



INTRODUCTION: WHAT IS BID RIGGING AND WHY IS IT ILLEGAL

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STRUCTURE OF THE PRESENTATION

- Introductory remarks on bid rigging and public procurement
- Example of enforcement cases against bid rigging
- The OECD Guidelines for Fighting Bid Rigging



MAIN POINTS

- Bid rigging can occur in any country and in any market
- Bid rigging significantly increases prices of goods and services
- Fighting cartels and bid rigging is a top priority of most competition authorities
- Effective tools, such as OECD Guidelines, can help fight bid rigging

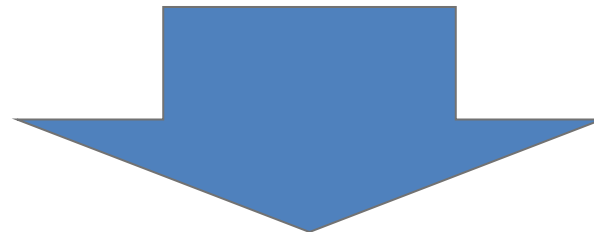


WHY WORRY ABOUT BID RIGGING?



Public procurement accounts for approx 15-20% of GDP in OECD countries

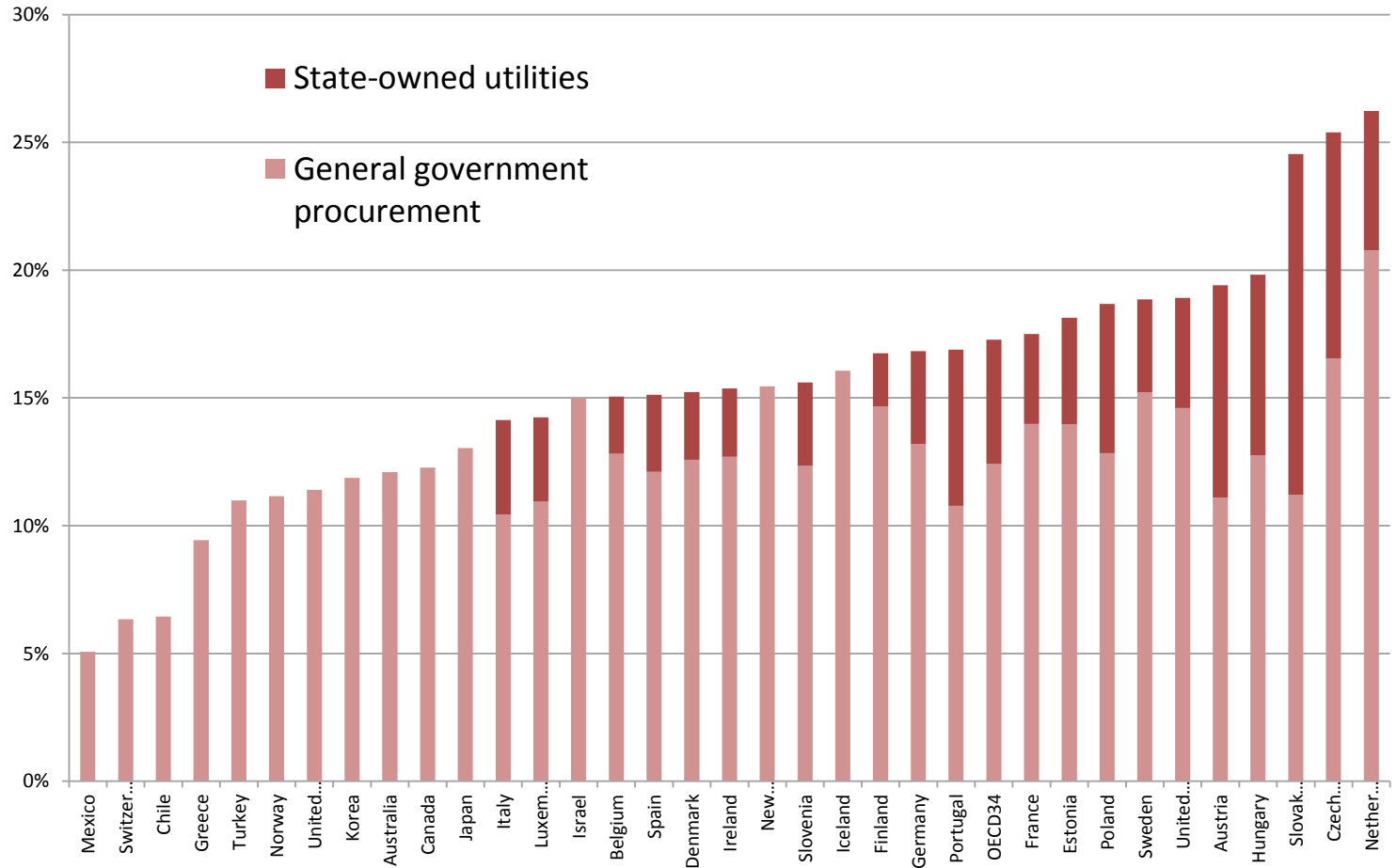
Bid rigging can raise prices significantly (up to 20% or more)



**POTENTIAL DAMAGES FOR TAX PAYERS
CAN BE SIGNIFICANT !!**

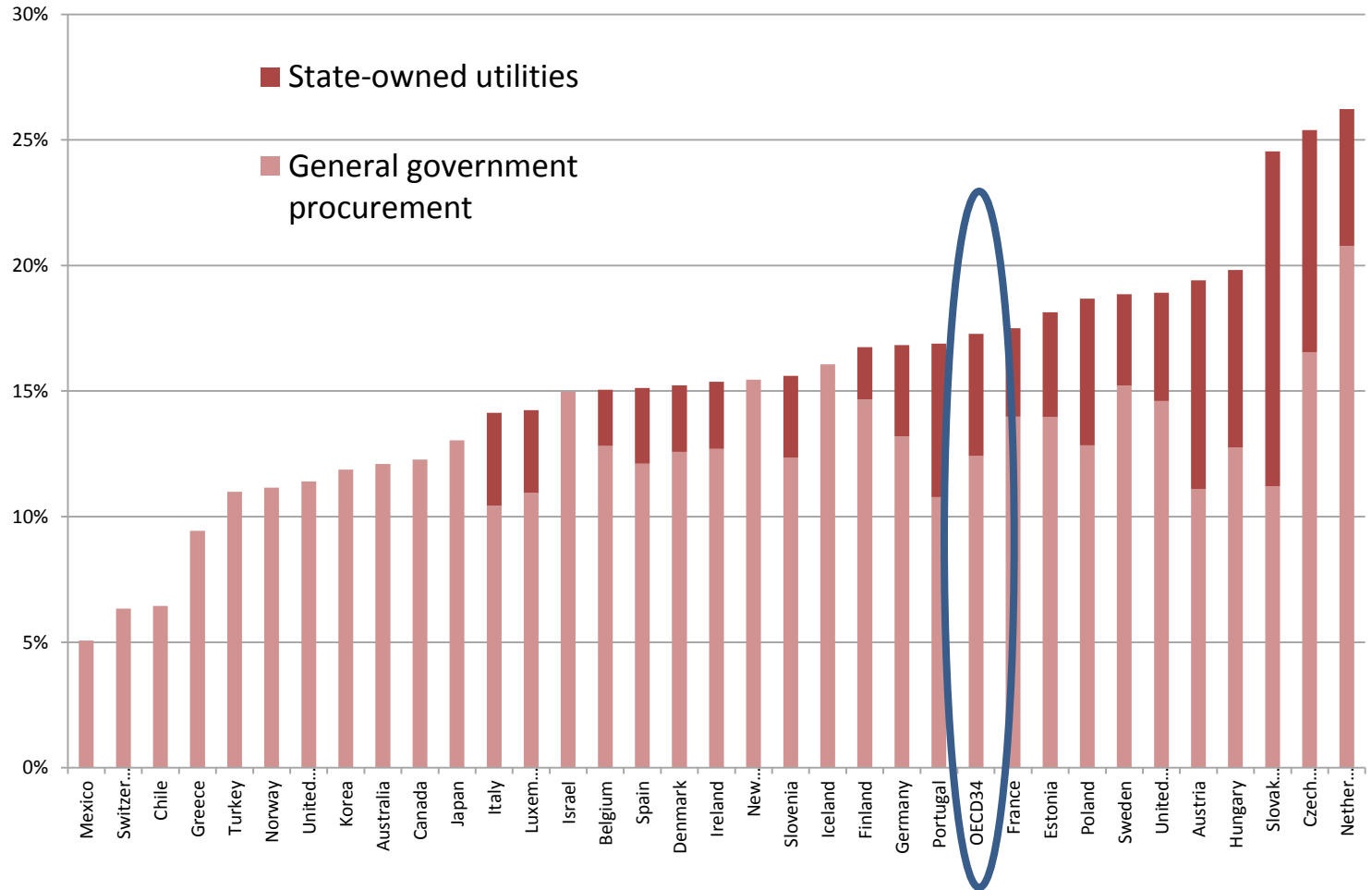


PUBLIC PROCUREMENT AS % OF GDP





PUBLIC PROCUREMENT AS % OF GDP





IMPORTANCE OF COMPETITIVE PROCUREMENT

- A competitive procurement system will:
 - Drive prices to marginal costs
 - Will minimize costs for firms and the government
 - Will drive innovation, as firms learn from one another and thereby to continuously improve products.
- And competitive public procurement system will accrue benefits to the whole economy as public procurement often involves key infrastructure (highways, railways, electricity, etc.) for other industries.



INTERNATIONAL EXAMPLES

The improvement of procurement procedures led to significant savings in a number of countries (OECD 2003):

- 47% saving in the procurement of certain military goods in Columbia
- 43% saving in the cost of purchasing medicines in Guatemala
- USD 3.1 ml savings for the Karachi Water and Sewerage Board (Pakistan)

In the EU, the implementation of the EC Directive on Public Procurement in the period between 1993 and 2002 generated cost savings of between a little less than EUR 5 billion and almost EUR 25 billion.



SURVEYS OF CARTEL OVERCHARGES

Reference	Number of Cartels	Mean Overcharge (percent)	Median Overcharge (percent)
Cohen and Scheffman (1989)	5-7	7.7-10.8	7.8-14.0
Werden (2003)	13	21	18
Posner (2001)	12	49	38
Levenstein and Suslow (2002)	22	43	44.5
Griffin (1989)	38	46	44
OECD (2003), excluding peaks	12	15.75	12.75
Weighted average	102-104	36.7	34.6



BID RIGGING – THE COSTS

Japan: Prices across 18 tenders declined by approximately **20%** after competitive bidding as restored to the procurement process

U.S.: Bid rigging had raised the price paid by the US Department of Defense by **23.1%**

S. Africa: Prices of health care products declined by approximately **27%** after antitrust intervention

Clarke and Evenett have shown, the resource saving that can be generated by only a marginal reduction in bid rigging on government contracts (e.g. of the order of 1 per cent) is greater than the average annual operating budget of the competition agency in most countries, often by a factor of several times over.



WHAT IS BIDDING?

- Bidding is a way to buy or sell goods or services through a tender or auction.
- When purchasing, the bid is usually awarded to the low bidder.
- Every country has laws and rules establishing procedures.



WHAT IS BID RIGGING?

- Any agreement (written or oral) between bidders that limits or reduces competition in a tender.
- The agreement may be between a bidder and a potential bidder that does not actually submit a bid.
- The agreement may work well and last a long time, or not last long.
- In most countries, all bid rigging agreements are illegal, and in some countries criminal.





BID RIGGING – THE CAUSES

Firms' conduct - Agreements between competitors:

- Agreement on who will win the bid
- Agreement on prices
 - 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 (government agencies) or in certain geographic areas

Regulatory framework which might:

- Increase transparency
- Increase participation costs
- Limit international competition
- Favor joint bidding and sub-contracting



BID RIGGING - COMMON FORMS

Cover bidding

A competitor agrees to submit a bid that is higher than the bid of the designated winner or agrees to submit a bid that contains 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.

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.



BID RIGGING V. CORRUPTION

- Corruption can involve only 1 company paying a bribe to a government official
- Bid rigging must involve at least 2 companies. They must agree on how to avoid competition.
- But, corruption can involve bid rigging.



MARKETS MORE SUSCEPTIBLE TO BID RIGGING

- Products are homogeneous
- Small number of companies in the market
- Little or no entry
- Stable market conditions
- Repetitive bidding
- Identical or simple products or services
- Few if any substitutes
- Little or no technological change
- Industry associations





HOW TO FIGHT BID RIGGING EFFECTIVELY

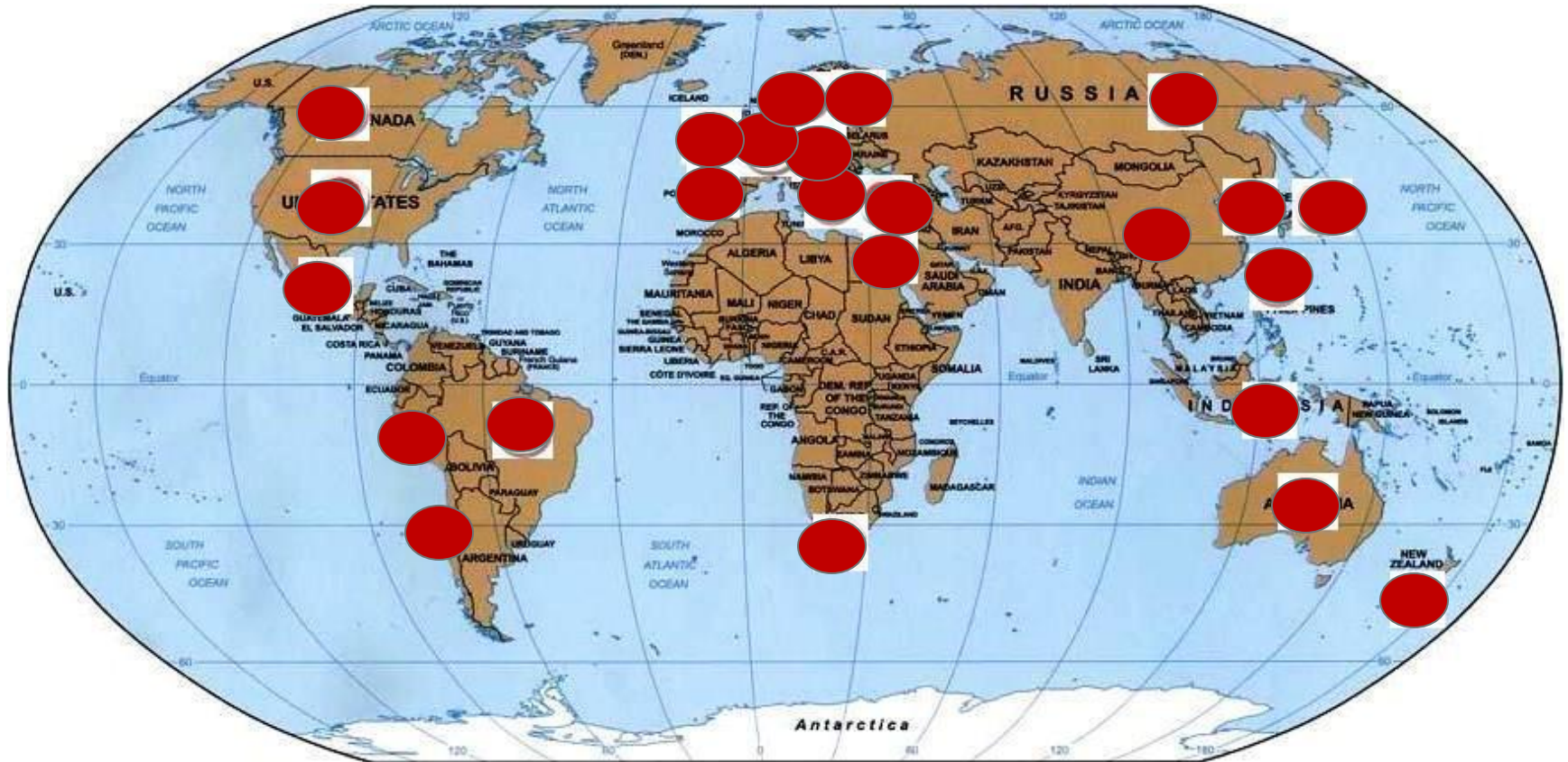
- Effective cartel laws and regulations
- Effective leniency program
- Effective enforcement procedures and institutions
- Effective sanctions

Other ways:

Raise awareness of procurement officials and bidders concerning the risks of bid rigging (Checklists and Guidelines)



BID RIGGING CASES FROM AROUND THE WORLD





UK - CONSTRUCTION BID RIGGING

- 103 construction companies were fined a total of 143 million Euros for colluding on building contracts.
- Illegal conduct impacted 199 tenders for 6 years.
- More than 220 million Euros in projects affected, including schools and hospitals as well as numerous private projects.
- The OFT also received evidence of cover bidding implicating many more companies on thousands of tender processes, but focused its investigation on the alleged infringements.
- Cover bidding strategies were used and compensation paid to losing bidders ranging from 3.000 – 70.000 Euros.



THE NETHERLAND – CONSTRUCTION INDUSTRY

Sector	Type of violation	Firms fined	Total Sanctions
Highways, roads and buildings	Courtesy bidding and compensation schemes	611	€ 71 ml
Cement	Market partitioning	50	€ 12.8 ml
Gardens	Market partitioning and courtesy bidding	56	€ 3 ml
Pipes and canalisations	Market partitioning and courtesy bidding	72	€ 12 ml



KOREA – INSURANCE

- Insurance is highly regulated in Korea but in 2003 a portion of the law was changed to allow for more competitive bidding in a certain segment of the industry – work related accident insurance.
- Prior to the change only 1 firm won every bid to 17 government agencies
- After the law was changed a cartel was formed to forestall competition.
- 2006 expenditures by government were approximately 80 million USD.

- Joint bidding was used
- Markets allocated
- Compensation was paid for false bids by other insurance providers, markets allocated

- USD 15 million in fines levied by competition authority

- Examination of documents from previously successful cartel investigation led to the case being opened



OTHER INTERNATIONAL EXAMPLES

Brazil:	Security guard services
China:	School construction
Indonesia:	Supply of pipe and pipe-processing services
Peru:	Supply of construction services
Chinese Taipei:	Truck-mounted mobile cranes
Mexico:	Surgical sutures X-ray materials and developers for X-ray Generic pharmaceuticals



OECD GUIDELINES - 2009



GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH



DESIGNING TENDERS TO REDUCE BID RIGGING

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH



DETECTING BID RIGGING IN PUBLIC PROCUREMENT

Helping governments to obtain best value for money

COMPETITION – THE KEY TO PRODUCTIVITY AND GROWTH

OTHER GUIDELINES



Cartels

Deterrence and detection
a guide for government procurement officers



COMPETITION ACT, 2002
Advocacy Series 4

PROVISIONS RELATING TO

BID RIGGING



Twelve ways to detect bid-rigging cartels

Have you noticed anything odd about the tenders you received in a tender procedure for goods or services? Take your suspicions seriously. When companies circumvent applicable competition rules in tendering procedures, they often leave signs; signs which may be easy to spot with a little knowledge.

This checklist sets out twelve signs which suggest that companies may

Making competition work for you

A guide for public sector procurers of construction



THE REAL TRUTH ABOUT 14M13175

入札談合等関与行為防止法について

入札談合等関与行為の排除及び防止並びに職員による入札等の公正を害すべき行為の処罰に関する法律

- 入札談合等関与行為防止法の制定及び平成18年の改正の経緯
入札談合等関与行為防止法は、国・地方公共団体等の職員が入札談合に関与する、いわゆる官製談合を防止するために、平成14年7月に議員立法により制定され、平成15年1月から施行されました。
同法施行後、鹿児島市、新潟市、日本道路公団の入札談合事件において、本法に基づき、公正取引委員会が改善措置要求を行ったほか、刑法の総入札妨害罪・談合罪で発注機関側が発見される事例も生じる等、いわゆる官製談合事件が、国・地方問わず多くみられる状況が続いたことを踏まえ、平成18年12月、発注機関職員に対する刑事罰の導入、入札談合等関与行為の範囲の拡大、法適用対象となる発注機関の拡大等を内容とする改正が行われ、平成19年3月14日から施行されています。

公正取引委員会



OECD GUIDELINES FOR FIGHTING BID RIGGING

Source

Best practices in OECD countries

Better tender design

Help procurement officials design public tenders to reduce bid rigging
(Design Checklist)

Tougher law enforcement

Help procurement officials detect bid rigging when it occurs
(Detection Checklist)



CHECKLIST FOR DESIGNING TENDERS

- Learn about the market and about your suppliers
- Maximize participation of potential bidders
- Define requirements clearly and avoid predictability
- Reduce communication among bidders
- Raise awareness of the risks of bid rigging, provide training



CHECKLIST FOR DETECTING BID RIGGING

Procurement officials should be alert for:

- Opportunities that bidders have to communicate with each other
- Relationships among bidders (joint bidding and sub-contracting)
- Suspicious bidding patterns (e.g. ABC, ABC) and pricing patterns
- Unusual behavior
- Clues in documents submitted by different bidders



WHERE TO FIND THE OECD GUIDELINES?

Web link: www.oecd.org/competition/bidrigging

Translations available in 24 languages!



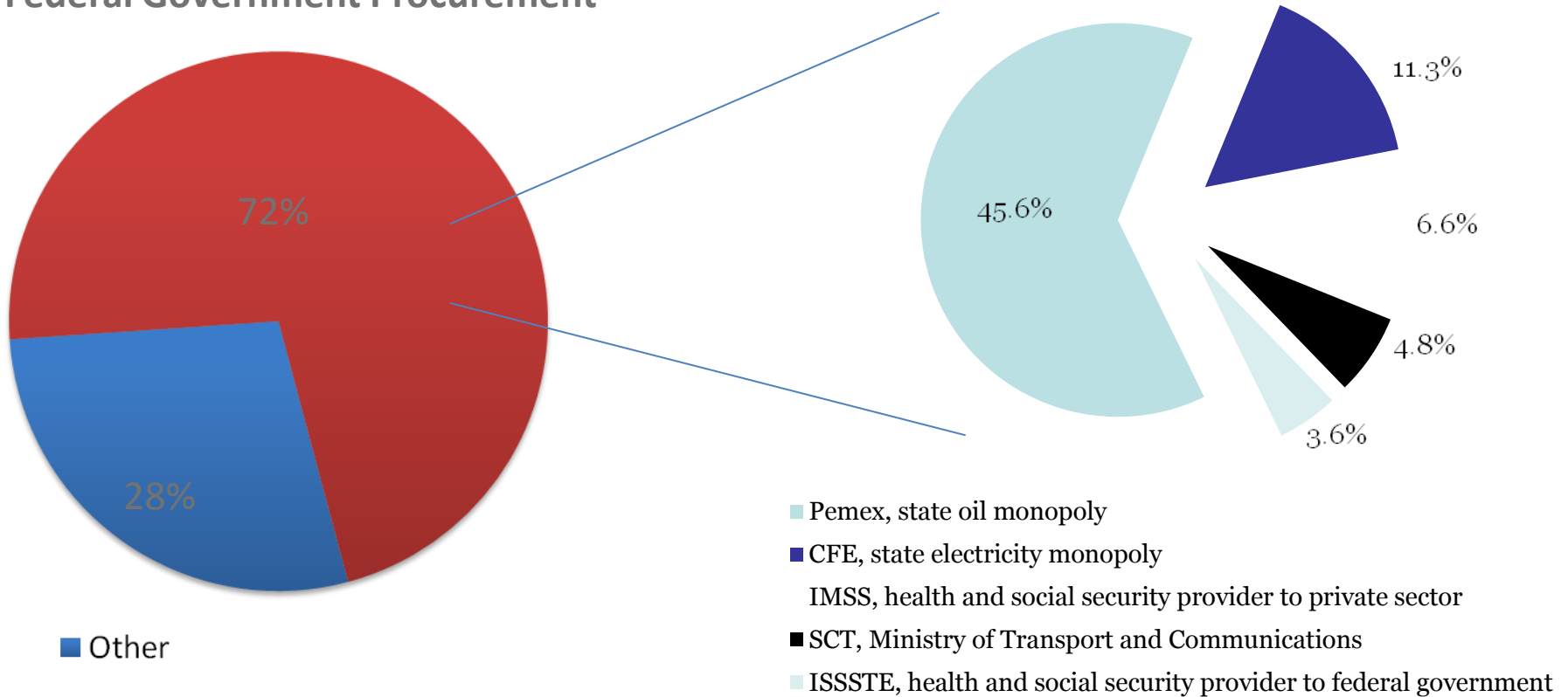
PUBLIC PROCUREMENT IN MEXICO

- In 2008, public procurement accounted for 18.4 % of GDP distributed as follows:
 - Public entities: 8.7 %
 - State and municipal governments: 5.5 %
 - Federal government: 2.9 %
 - Social Security: 1.5 %
- In 2008, 70,230 federal public procurement contracts were registered adding up to USD 59 billion:
 - 65.2 % for acquisition of goods and services
 - 34.8 % for public works



Public Procurement Share at Federal Level

Federal Government Procurement





MEXICAN COMPETITION LAW

- Article 28 of the Mexican Political Constitution prohibits monopolies and monopolistic practices
- Article 134 establishes that public procurement must be done through sealed-bid tenders
- Article 9 of the Federal Law of Economic Competition (FLEC) prohibits “absolute monopolistic practices”



FEDERAL LAW OF ECONOMIC COMPETITION

- Bid-rigging is a per se prohibition under the FLEC-
no efficiency defence
- Individuals engaged in absolute monopolistic
practices are subject to punishment of three to ten
years in prison
- Entities may be fined 10 percent of annual sales or
the value of their assets
- Recidivists face increased fines and potential
structural re-organisation



CFC COMMITMENTS TO COLLABORATE

- Collaboration between the CFC and federal government agencies to identify anticompetitive practices in public procurements
- Collaboration with Mexican states and federal agencies to identify anticompetitive regulations and modify procedures
- International collaboration with the OECD to raise awareness and study procurement practices to reduce bid-rigging



OECD STUDIES

- Three procurement studies by the OECD:
 - ❖ IMSS – 2011
 - ❖ State of Mexico (GEM) – 2012
 - ❖ ISSSTE – 2013
- Recommendations for changes in national and state procurement legislation/regulations and internal, agency-specific practices
- Agreement signed in December 2012 with the Federal Electricity Commission (CFE) to review its procurement practices



COMMON ISSUES AFFECTING COMPETITION IN TENDERS

- Market studies are critical precursors to competitive tenders
- Consolidation of tenders and using a variety of procurement approaches can reduce collusion
- Limitations on bidders by regions or nationality reduce competition and may facilitate collusion
- Transparency rules may facilitate collusion
- Joint awards, splitting contracts and sub-contracting may facilitate collusion



OECD RECOMMENDATIONS TO GEM

- Accept joint bids only when there are pro-competitive justifications which must be supplied by bidders in their bid submissions
- If bidders wish to sub-contract, they should be required to provide an explanation why sub-contracting is necessary
- Create a Market Studies Unit to ensure sufficient and appropriate information is gathered before procurements are undertaken
- Share best practices and market intelligence with other procurement agencies
- Set up clear procedures for staff to report bid-rigging
- Implement a regular training program focusing on how to detect and avoid bid-rigging and how to enhance competition in procurement procedures
- Establish a coordination and oversight body regarding procurement procedures/issues



OECD RECOMMENDATIONS TO ISSSTE

- Establish a comprehensive procurement database
- Set up a Procurement Coordination Unit
- Centralise purchases
- Enhance the existing Market Studies Unit
- Conduct reverse auctions
- Retain procurement records for longer time periods
- Utilise Certificates of Independent Bid Determination
- Commit to continued training and education for procurement officials
- Adopt a policy of seeking damages from firms convicted of bid-rigging



OECD RECOMMENDATIONS ABOUT LEGISLATION

- Remove provisions that discriminate against certain suppliers
- Limit the use of procurement procedures other than public tenders
- Eliminate the requirements to hold clarification meetings and to establish a “convenient price”
- Ensure disclosure requirements do not facilitate collusive activity
- Require suppliers to submit signed certificates of non-collusion
- Enhance the role of “social witnesses” in procurement processes
- Revise the current legal framework regarding guarantees and penalties



CONTINUING COLLABORATIONS IN MEXICO

- Consultation with the Secretariat of Public Administration (SFP) about changes to the Procurement Act and Public Works Act to make procurements more competitive
- Work with the SFP to design training programs
- Review of the SFP Procurement Manual to identify potential anti-competitive requirements
- Mexican Institute for Competitiveness study, “Competition on Public Procurement” (2011), reviewed and ranked the regulations in the 31 Mexican states and the Federal District with respect to enabling/promoting competition in procurement
- Training by the CFC and OECD regarding bid-rigging
- Adoption of the OECD Guidelines for Fighting Bid Rigging



LESSONS LEARNED

- Successful collaborations require high-level commitment, sufficient resources and a willingness to be open and candid
- Training and education of public procurement officials is absolutely necessary and pays immediate dividends
- Procurement officials demonstrate an eagerness to be a part of the solution
- Recommendations in procurement studies/reports must be tailored to the specific department/agency and commitments must be long-term
- Implementation plans are critical



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