Methods of Bid-Rigging Detection

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AGENDA

I. Overview of Bid-Rigging in Korea

Cartel enforcement is one of the top priorities of competition law enforcement of KFTC
In particular, "bid-rigging" as a hard core cartel is enforced strongly and by many related laws

"Monopoly Regulation and Fair Trade Act"
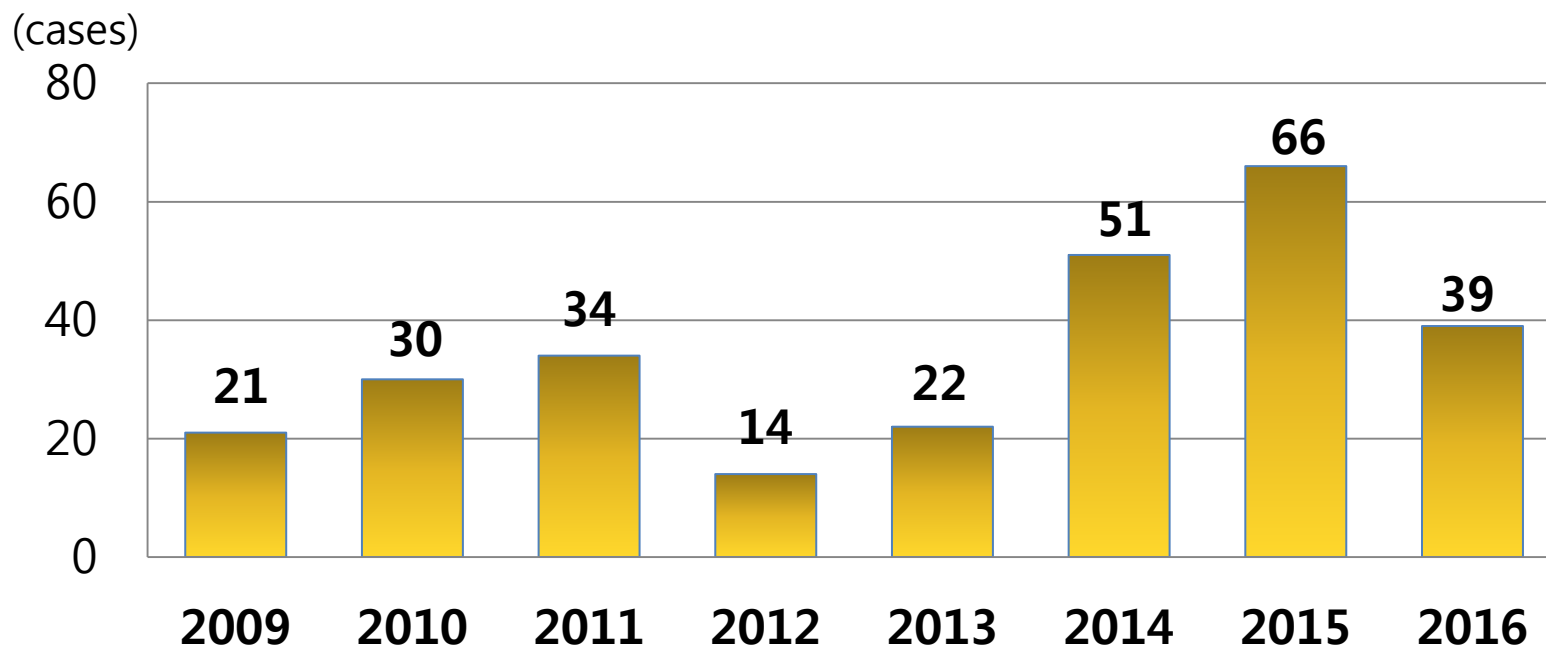
"Criminal Law"

Bid-Rigging

"Act on Contracts to Which the State is a Party"

"Framework Act on the construction industry"

KFTC's corrective measures ordered against bid-rigging

(cases)

- - After 2012, it is on an upward trend.
- - About 70% of all cartel cases is bid-rigging in recent 3 years.

II. Tools for Detecting Bid-Rigging

Overview

Bid-Rigging Detection

- **Leniency**
- **Rewarding system for reporting of cartels**
- **Cooperation with the public ordering institutions**
- **Bid Rigging Indicator Analysis System**

- It gives rewards to those who reported illegal practices and provided evidence of the violations to the KFTC.

Rewarding system vs. Leniency program in Korea

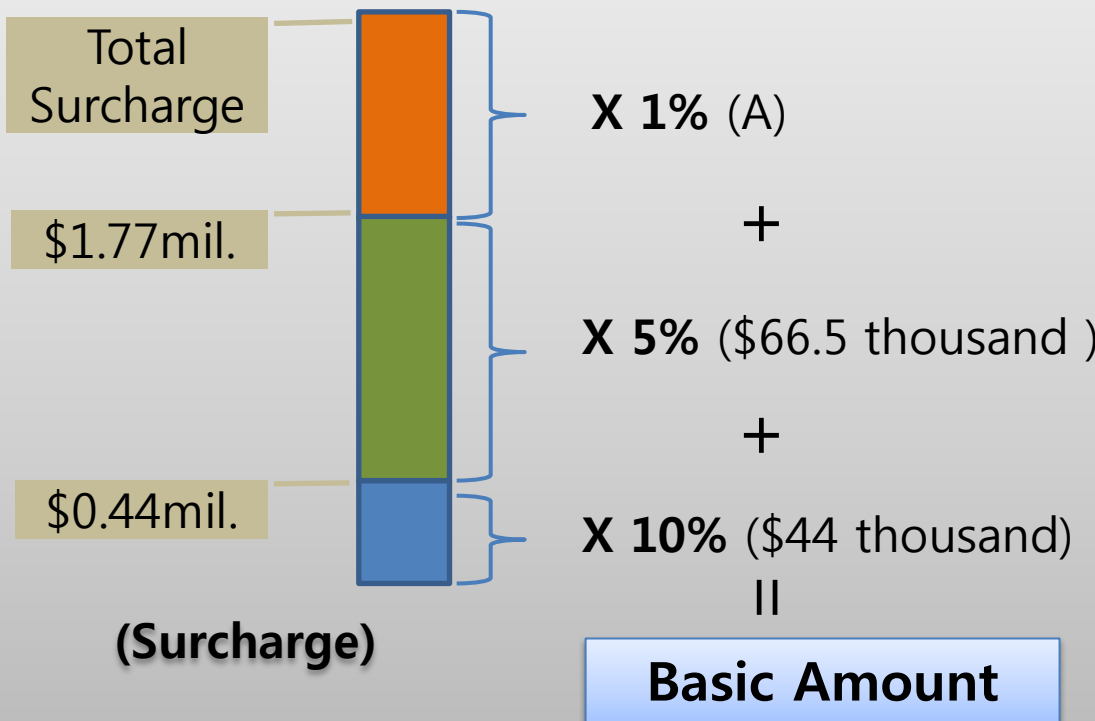|	Reward system	Leniency program
Subjected practice	7 violations of the Korea Competition Act including cartels	Cartels only
Who can report and be rewarded?	Anyone except for companies which violate a law and public officials investigating the case	Cartel Participants (not allowed for individuals)
	Only the first applicant rewarded	Up to the second applicants
Effect	Monetary reward	Exemption or reduction of remedies, surcharges and criminal sanctions

- The amount of reward is decided by
  ① volume of surcharge, ② value of the evidence.

  ※ Maximum reward: KRW 3bil. (about $2.7mil.)

Reward = Basic Amount X Adjustment ratio

Total Surcharge	

X 1% (A)

+

$1.77mil.

X 5% ($66.5 thousand)

+

$0.44mil.

X 10% ($44 thousand)

||

(Surcharge)

Level of evidence	Ratio
Highest	**100%**
High	**80%**
Middle	**50%**
Low	**30%**

Basic Amount X **Adjustment ratio**

- The use of rewarding system is increasing in cartel investigation.

- Reports from people involved in collusion are getting more important, as more companies are engaging in collusion in a more secret and intelligent way.

Rewards for informants in cartel cases

	2012	2013	2014	2015	2016
Total amount of rewards	$22,000	$230,000	$279,000	$707,000	$646,000
No. of cartel cases	5	7	6	16	15
The largest amount of a reward for a single case	-	$159,000	$239,000	$345,000	$425,000

Successful Case: Airflue and Air Duct Construction (Nov.2016)

- 23 enterprisers agreed upon winning-bidders, bid prices of airflue and air duct construction bidding.

- The whistle-blower provided decisive evidence including written agreements, documents regarding quantity allocation and secret meetings between cartel participants.

- The KFTC imposed a total penalty surcharge of $13 mil. and **gave reward of $0.42 mil. to the whistle-blower.**

⟹ **Powerful incentive for potential whistle-blowers**

Necessity for Cooperation

- The KFTC cannot monitor the whole public biddings.
   (more than 400,000 public biddings in a year)

- Sometimes, only experts in charge of the public contract can recognize the symptom of cartel in an individual bidding.

What we do

1. Consultative Group for preventing bid-rigging (since 2014)

 - composed of 24 public ordering institutions including PPS(Public Procurement Service), Defence Acquisition Program Administration, etc.

 - holds a regular meeting twice a year to exchange information and discuss regarding detecting and preventing bid-rigging.

What we do

2. Encouraging to build self-monitoring system on bid-rigging

- 8 institutions including PPS, Electronic Power Corporation, Land & Housing Corporation are operating their own monitoring system.

- Analysize the possibility of bid-riggings from quantitative indicators such as winning bid to budget ratio based on the procurement data.

- They have reported 12 suspicions of bid-rigging to the KFTC since 2013.

3. Education for officers of central and local government, state-owned companies in charge of public contracts
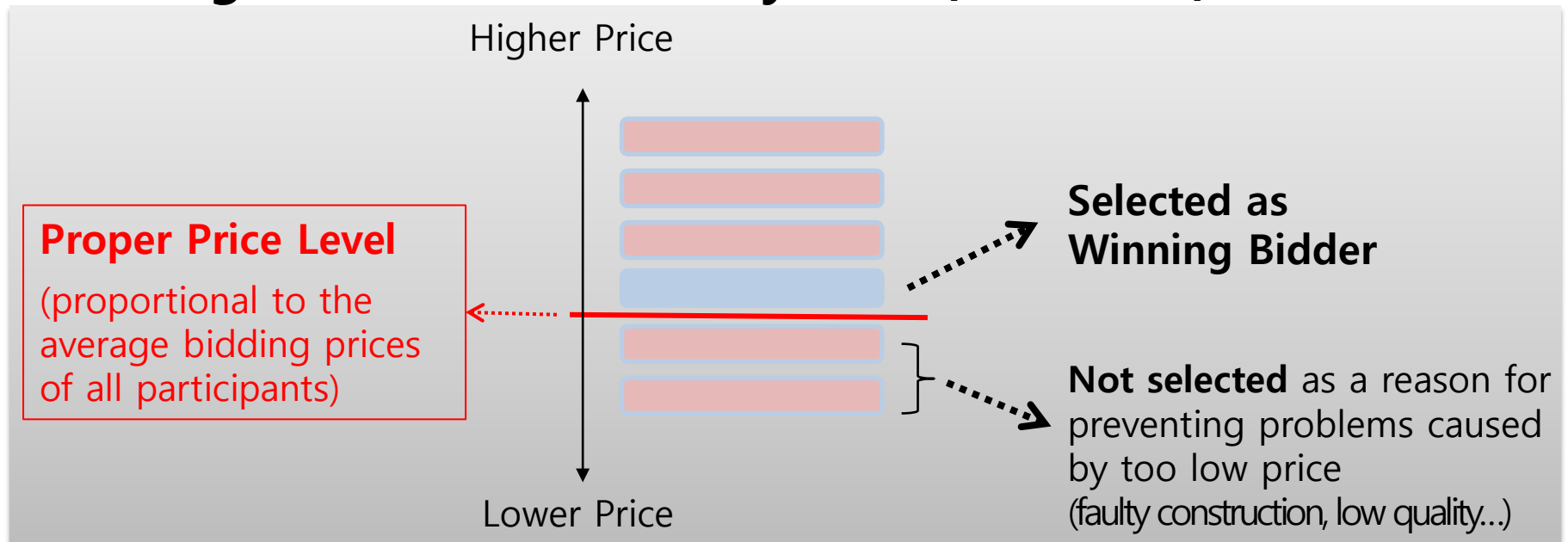
- Collaboration with the PPS.

Successful Case: Wonju-Gangneung express railroad (2017.4)

A. Outline: PPS ordered the Wonju-Gangneung express railroad, in 2013 for 2018 Pyeongchang winter olympics.
(937 billion won)

B. Bidding Method: Low-bid system (modified)

Higher Price

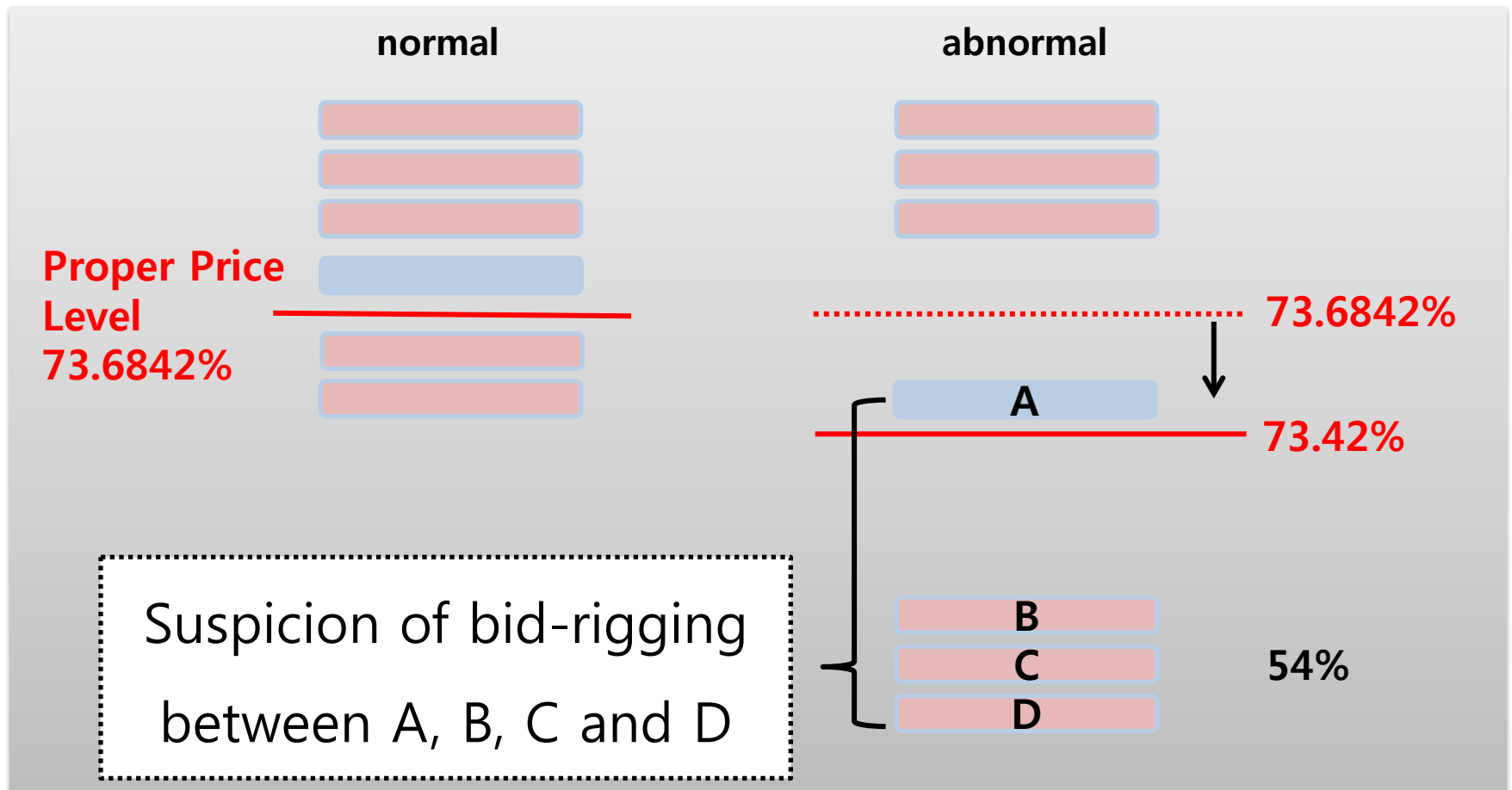**Proper Price Level**
(proportional to the average bidding prices of all participants)

Selected as Winning Bidder

Not selected as a reason for preventing problems caused by too low price
(faulty construction, low quality...)

Lower Price

C. PPS recognized: some participants suggested extremely lower price than the proper price level.

normal   abnormal

Proper Price Level 73.6842%

73.6842%

73.42%

A

B

C

D

54%

Suspicion of bid-rigging between A, B, C and D

D. KFTC's Finding from PPS's notification

- 4 participants agreed upon winning bidders of 4 construction sections in advance.

No. of Section	1	2	3	4
Winning Bidder	A	B	C	D
False Bidders	B, C, D	A, C, D	A, B, D	A, B, C

- The three false bidders submitted the bid at extremely low prices to lower the average bidding price reflected in the proper price level, and the other was able to win the bid by submitting a slightly higher price than the proper price level.

E. Sanctions: Total surcharge of KRW 70.2 bil.($62.1 mil.)

- **A tool to detect bid-riggings by analyzing huge public procurement data.**

- **Evaluate bid-rigging possibility, using one set of two or three indicators by the type of bidding.**

- **The pubic procurement agency should submit information* of the bidding to the KFTC.**

  * Number of bidding participants, type and methods of biddings, successful bid price, and bidding details by bidding participants

- **The types of bids is considered into indicators.**

Types of bids (competitive factor)	Indicator	
Lowest bid (price)	① Winning bid to budget ratio (+) ② Number of bidders (-) ③ Restrictions on being bid participants (+)	Bidding history analysis
Turn-key bid (price, technical ability)	(type1 : price-fixing) ① Winning bid to budget ratio(+) ② Gap among bid prices (-) (type2 : a supporting role) ① Winning bid to budget ratio(+) ② Gap among technical assessments (+)	"qualitative indicators needed more"

※ (+): proportional, (-): inversely proportional

III. Closing

Closing

- **Leniency is a powerful tool for detecting cartel, but also has a limit because cartel participants are willing to apply for leniency only when it is highly likely that they would get punished.**

- **So we need to develop another detecting tools which could lead to ex-officio investigations.**

  - **These tools enable more proactive enforcement and promote potential leniency applicant. (Virtuous circle)**

Thank you for your attention!

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