



competition commission
south africa

**GAUTENG ANTI-CORRUPTION SUMMIT
GALLAGHER CONVENTION CENTRE
07 NOVEMBER 2014**

**Presentation by
Commissioner Tembinkosi Bonakele**

Table of Contents



competitioncommission
south africa

- Role of Competition Policy
- Aims of the Competition Act
- Competition and Corruption
- Impact of Corruption on Competition
- Bid Rigging in Public Procurement
- Cover Bidding
- Other Forms of Bid Rigging
- Case Studies
- Preventing Bid Rigging
- Conclusion

Role of Competition Policy



competitioncommission
south africa

- Regulatory tool to improve market outcomes
- Creates equal opportunities for business to compete and grow
- Stimulates economic efficiency and inclusive growth
- Protects consumers against market abuse
- Addresses certain market failures and inconsistencies

Aims of the Competition Act



competitioncommission
south africa

- Promote efficiency, adaptability and development of the economy
- Provides consumers with competitive prices and product choices
- Promote employment and advance the social and economic welfare of South Africans
- Expand opportunities for South African participation in world markets and recognize the role of foreign competition in the Republic
- Ensure that small and medium sized enterprises have an equitable opportunity to participate in the economy
- Promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons

Competition and Corruption



competitioncommission
south africa

- Public Sector Collusion:
 - Use authorizations – Licensing conditions
 - Tender Approvals – Unfair advantage and preference
 - Bid Rigging Practices – Procurement fraud
- Private Sector Collusion:
 - Collusive tendering by cartels
 - Market allocation practices
 - Price fixing
- The conduct above is mostly done by cartels and is prohibited by the Competition Act
- Whilst in the main this constitutes anti competitive conduct, it is mainly motivated by fraudulent and corrupt motive.

Impact of Corruption on Competition



competitioncommission
south africa

- It creates market distortions
- It restricts entry of small players into the market
- It victimizes the consumers especially on prices
- It harms the economy and its competitiveness
- It perpetuates inequalities and renders the economy inefficient

Bid Rigging in Public Procurement



competitioncommission
south africa

- Agreement on who will win the bid
- Agreement on price:
 - Agreement to raise, lower, or maintain prices
 - Agreement not to negotiate on price
 - Agreement to limit discounts / rebates
 - Agreement on price formulas or guidelines
- Agreement on who will bid for certain customers
- Agreement on who will bid in certain geographic areas

Cover Bidding



competitioncommission
south africa

- Cover bidding (complementary, courtesy, token, or symbolic bids)
- Individuals or firms agree to submit bids:
 - that are higher than the bid of the designated winner,
 - known to be too high to be accepted, or
 - that contain special terms that are known to be unacceptable to the buyer.
- It is the most common form of bid rigging as it gives the appearance of genuine competition.

Other Forms of Bid Rigging



competitioncommission
south africa

- Bid suppression
 - One or more companies agree to refrain from bidding or to withdraw a previously submitted bid.
- Bid rotation
 - Conspiring firms continue to bid, but they agree to take turns being the winning (*i.e., lowest qualifying*) bidder.
- Market allocation
 - Competitors carve up the market and agree not to compete for certain customers or in certain geographic areas.

Case Studies – Construction



competitioncommission
south africa

- The Commission busted the construction cartel in 2010
- Bid Ridding in respect of the 2010 stadia and other infrastructure
- The firms had a distinct modus operandi in the cartel
- Settlement applications revealed about 300 contraventions
- The total value of rigged tenders was about R49 billion

Case Studies – Construction



competitioncommission
south africa

- Commission received settlement applications from 21 firms
- 15 firms settled with a total fine of R1.46 billion in July 2013
- Commission now in Phase 2 of the project with 24 implicated firms under investigation and prosecution stages.
- Consumers/Tax payers bearing the brunt of this cartel conduct (overcharges)
- Joint action with the hawks is underway to follow up on possible criminal liability

Case Study - Cement



competitioncommission
south africa

- The Commission initiated an investigation into the cement industry in June 2008.
- Price fixing, market allocation and collusive tendering probed
- The Commission subsequently conducted an impact assessment arising from the cement cartel busting.
- The study was focused on direct financial benefits to consumers.
- The consumer savings ranged approximately between R4.5 billion to R5.8 billion for the 2010/13 period.
- This is evidence that corruption at this massive scale robs consumers of billions of rands.

Preventing Bid Rigging - Checklist



competitioncommission
south africa

- The Commission has developed a certificate of independent bid determination (SBD 9) which contains a checklist on detecting bid rigging:
 - Be informed about the market
 - Maximize potential participation by genuinely competing bidders
 - Define requirements clearly and avoid predictability
 - Reduce communication among bidders
 - Carefully choose criteria for evaluating and awarding the tender
 - Raise awareness among public procurement officials
- These are derived in the main from the OECD guidelines

Lessons for Corporate Governance Construction Fast-Track



competitioncommission
south africa

- Common practice sustained over a decade
- Senior executives took part in the conduct
- Abnormal profits were realized over the period
- Patterns of tender awards became apparent
- Black book and lists
- New employees orientated
- Exchanged sensitive pricing
- Losers payments misrepresented financial entries
- No firm settled civil damages

Conclusion



competitioncommission
south africa

- Intensify enforcement mechanisms
- Advocate for policy changes
- Conduct training for procurement officials
- Embed the use of CIBD in procurement
- Take decisive action against fraudsters
- Pursue civil damages (section 65)



competition commission
south africa

THANK YOU