

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

THE LINKAGES BETWEEN CORRUPTION AND VIOLATION OF COMPETITION LAWS

QUERY

What is the relationship between corruption and violations of competition law? To what extent are anti-competitive agreements (including sharing the market through tender procedures), abuse of dominant position and abuse of state aid related to corruption? What are the corruption risks in competition practices/policies and how to address/mitigate? Please also provide a list of further reading material and standards/best practices on this matter.

PURPOSE

To better understand the linkages between corruption and violations of competition law.

CONTENT

1. Corruption and competition: the linkages
2. Mitigating corruption risks in competition practices and policies
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Author(s)

Marie Chêne, Transparency International,
tihelpdesk@transparency.org

Reviewer(s)

Finn Heinrich PhD. Transparency International

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SUMMARY

Although distinct, there is a broad consensus and empirical evidence that competition and anti-corruption are closely intertwined, with corruption inversely related to levels of competition. Anti-competitive business conducts frequently occur in tandem with corruption, which can also facilitate firms' collusive behaviours. This intersection between anti-competitive practices and corruption is particularly evident in the field of public procurement.

The literature recommends a coordinated enforcement approach to corruption and competition laws, implying increased cooperation between anti-corruption and competition authorities. While collusion and corruption are generally pursued under distinct but compatible legal frameworks, there is a need to balance competing requirements of collusion and corruption prevention.

Similar to anti-corruption, enforcement tools at the disposal of competition agencies include a mixture of carrots and sticks, such as dissuasive civil and criminal sanctions, leniency programmes for early defectors, effective monitoring, complaints mechanisms and whistleblowing protection. Naming and shaming approaches, including ethical blacklisting of companies violating competition and anti-corruption laws, is also being envisaged by some countries.

1 CORRUPTION AND COMPETITION: THE LINKAGES

Competition and anti-corruption

The OECD refers to anti-competitive practices as a “wide range of business practices in which a firm or group of firms may engage in order to restrict inter-firm competition to maintain or increase their relative market position and profits without necessarily providing goods and services at a lower cost or of higher quality”. (OECD 2003).

There are a number of ways by which firms can restrict competition, broadly classified into: 1) horizontal restrictions on competition – involving other competitors – with practices such as cartels, collusion, mergers, predatory pricing, price discrimination; and 2) price fixing agreements and vertical restraints – involving supplier-distributor relationships – including practices such as exclusive dealing, geographic market restrictions, market allocations, and so on.

Anti-competitive practices typically aim to raise barriers to entry and entrench the market position of existing (dominant) firms and/or facilitate anti-competitive practices to maintain or increase the firm’s position in the market (OECD 2003).

The formation of cartels and other collusive schemes whereby firms agree not to compete with each other in activities such as price fixing (involving a conspiracy between business competitors to buy or sell goods or services at a fixed price, market allocations), when competitors agree not to compete for certain customers or in certain geographic areas (or bid rigging), when the bidders determine between themselves who should win the tender (this is viewed as the “supreme evil of anti-trust” by some and has been found to penetrate markets as diverse as food and vitamins, information technology, health products and consumer services.

Between 1990 and 2005, 283 private international cartels have been discovered, enjoying aggregate sales topping US\$1 trillion and overcharging consumers more than US\$300 billion¹ (Mehta 2009). Even the most trusted brands, such as Bayer and

Intel, have been fined for price fixing (Transparency International 2009).

There are many linkages between promoting competition and anti-corruption. Both competition and anti-corruption laws pursue similar goals, attempting to address market failures and dysfunctions and to ensure that companies compete on a level playing field and achieve best value for money.

American economist Robert Klitgaard’s understanding of corruption, as the result of monopoly plus discretion minus accountability, implies that promoting competition can have an impact on fighting corruption. Some analysts even consider the existence of cartels, monopolies, oligopolies and collusion as a structural cause of corruption. Due to their size and inefficiency, these market structures foster privileged and promiscuous relationships with the government, leading to unhealthy interactions between regulators and industry. This in turn damages the development of certain sectors, undermines growth and increases the need for the state to take an interventionist stance, creating a vicious cycle that feeds corruption (Pinheiro Machado 2015).

It is generally accepted that highly competitive markets tend to drive out corruption (Troesken 2007), and that the introduction of more competition could help curtail corruption. Empirical evidence tends to confirm that the level of corruption is inversely related to competition and that corruption tends to be higher in countries with low levels of competition (Emerson 2006; Clarke & Xu 2001).

In competitive environments, competition puts pressure on firms to reduce production costs and innovate, driving productivity and economic growth, while corruption rewards inefficient companies and negatively affects effective competition policy (OECD 2014). On the other hand, markets with high barriers to entry and characterised by declining marginal costs and high fixed costs tend to provide fertile ground for corruption (Troesken 2007). Open market economies provide in principle fewer opportunities and incentives for corruption. Meanwhile, high levels of corruption create higher entry barriers into lucrative markets, resulting in an uneven playing field and a lower level of competition, which in turn allows firms to charge higher prices (OECD 2014).

¹ Note: Transparency International takes “billion” to refer to one thousand million (1,000,000,000).

The connection between anti-competitive practices and corruption

Corruption and anti-competitive practices are mutually reinforcing

There is a broad consensus that corruption hurts competition, and there are many similarities between corrupt and anti-competitive business practices.

While anti-competitive and corrupt activities are distinct, both result in too much market power for some firms, fuelling inefficiencies and exaggerating costs, with a detrimental impact on prices and the quality of goods and services. They often have mutually reinforcing effects, and both offences result in a failure to achieve the best value for money by awarding contracts or markets on a basis other than fair competition and the merit of the contractor.

In addition, collusive and anti-competitive activities, such as price fixing, market allocation and bid rigging, often go hand-in-hand with bribery and corrupt practices, and many investigations combine anti-trust and anti-corruption claims. In fact, in the mid-seventies, in the wake of major foreign bribery scandals by US corporations, US policy makers debated whether a new anti-corruption law was necessary or whether existing laws, including anti-trust laws, were sufficient to combat foreign bribery, as foreign bribery could be considered a violation of anti-trust laws. It was concluded that a specific anti-corruption legislation would be a more cost-effective enforcement tool as prosecutors would not have to show that the bribery scheme had caused harm to competition under the anti-trust framework (Goodman 2013).

Both uncompetitive and corrupt business practices feed on and nurture a corporate culture that undermines corporate integrity standards and the respect of the rule of law.

In addition, bribery and cartel formation often use similar strategies for disguising their activities, such as off-budget slush funds, covert communication, unethical exchange of confidential information and the use of go-betweens and intermediaries, while corporate corruption smothers the formation of cartels, opening the door for further corruption and

degrading further the corporate ethical culture (Mehta 2009).

Corruption facilitates anti-competitive practices

There are different ways for firms to gain direct market power and influence their market position, which are typically regulated by competition laws, through trade barriers, collusion, manipulation of prices, favourable agreements on sole-source procurement. Some methods are illegal and involve a variety of corrupt practices, such as bribery to violate the rules of the game, while others are considered legal practices, such as lobbying, with the view to changing the rules. In fact, corruption can support and facilitate all the relevant mechanisms by which firms may gain and sustain market power, such as trade barriers, market allocations, manipulation of prices, acceptance of welfare mergers or favourable agreements on sole-source supply by government institutions (Soreide 2007).

As a result, while distinct, collusion and corruption frequently occur in tandem. Cartel investigations often reveal that they co-exist with bribery, as an anti-competitive agreement among cartel members may also involve offering bribes to government officials to ensure the awards are given in accordance with the cartel's market allocations or anti-competitive agreement (Rab and Stempler no date). Individuals and corporations can also make payments to other companies to enter into anti-competitive agreements, such as paying a competitor to exit a business or to fix prices (Rab and Stempler no date). A private utility may also bribe local officials to acquire an exclusive franchise or monopoly to operate in a specific area, resulting in a lucrative market, immune to competition (Troesken 2007).

Corruption and anti-competitive practices in public procurement

The intersection between anti-competitive practices and corruption is particularly evident in public procurement. Public procurement frequently involves large, high value projects, with barriers to entry, which present attractive opportunities for both corruption and collusion. In fact, some consider that one of the most common intersections of corruption and anti-competitive conduct occurs in government procurement, when bid rigging can be combined with

or facilitated by bribery of public officials or unlawful kickbacks (OECD 2014).

There is a broad consensus that corruption has a detrimental impact on competition in public procurement processes, while transparency and open competition makes for better value for money and less opportunity for corruption to occur.

Corrupt procurement officials might attempt to manipulate laws and regulations to bypass competitive tendering and additional oversight for their own interest and rent seeking activities. There are a number of ways by which corrupt procurement officials can restrict competition: contract specifications can be designed in a way that profits a particular company. Manipulation can also take the form of splitting up a high value contract into a number of smaller ones, in order for them to fall below the value thresholds which require a contract to be opened to competition. Similarly, inappropriate contract bundling – whereby a procuring entity bundles a number of different contracts together to create a tender that is so complex that only a particular company is able to deliver – can be used to avoid truly competitive tender procedures (World Bank 2013).

Therefore, a corrupt government agent controlling access to a formal market has the means and incentive to demand bribes in exchange for limiting the number of competing firms (Emerson 2006). Corruption is then likely to distort the competitive pressure on firms to bid with prices that reflect the cost structure of most efficient firms, replacing price competition with bribe competition.

In such corrupt environments, corruption may also facilitate collusion among competing firms, especially when there are resubmission opportunities and the public official has legal discretion to allow for a re-adjustment of (all) submitted offers before the official opening. In such schemes, the incentives of both the bidders and the corrupt agents become aligned (Compte, Lambert-Mogiliansky and Verdier 2000; Lambert-Mogiliansky and Sonin 2005). Such schemes are often made possible by having an “insider” in the public agency who provides bidders with the necessary information to rig bids and may even operate as a cartel enforcement mechanism (OECD 2010).

For firms engaging in anti-competitive practices in procurement, there are several common strategies that can be used separately or in tandem to restrict competition. They typically take the form of bid rigging, whereby conspirators agree in advance who will submit the winning bid and to distribute between themselves the profits obtained from an uncompetitive procurement process. Competitors who agree not to bid can be offered compensation payments or receive subsequent contracts from the designated bidder to share the proceeds of the illegally obtained higher priced bid (OECD 2009). Bid-rigging strategies can involve: “cover bidding”, when firms agree to submit bids that higher than the bid of the designated winner, too high to be accepted or contains terms that are known to be unacceptable to the purchaser; “bid suppression”, where one or more companies agree not to bid or withdraw their bids; and “bid rotations”, where firms agree to take turns to be the winning bidder. Competitors may also agree on market allocations and agree not to compete for certain customers or geographic areas (OECD 2010).

Enforcing collusive schemes implies that companies abide by the agreement and have the means to monitor and punish firms who do not. Bribery and corruption in the form of compensatory payments or the granting of sub-contracts can play an important role in ensuring compliance of firms to the collusive scheme to ensure that competitors and losing bidders respect the collusive deal and do not expose illegal activities to authorities.

Regulatory capture

Corruption can also permeate competition authorities and undermine the effective enforcement of competition laws. For example, without a transparent process, officials enjoy a certain level of administrative discretion in interpreting concepts such as “fair” competition and controls and investigations into anti-competitive practices are often the starting point for corruption (Mehta, Agarwal and Singh 2007).

More generally, cartels and monopolies need to maintain the status quo for their operations and sustain their market power. They are in a position to defend their margin through their influence on law-makers, creating a symbiotic relationship with the

government which has a perverse long-term effect on the economy. When regulatory competition institutions are not independent, they can be subjected to undue business influence and state capture. Monopolies and private firms also look for privileges to avoid market competition and, in some countries, purchase protection by “buying” laws via connections in the government (Centre for European Policy Studies 2007). In some countries, legal and illegal influence of businesses over the policy and legislative processes through political corruption and lobbying can lead to increased intervention by the state and more regulations to impede the entry of new players into the market (Pinheiro Machado 2015).

In Serbia, for example, some consider that the country does not have an effective competition framework, partially due to the huge domination of monopolies. The Anti-monopoly Commission was established after a long delay and a competition law passed in 2006. However, it is anticipated to fail to achieve its goals because of evident deficiencies, failing to punish domination of a market, but only the “misuse” of such a position on the basis of “reasonable discretionary estimation” (Centre for European Policy Studies 2007).

2 MITIGATION OF CORRUPTION RISKS IN COMPETITION PRACTICES

Although firms can get considerable market advantages through a variety of corrupt practices, anti-corruption initiatives do not often address corruption as a competition challenge. According to U4, donor support to private business development should incorporate efforts to strengthen the regulation of market competition and link this work to anti-corruption activities, by ensuring that formal frameworks and competition laws are in place and by supporting the quality, resources, capacity and competences of anti-trust and competition regulatory agency (Soreide 2007).

Coordination of efforts to promote anti-corruption and competition

There is a growing consensus that as corruption and anti-competitive practices are closely intertwined,

competition and anti-corruption enforcement are complementary, not mutually exclusive and should be pursued in parallel and in a coordinated way (OECD 2010; OECD 2014; Soreide 2007; Lambert-Mogiliansky Sonin 2005). Some analysts even argue that in countries where a law prohibits corruption regardless of the sector, such as under the UK bribery act, anti-competitive practices, such as price fixing, bid rigging or market sharing between companies could breach both the competition and anti-corruption laws even when no payment has been made to officials (Ellis 2014).

Collusion and corruption are generally pursued under distinct but compatible legal frameworks. A competition authority is typically in charge of combating collusion while corruption falls under the remit of the prosecutors or a specialised anti-corruption agency. Cooperation between these various enforcement agencies, through a formal memorandum of understanding, notification requirements or other mechanisms can bring mutual benefits to both agendas. As evidence of corruption can come to light during a cartel investigation and vice-versa, knowledge and evidence sharing is therefore crucial for both competition and anti-corruption enforcement, especially when some enforcement agencies (typically competition authorities) have less evidence gathering powers than the prosecutor and other law enforcement institutions (OECD 2010; OECD 2014).

In some cases, however, competition laws can hamper collective action against corruption, when competitors may agree to formally or informally identify and collectively boycott various corrupt suppliers. This may be considered as anti-competitive practice, contravening most anti-trust laws (Ellis 2014).

Protecting the integrity of procurement processes

Most experts argue that reforming and limiting collusion in procurement is generally seen as a good entry point and an effective way for competitive authorities to help fight corruption (OECD 2014). At the operational level, however, there can be a tension between good practice in combating collusion and good practice in combating procurement related

corruption, and attention should be given to the competing requirements of collusion and corruption prevention.

In particular, transparency is considered crucial for preventing corruption, especially in procurement processes. However, it can have a detrimental impact on competition by resulting in the unnecessary dissemination of commercially-sensitive information, allowing firms to align their bidding strategies on their competitors and facilitating the formation and monitoring of bid-rigging cartels. Disclosing sensitive information, such as the identity of bidders and terms and conditions of each bid, may allow competitors to detect deviations from a collusive agreement.

Transparency may also make procurement processes more predictable, which can also facilitate collusive practices. This tension is made apparent in the selection of the tender procedure between an open tender procedure that creates more opportunities for communication between bidders and a sealed-bid procedure which is more susceptible to corruption. This trade-off of transparency can be mitigated by sound procedural design, by releasing information only about winning bids, avoiding disclosure of bidder identities or sensitive information regarding the actions of competing firms, only information on winning bids could be released and the identities of the bidders should not be disclosed (OECD 2011)

The OECD guidelines for fighting bid rigging in public procurement provide detailed guidance and a checklist for public officials to detect and prevent anti-competitive practices from the design to the implementation of the procurement procedure (OECD 2009). Key issues to consider include the selection of the bidding procedures (open tender or sealed-bid), and the design of a procurement process that aims to: 1) reduce barriers to entry and increase bidders' participation; 2) avoid predictability while defining clear requirements; 3) reduce the frequency of procurement opportunities as collusion is facilitated if bidders meet each other repeatedly in a number of procurement processes; and 4) reduce the flow of competitive sensitive information and communication opportunities between bidders while reconciling requirements to prevent both corruption and collusion.

In addition, and more specifically, a number of more specialised mechanisms for protecting the integrity of procurement processes, while accommodating the objectives of competition law enforcement, can be envisaged, including, among others (OECD 2011; OECD 2010; Mehta 2009):

- opening national markets to international competition to increase the number of bidders
- maximising transparency without allowing the sharing of commercially-sensitive information
- certificates of independent bid determination (CIBD) requiring bidders to certify that they have arrived at a tender price absolutely independent of other bidders
- data analysis tools such as comparison of public databases to identify indications of anti-competitive or corrupt activities
- specialised review mechanisms for public contract awards
- auditing
- integrity pacts whereby governments and potential suppliers make explicit commitments to integrity in bidding processes, instilling mutual trusts that no one will resort to bribery or bid rigging
- strong sanctions, including debarment from future procurement processes for a period of time

Given the intersection of their mandate, procurement agencies and competition authorities should cooperate (International Competition Network 2015).

Independence and accountability of competition authorities

Competition authorities have a key role to play in tackling both collusion and corruption. A three-pronged approach is usually recommended in the literature, including: 1) designing a sound competition framework; 2) extensive advocacy and awareness raising directed at public officials (with a special emphasis on procurement officials) business and the public; and 3) vigorous enforcement action in cases of violation of both anti-corruption and competition laws (OECD 2010).

In particular, effective advocacy and outreach can promote a compliance culture and a change of

culture in business practices. Some competition agencies educate public procurement officials on how to detect anti-competitive practices while warning them of the risk of prosecution they face should they be tempted to participate in collusive practices (International Competition Network 2015)

Effective competition authorities share a number of common features, including a clear vision of the agency's purpose and strategic priorities, an appropriate structure and transparent processes, sound case and project management effective human resource practices as well as effective monitoring and evaluation mechanisms. Competition agencies should also have a variety of investigative tools and approaches at their disposal to initiate investigations, including pro-active methods such as the screening of public tenders, intelligence and monitoring of bid participants as well as reactive methods such as reacting to complaints or leniency application (see below) (International Competition Network 2015).

It is also important to integrate anti-corruption mechanisms in the building of the institution. Competition law enforcement is particularly susceptible to corruption because fines are normally imposed through an administrative system in which the competition authority acts as both investigator and judge. These authorities are not always independent of direct political control, and normally retain wide discretion in calculating fines and granting leniency, which provides opportunities for corruption. Competition authorities' effectiveness can be hampered by direct political interference, especially where there is a strong overlap between the political and commercial elite, which is often the case as in many countries, these institutions are under direct government control (Stephan 2008).

Integrating anti-corruption in competition authorities, includes: taking measures to ensure transparency and access to information on the agency's operations and decisions; introducing the right set of staff incentives and rules; establishing effective internal and external oversight mechanisms and; providing safe whistleblowing mechanisms (Chêne 2011; Healey 2008).

Special safeguards also need to be in place to ensure that competition officers do not engage in

corruption themselves. Competition officers should be required to uphold standards of integrity and transparency, act with impartiality, and to disclose conflicts of interest. Measures should also be envisaged to regulate their post-employment and introduce cooling-off periods after the termination of their competition duties (OECD 2014). A previous Helpdesk answer specifically focuses on integrating anti-corruption measures in competition agencies and can be accessed [here](#).

Tools for effective enforcement

Until recently, few countries have so far intensified their efforts to fight cartels and uncompetitive practices (Mehta 2009). In the last decade, enforcement tools against uncompetitive practices have grown, with a mixture of carrot and stick mechanisms.

Sanctions

To deter both corrupt and anti-competitive practices, it is important to establish a fair prospect of detection and sanction, with sanctions and specialised penalties, such as civil and criminal fines and penalties, and debarment for both collusion and corruption practices.

Penalties for uncompetitive business practices have significantly risen and become more common in recent years. Civil and administrative fines typically amount to 10 per cent of the sales values (Mehta 2009), while typical sanctions for corruption are fines and imprisonment. This may not be enough as some companies may consider fines for anti-competitive or corrupt practices as a cost of doing business. Reputational damage and disqualification from participating in competitive bidding may represent a greater harm for firms that engage in anti-competitive and corrupt conduct and act as a greater deterrent (OECD 2010). In countries with certificates of independent bid determination, it is possible to punish false statements as a means of sanctioning collusion in procurement.

Criminal liabilities can act as a more efficient deterrent, but only a few but growing number of countries such as France, Germany, the UK and the United States punish cartel running by imprisonment and/or fines (Mehta 2009).

Leniency programmes

Involving businesses in detecting irregularities can be an effective deterrent and increase detection, as competing firms are the best placed to detect irregularities. Some countries have competition leniency programmes which grant immunity or reduced fines for firms/early defectors that reveal the existence of a cartel and participate in investigations, which shows promising results (OECD 2010).

In the EU for example, a 2002 leniency programme for cartel defectors included full amnesty for the first and most cooperative defectors and led to disclosures that enabled the European Commission to take 19 actions involving more than 100 companies for a total of nearly €3 billion (Mehta 2009).

The combination of leniency programmes and high sanctions has proven very successful at uncovering and punishing cartel agreements in the US (Stephan 2008).

Reporting mechanisms and whistleblowing protection

Effective complaints procedures provide staff, competing firms and the public the opportunity to report and complain about both corruption and a broader range of unfair competition practices (Soreide 2007). To be successful, such schemes imply that appropriate whistleblowing protection be in place to protect whistleblowers from any form of retaliation.

Monetary incentives can also be used to encourage disclosure and reward individual informers. This is the approach used by the UK Office of Fair Trading, which reward whistleblowers with up to GB£100,000 (€128,540) for providing information about cartels, and by the US's false Claims Act (Mehta 2009).

Monitoring anti-competitive practices as part of corporate responsibility

Tracking involvement in corrupt and anti-competitive activities are important pillars of corporate responsibility and should be reported as part of overall company assessments (Transparency International 2009).

Naming and shaming and ethical blacklisting

As reputational damage can be costly for companies and act as a strong deterrent, countries such as Norway also send a strong signal to companies by removing those convicted of violating competition regulations from listings on ethical indices and investment funds. In Brazil, companies violating competition law can be imposed to pay for a summary of their offences to be published in the papers (Mehta 2009).

3 FURTHER READING

Background studies

***Fighting corruption and promoting competition.* OECD. 2014.**

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF\(2014\)12/FINAL&doclanguage=en](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/GF(2014)12/FINAL&doclanguage=en)

Based on discussions held at the 2014 [Global Forum on Competition](#), this report explores four main questions:

- the relationship between competition and corruption and the ability of anti-trust enforcement to contribute to the fight against corruption
- the role of competition authorities in fighting corruption
- the relationship between leniency programmes to fight cartels and the fight against corruption: in particular whether leniency programmes undermine the fight against corrupt officials
- the cooperation between competition authorities and anti-corruption bodies and the allocation of cases between competition authorities and anti-corruption bodies, and how to fight corruption within competition agencies

***Competition and corruption.* Allen, F., Qian, J.Q. and Shen, L. 2015.**

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685219

An interesting aspect of corruption is that its damaging effects on economic growth seem to differ significantly across countries. The authors examine the potential of combating corruption associated with the provision of public goods and services by introducing competition between officials. With multiple officials providing the same service or goods, the fee is determined competitively, and the pernicious effects of corruption are minimised. Moreover, the cost of implementing the optimal payment scheme by the central government is also minimised. This theory is consistent with some countries growing at fast rates despite corruption while others are severely damaged by it.

***Does competition among public officials reduce corruption? An experiment.* Ryvkin, D. & Sierra, D. 2013.**

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2383879

This paper tests the effectiveness of increasing competition among officials providing the same goods or service and investigates whether overlapping jurisdictions reduce extortionary corruption (bribe demands for the provision of services that clients are entitled to receive) using a laboratory experiment. The paper finds that increasing the number of providers lowers bribe demands only if it reduces search costs. If search costs are unaffected, increasing competition has either no effect (if search costs are high) or a positive effect (if search costs are low) on bribe demands.

***Why competition cannot effectively reduce corruption: The case of China's public procurement.* Zhou, N. 2012.**

<http://dspace.cityu.edu.hk/handle/2031/6989>

Drawing on empirical data from China's public procurement, this case study explores how and why competition mechanisms adopted in procurement management have failed to curb corruption in China. The data collected from the public procurement in a Chinese city indicates that bidding competition has in fact been distorted to a large extent. Procurement actors, such as government officials and firms, use a variety of strategies to evade and manipulate competition mechanisms. When the state withholds itself from excessively interfering with the market, it

fails to establish a sound regulatory regime to support bidding competition. This in turn provides procurement actors with opportunities to undermine competition. Based on these findings, the paper concludes that competition alone is not a panacea for controlling corruption. Only if coupled with vigorous state regulation can market competition successfully prevent corruption.

***Promoting compliance with competition laws.* Murphy, J. OECD. 2011.**

<http://www.oecd.org/dataoecd/12/13/48849071.pdf>

This paper is provided for purposes of facilitating a discussion of the possible role of compliance and ethics programmes in promoting compliance with competition law. The paper first defines what a modern compliance and ethics programme is and distinguishes this from older concepts of compliance. It then poses the policy question on these programmes: does even a small programme effort merit a free pass for offending companies, should programmes, no matter how diligent, be completely irrelevant, or is there a useful middle ground? The area of compliance relating to cartels may deserve different consideration from more sophisticated areas such as abuse of dominance and price discrimination.

***Competition and procurement.* OECD. 2011.**

<http://www.oecd.org/regreform/sectors/competitionandprocurement-2011.htm>

This book presents the key findings resulting from discussions held at a series of best practice roundtables on competition policy. Namely: collusion and corruption in public procurement (2010); public procurement: the role of competition authorities in promoting competition (2007); competition in bidding markets (2006); competition policy and procurement markets (1998).

The executive summaries from which these key findings are based are included together with related documentation, such as the 2008 OECD Council Recommendation on Enhancing Integrity in Public Procurement, the guidelines for fighting bid rigging and the third report on the implementation on the 1998 council recommendation concerning effective action against hard core cartels.

The effect of corruption on competition for government contracts. Clarke, G. R. 2010.

https://www.researchgate.net/publication/228456043_The_Effect_of_Corruption_on_Competition_for_Government_Contracts_2010

In many countries, firms pay bribes to win government contracts. This paper looks at the effect of corruption during the bidding process on competition for these contracts. The empirical results, using data from Afghanistan, suggests that corruption might discourage firms from bidding on government contracts.

Firms that do not bid on government contracts are far more likely to say that corruption is a serious problem than firms that do. One plausible explanation for this is that corruption discourages firms that are particularly averse to bribery in bidding. Corruption also appears to affect the outcome of the bidding. Firms that win contracts with international organisations — where corruption is lower — appear to be better performing than the losers. The same was not true for firms that win government contracts suggesting that corruption might lower the quality of firms winning government contracts.

Beyond the cartel law handbook: How corruption, social norms and collectivist business cultures can undermine conventional enforcement tools. Stephan, A. 2008. ESRC Centre for Competition Policy & Norwich Law School, University of East Anglia. 2008.

<http://competitionpolicy.ac.uk/documents/8158338/8256111/CCP+Working+paper+08-29.pdf>

The combination of leniency programmes, high sanctions, complaints from customers and private actions for damages, has proven very successful at uncovering and punishing cartel agreements in the US. Countless jurisdictions are being encouraged to adopt these “conventional” enforcement tools, in the absence of an international competition authority. The purpose of this paper is to widen the debate on cartel enforcement by identifying three issues which can undermine their effectiveness in some jurisdictions: 1) corruption and organised crime; 2) social norms that are sympathetic to collusive practices; 3) collectivist business cultures built on personal relationships.

Independence and accountability of competition authorities. Healey, D. 2008.

http://unctadxi.org/en/SessionDocument/c2clpd67_en.pdf

A review of the concepts and practice of the independence and accountability of competition authorities shows that, even as countries have responded to pressures and learnt from the successful experience of others in setting up independent competition authorities, there is a nuanced application of these concepts across countries. Legal, administrative, political and economic factors explain differences in application and most likely make the pursuit of a single standard for independence and accountability undesirable.

However, most countries have put in place various checks and balances. Independence is counterbalanced by the desire for stricter standards of accountability; also, for developing countries in particular, accountability is fundamental to development. In this context, the challenge for all countries is to achieve the best balance between autonomy and control

Competition and corruption: Lessons from 150 years of industrial governance. Troesken, W. 2007.

<http://mercatus.org/uploadedFiles/Mercatus/Publications/Competition%20and%20Corruption.pdf>

This paper argues that political corruption and market competitiveness are inversely related. Highly competitive markets drive out corruption, while markets with high natural barriers to entry (for example, those characterised by declining marginal costs and high fixed costs) allow corruption to flourish.

Competition drives out corruption because corruption is costly and high cost enterprises are at a competitive disadvantage. The inverse relationship between corruption and competitiveness is demonstrated by reviewing the history of three industries: whiskey distilling (highly competitive); oil refining (moderately competitive); and public utilities such as gas, electric and water (not competitive).

Competition and corruption: What can the donor community do donor community do? Soreide, T. 2007. U4 Anti-Corruption Resource Centre

<http://www.u4.no/publications/competition-and-corruption-what-can-the-donor-community-do/>

This brief discusses how corruption might threaten the benefits of competition in a market. Corruption can result in too much market power for some firms and thus increase prices and negatively influence the supply of goods and services in the private sector. While improved competition is important to cut prices, to improve the business climate, and to reduce the impact of corruption, better regulation of markets is also an achievable objective in many countries, and an area where aid agencies can exert influence.

Competition policy, inflation and corruption: evidence from African economies. Vindelyn Smith-Hillman, A. 2007.

<http://www.tandfonline.com/doi/abs/10.1080/13504850500461415>

Using regression analysis, the study examines the relationship between competition policy, inflation and corruption in 23 African economies. The inclusion of a group of 20 industrial countries acts as a benchmark enabling the evaluation of the significance of competition policy within countries with good governance records. The results reveal the absence of a statistically significant relationship when the two groups are independently assessed, however, when all 43 countries are combined the results prove to be statistically significant. While the results do not provide the unambiguous support of a relationship, this does not negate a role for competition policy.

Corruption, competition and democracy. Emerson P. M. 2006

<http://people.oregonstate.edu/~emersonp/ccd/ccd.pdf>

This paper presents a model of the interaction between corrupt government officials and industrial firms to show that corruption is antithetical to competition. It is hypothesised that a government agent that controls access to a formal market has a self-interest in demanding a bribe payment that serves to limit the number of firms. This corrupt official will also be subject to a detection technology that is a function of the amount of the bribe payment

and the number of firms that pay it. Under quite normal assumptions about the shape of the graph of the detection function, multiple equilibria can arise where one equilibrium is characterised by high corruption and low competition, and another is characterised by low corruption and high competition. Some suggestive empirical evidence is presented that supports the main hypothesis that competition and corruption are negatively related.

Standards and guidelines

Recommendation on fighting bid rigging in public procurement. OECD. 2012.

<http://www.oecd.org/daf/competition/guidelinesforfightingbidrigginginpublicprocurement.htm>

The recommendation calls for governments to assess their public procurement laws and practices at all levels of government to promote more effective procurement and reduce the risk of bid rigging in public tenders. It includes the guidelines for fighting bid rigging in public procurement developed by the OECD Competition Committee in 2009. The guidelines help governments improve public procurement by fighting bid rigging. They are designed to reduce the risks of bid rigging through careful design of the procurement process and to detect bid rigging conspiracies during the procurement process. The guidelines include two checklists: a checklist for detecting bid rigging in public procurement and a checklist for designing the public procurement process to reduce the risks of bid rigging.

Competition rules on horizontal cooperation agreements. European Commission. 2010.

<http://ec.europa.eu/competition/antitrust/legislation/horizontal.html>

As it is often vital for companies to work together to achieve synergies, there exist a vast number of horizontal cooperation agreements in many industries. These guidelines update and further clarify the application of competition rules in this area so that companies can better assess whether their cooperation agreements are in line with those rules.

Countering cartels to end corruption and protect the consumer. Transparency International. 2009.

http://transparency.ee/cm/files/lisad/cartels_and_corr

[ption.pdf](#)

Cartels are illegal and costly. They inflate prices for consumers, exact an economic toll on countries and undermine the integrity of companies. When companies engage in collusion by conspiring to fix prices, markets become inefficient and consumers bear unjustified price hikes that can reach up to 100 per cent. Cartels destabilise the business environment, generating moral ambiguity, illegality and a climate of corruption. Collusion paves the way for a corporate culture that supports corrupt acts such as the bribery of officials or the creation of slush funds. Secret agreements to fix prices might entail the buying-off of public officials, the manipulation of public procurement processes, or bid rigging. To effectively combat cartels, anti-trust and anti-corruption authorities should find new opportunities for collaboration and employ a host of tools that both create incentives for disclosure of cartel activity and apply severe penalties for those who continue to collude.

Business compliance with competition rules position paper. Business Europe. 2011.
<https://www.busineurope.eu/sites/buseur/files/media/imported/2012-00666-E.pdf>

Competition provides the best incentive for efficiency, encourages innovation and guarantees consumers the best choice for the best price. Abiding by anti-trust rules is fundamental for creating and sustaining a competitive economy. Compliance with anti-trust rules is not only a legal obligation, but also an attitude and a culture that can positively affect a business. Being compliant with rules and maintaining a strong reputation are fundamental matters for every enterprise. The basic principles of anti-trust compliance can start with basic, simple and cost-effective actions aimed at preventing breaches.

Practical insights and handbooks

The anti-cartel enforcement manual. International Competition Network (ICN). April 2015.
<http://www.internationalcompetitionnetwork.org/working-groups/current/cartel/manual.aspx>

This manual is a compilation of the investigative approaches used by ICN members possessing differing levels of experience. Each chapter explores techniques employed at various stages of anti-cartel

enforcement and identifies approaches that have proven effective and successful. Competition enforcement systems differ across jurisdictions. In this regard, the manual does not represent a comprehensive guide for the enforcement of laws concerning hard core cartels. Rather, it is intended to be a reference tool for agencies to enable them to evaluate and benchmark their own approaches. The manual is a "living" document that may evolve as new techniques, technologies, and approaches are developed and implemented.

Foundations of an effective competition agency UNCTAD 2011.

http://unctad.org/en/Docs/ciclpd8_en.pdf

This paper first addresses how to define an effective competition agency, and the importance of evaluation in that context. The next two sections address different factors that form the foundations of an effective competition agency. Much of the content of the first three sections applies to competition agencies in both developing and developed countries. The last two sections focus, respectively, on young competition agencies, and on what might be called "barefoot competition offices", those without significant political or financial support.

Compliance matters: what companies can do to better respect EU competition rules. European Union. 2011.

http://ec.europa.eu/competition/antitrust/compliance/index_en.html

This publication aims to help companies develop a pro-active compliance strategy. It summarises the key competition rules companies should respect and sets out generally recognised basic methods to help companies ensure compliance with EU competition rules.

How your business can achieve compliance with competition laws. Office of Fair Trading (OFT). 2011.

http://www.oft.gov.uk/shared_of/ta-and-cartels/competition-awareness-compliance/oft1341.pdf

This guidance is intended to help all businesses to comply with competition law, by describing the OFT's

suggested four step process for achieving a competition law compliance culture.

Small and middle sized enterprises compliance with competition regulations. Chêne, M. 2012.

In most countries, all companies are subject to competition laws, irrespective of their size. Good practice corporate compliance programmes with these laws typically include a set of key features such as leadership and support from senior management, development of policies and procedures based on risk assessment, standards and controls, training and communication, monitoring, auditing and report mechanisms, disciplinary procedures and incentives, regular review and updating. These principles can guide both large and small companies' compliance programmes and can be easily adapted to the constraints and specificities of small and middle sized enterprises.

Competition authorities typically provide generic guidance on corporate compliance with competition laws that are relevant to small business too, and recognise that compliance efforts might be less formalised and structured than for larger companies. In any case, compliance measures should be appropriate and proportionate to their size, as well as the nature and degree of risk they are exposed to.

Integrating Anti-corruption Measures in Georgia's Newly Established Competition Agency. Chêne, M. 2011

http://www.transparency.org/whatwedo/answer/integrating_anti_corruption_measures_in_georgias_newly_established_competit

There is a broad consensus that promoting competition may have a positive impact on limiting factors fuelling business related corruption and can contribute to foster a corruption free business environment. Establishing strong, independent and accountable competition authorities with adequate investigative, enforcement and regulatory powers is important to achieve this goal. The literature shows that effective competition authorities share a set of common features including a clear vision of the agency's purpose and strategic priorities, an appropriate structure and transparent processes, sound case and project management systems and human resource practices as well as an effective

monitoring and evaluation mechanism. The independence and accountability of the institution also needs to be ensured. Anti-corruption measures can be built up in the institution by promoting transparency and access to information on the agency's operations and decisions, introducing the right set of staff incentives and rules, establishing effective internal and external oversight mechanisms as well as encouraging safe whistleblowing.

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