



CNMC COMISIÓN NACIONAL DE LOS
MERCADOS Y LA COMPETENCIA

Mini Plenary #3: Other methods of bid-rigging detection

Isabel López Gálvez,
Head of Cartels and Leniency Unit - CNMC

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Cartel enforcement

- ✓ **Cartel prosecution, first priority at CNMC and also our most relevant success, although not always happens: in 20 years, from 1989 to 2009, 10 cartels detected (3 bid-rigging cases)/in 7 years, from 2010 to 2016, 51 cartels detected (14 bid-rigging cases), specially, due to Leniency Programme since 2008).**

- ✓ **In particular, “bid-rigging” is included cartel definition and enforced strongly last years, with a focus on bid-rigging in public procurement:**
 - ✓ Prevention and detection for a viable investigation
 - ✓ Investigation (dawn raids)
 - ✓ Deterrence (knock-on effect): fines(including individuals), prohibition of contracting (regulated, not yet applied), private damage claims (recently reinforced), prohibition of contracting (regulated, not yet applied), adverse publicity...

Detection tools bid-rigging cases

✓ Traditional (in general, reactive):

- Formal and informal complaints: third parties (competitors), former employees, customers, anonymous, consumer agencies, etc.
- Ex officio: reports by other Public Administrations/investigative bodies, requirements of information, sector inquiries, screening, advocacy (market and economic studies, surveys, consultations, etc.), media news, etc.
- And also international cooperation!

Detection tools bid-rigging cases

✓ **New tools to detect bid-rigging cases (more pro-active):**

- Since 2008: Leniency programme (only for cartels, included bid-rigging cases), linked directly with dawn raids
- Since 2014: CA Working Team about public procurement (detection possible bid-rigging cases): training programmes to procurement officials, brochures, development analysis IT system online public procurement data, ...
- Since 2015: Bid-rigging screening (prevention and detection), developing internal database (2016) and data analysis tool (2016)
- Since 2016: Informants (competitors, clients, disgruntled workers, etc.): mail box; e-mail address, on-line complaints process, dedicated telephone numbers, etc.

Issues about detection tools

✓ Practical and legal constraints:

- Availability and quality of the information (public/confidential/other language/not structured data).
- Enough time and resources to evaluate information facilitated
- In particular, cases bid-rigging in public procurement, no experience of cooperation/familiarity (trust)/willingness to cooperate other Public Administrations or Public Entities
- No national/international rules preventing the exchange of confidential information (for example, not a common definition of confidential or privileged)

✓ Possible first solutions:

- Indicators data facilitated
- Improve bilateral contacts and cooperation between CA and other public enforcers, for example, dedicated contact points
- Specialized resources data analysis in the CA
- Improve collaboration and information exchange (formal and informal) among CAs in tackling cross-border bid-rigging cases.

Leniency Programme: Bid-rigging cases

- ✓ Ensure greater effectiveness in the Competition Authorities (CAs)´ actions against cartels vs. traditional tools (complaints, markets studies, requirements of information...).
- ✓ Facilitate detection of bid-rigging cases for a viable investigation (immunity) or to advance in investigating those already detected (reduction), supporting the investigative work and CAs´ capacity to establish the investigated facts to the legally required standard of evidence:
 - First consequence, instability of the agreement.
 - Possibly, end or not continue the bid-rigging case after the dawn raids.
- ✓ Increase the instability of the agreement and also others ongoing bid-rigging cases and/or avoiding its creation.
- ✓ Linked with the investigatory powers: reinforced power inspections, increase the number of undertakings dawn raided and the possibility to require more information or data (public or confidential) about the tender (included other Public Administrations or Public undertakings).

Requirements of successful cases with leniency applications

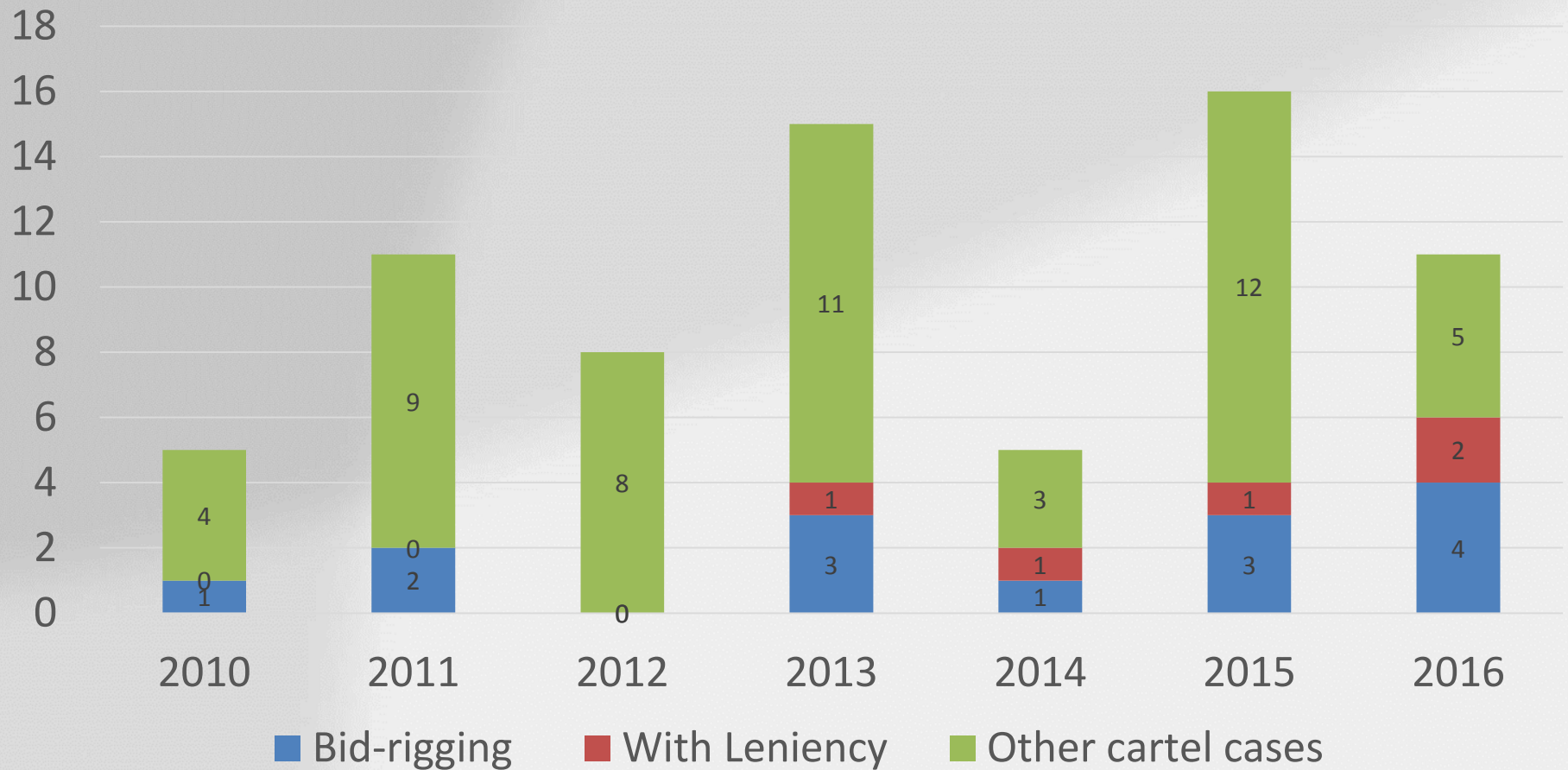
- ✓ Maximum transparency, certainty and predictability in the application of the leniency programme and about expected benefits, in particular, cases bid-rigging in public procurement (trust of leniency applicant): June 2013 Communication on Leniency Programme (Spanish leniency programme).
- ✓ Strong deterrence through penalties cases arising from leniency, due to high standard of proof:
 - Also individual fines imposed directives
 - Included Public Administration (first case, confirmed by Supreme Court, although it is not a case of bid-rigging, it is a cartel with the participation of a Public Administration)
- ✓ Cultural awareness about application leniency programme: press release cases with leniency, including immunity applicant calculated fine.

Implementation Spanish Leniency Programme

- ✓ Successful enforcement tool in fight against cartels: 6 cases since 2013
 - Effectiveness, allowing a more appropriate use of the CNMC's resources by helping to reduce investigation work and to resolve the infringement proceeding in cartel cases.
 - Until 2016, 26 published cartel cases sanctioned (20 immunity applications, plus 6 only with reduction), 5 of them, bid-rigging cases, plus another one in march 2017 (almost all of them, in public procurement).
 - Ability to do cases ex-officio: definition of other sectors for efficient and effective tasks of detection.
- ✓ 2016: CNMC imposed 227 million € in fines, 96% of this amount was due to cartel cases, the largest one (130 million €) in the cartel of diapers for adults for moderate-heavy incontinence and included, for the first time, fines to the executives involved (also one of them, applied the benefit for leniency programme), a case also of bid-rigging in public procurement (trying not to be effective public tenders).
- ✓ 2017: Other bid-rigging case fined plus 9 million € (transport sector in Balear islands, including public tenders school transport and private transport) and at least, other 2 bid-rigging cases (investigation phase)

Bid-rigging/Cartel cases

Number of bid-rigging/cartel cases
(published Resolutions 2010/2016)

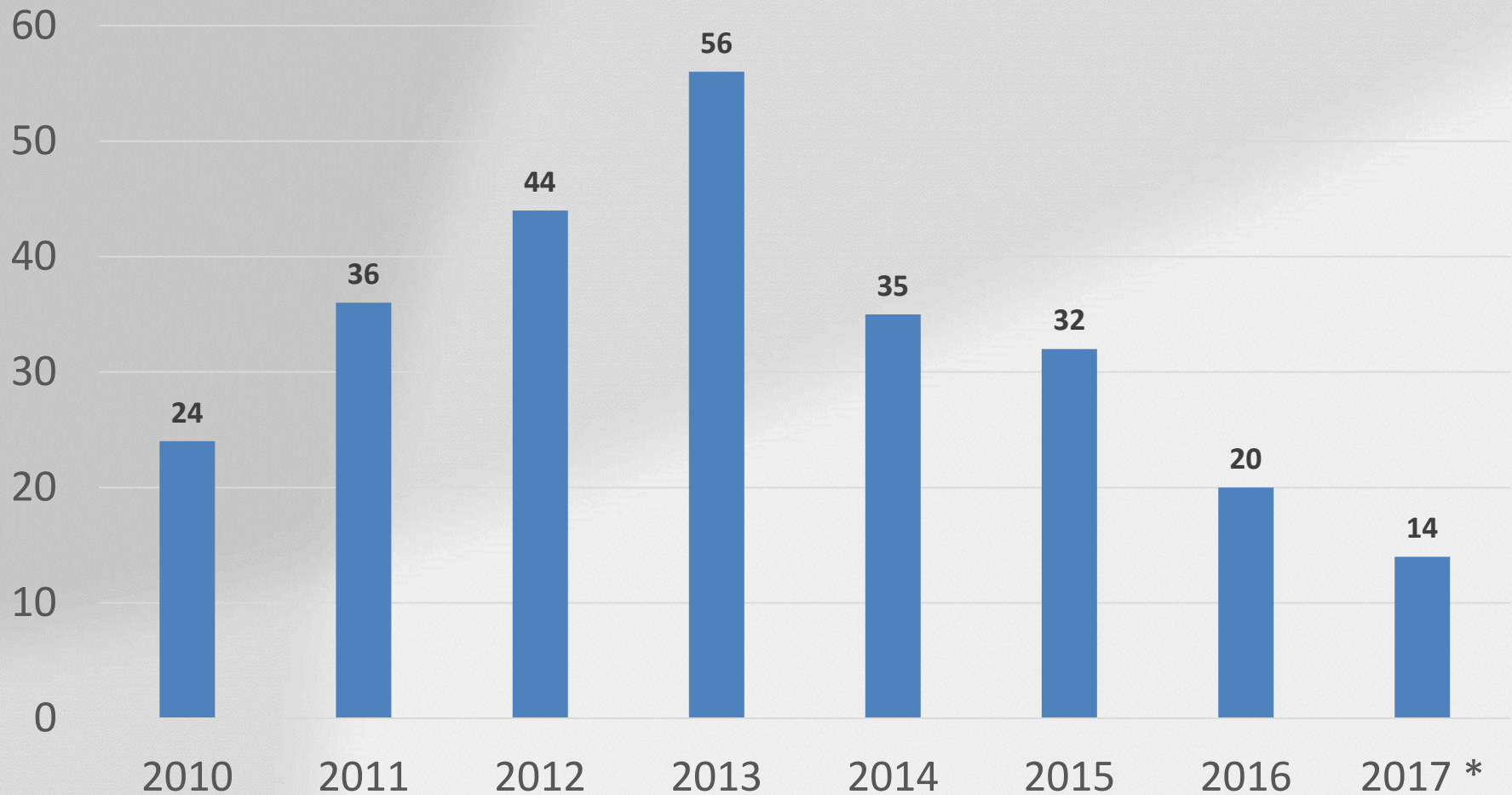


CNMC Resolutions Bid-rigging with leniency (2010/2017)

FILE	RESOLUTION	LENIENCY	FINE (€) NO LENIENCY	€ EXEMPTION	€ REDUCTION	TOTAL AMOUNT FINE (€)
S/0316/10 Sobres de papel	25/03/2013	Exemption and reduction (3)	16.606.282 €	20.498.246 €	7.477.031 €	44.581.559 €
S/0453/12 Rodamientos ferroviarios	04/12/2014	Exemption	3.933.583 €	123.815 €	0 €	4.057.398 €
S/0481/13 Construcciones modulares	03/12/2015	Exemption and reduction (1)	9.509.767 €	1.591.005 €	138.554 €	11.239.326 €
S/0504/14 AIO	26/05/2016	Exemption	60.291.577 €	68.562.575 €	0 €	128.854.152 €
S/DC/0544/14 Mudanzas internacionales	06/09/2016	Reduction	4.097.002 €	0 €	297.388 €	4.394.390 €
S/DC/0512/14 Transporte Balear de Viajeros	09/03/2017	Exemption	9.047.984 €	22.468 €	0 €	9.070.452 €
TOTAL			103.486.195 €	90.798.109 €	7.912.973 €	202.197.277 €

Dawn raids 2010/2017

Undertakings dawn raided 2010/2017



✓ IT tools: key to a successful detection and investigation

- Coordination between IT experts and investigators/case handlers
- Software development: IT unit uses forensic examination tools developed in-house by the CNMC, tailored commercial software to meet the needs of the CA (indexing systems, search and filter engines, text recognition and other applications).
- Search engines
- Training



- ✓ **Maintain incentives Leniency Programme:**
 - Future legal modifications make secure leniency applicants accurate regulation about civil damages and exemption about exclusion public procurement (not only for bid-rigging cases).
 - Also linked level of sanctions (including individuals)
- ✓ **Improve maximum collaboration and information exchange (formal and informal) among enforcers, highly necessary in bid-rigging, most public procurement**
 - Improved detection of bid-rigging cases ex-officio
 - Reinforced inspections (exchange evidence and other practical information)
- ✓ **Updated structure and knowledge CA: database, IT tools, ...**



Thank you for your attention!

isabel.lopezg@cnmc.es