to a greater risk of corruption than normal tenders. The lack of special requirements on how the procedure should be conducted makes it easier to hide corruption. Control is often more difficult since other staff within the procuring authority may be involved than those normally charged with handling procurements in the case of

a contract notice being published. The staff involved in direct awards may lack the expertise that the procurement officials have.

Illegal direct awards are also especially interesting for our colleagues at the National Anti-Corruption Unit. While cartels are difficult to detect, we discover illegal direct awards very easily by analysing newspaper articles and talking to informants. Companies are very likely to come to us when they are not happy with a tender process, and we certainly do not lack suspected infringements to investigate. The Anti-Corruption Unit believes that our detection methods may offer potential efficiencies for them also. This fall we will therefore initiate a more intense exchange of information with them when it comes to detection methods for illegal direct awards of contracts. They have the ambition to work more proactively, and devoting special attention to illegal direct awards might be one way for them to narrow down the search for corruption-related crimes among the thousands and thousands of tenders carried out each year in Sweden.

Conclusions and way forward

- The importance of preventive measures
- Training is never completed
- The importance of joining forces with other government agencies.
- All types of corruption not punishable under criminal law, but might be just as harmful for competition.

Common to all the practices I have mentioned here today is that it is often difficult to investigate and take action against violations once they have already occurred. These violations are often hard to identify, securing evidence is challenging and investigations are often complicated and time-consuming. This makes it all the more important to put emphasis on the early phases of the tender process, before the infringement has occurred, and focus on effectively preventing tenderers from using unfair business practices when entering into contracts with contracting authorities.

The Swedish Competition Authority lacks the institutional connection to investigations of suspected corruption, but has instead prioritised building a well-functioning cooperation with the Anti-Corruption Unit. We believe that a public authority's anti-corruption strategies can effectively be combined with the fight against bid-rigging and that we can learn a lot from each other's methods of detection. We are convinced that we and the Anti-Corruption Unit enhance and

complement each other in terms of what we achieve within our respective areas of responsibility and that cooperation allows us to send a more powerful message to procurers.

Lastly, we know that cheaters often tend to abuse the markets in more than one way. As troubling as this sounds, in one way it's an advantage for us as competition authorities. Because multiple forms of cheating leave more traces; and more traces can help us uncover more bid-rigging cartels.