

2017 ICN Cartel Workshop

Combating Cartels in public procurement

Plenary # 2

The outer limits: the parameters of a bid-rigging investigation

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German Legal Framework

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Prosecution of bid rigging offences

Natural Persons

- Bid rigging is a criminal offence
- Criminal law is applicable
- Prosecution by the public prosecutor
- Proceedings before criminal courts
- Max sanction: 5 years imprisonment

Companies

- Bid rigging is an anticompetitive offence
- Competition law + Act on Regulatory Offences is applicable
- Prosecution by competition authorities
- Max sanction: 10% of annual turnover of the economic entity



Public prosecutor and competition authorities have to cooperate closely in bid rigging cases

Cooperation of enforcement agencies

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In most cases, public prosecutor and competition authority will be dealing with the case in parallel. This means

- they have to coordinate their investigatory measures
- they have to share the same evidence
- they should consult on steps and results of their proceedings

Difficulties arise due to

- different procedural and substantive law
- different approaches to investigation and managing of proceedings
- lacking knowledge of these differences
- lacking experience in cooperation

Cooperation of enforcement agencies

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Bundeskartellamt and specialized public prosecutors have started an **initiative on cooperation** in order to **enhance investigation and prosecution** of bid rigging offences:

- regular conferences where public prosecutors and competition authorities discuss legal and practical issues
- setting up a check list on cooperation issues dealing with (inter alia)
 - start off with personal meetings; personal contact helps throughout the proceedings
 - preparation of on-premises search
 - access to file
 - securing evidence
 - hearing of witnesses
 - termination of proceedings (timing, press release, ..)

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Thank you for your attention



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