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Global Forum on Competition

COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from Russia

-- Session V --

This contribution is submitted by Russia under session V of the Global Forum on Competition to be held on 18 and 19 February 2010.

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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Russia --

1. The public procurement system in the Russian Federation is regulated by the Federal Law no. 94-FZ of July 21, 2005 “On placement of orders to supply goods, carry out works and render services for meeting state and municipal needs” and the Federal Law no. 135-FZ of July 26, 2006 “On Protection of Competition”. This legal basis establishes rules and procedures aimed at ensuring equal economic area on the territory of the Russian Federation when placing public procurements, effective use of budget funds and non-budget funding sources, prevention of corruption and other abuses in the field of public procurements. Besides, this legal basis ensures openness and transparency of public procurement placement that can be proved by the fact that \$27 billion out of \$133 billion of the total amount of public procurements in the Russian Federation is won by the small businesses in 2009.

2. As a result of the universal introduction of tender and auction procedures for public procurement the state economised considerable budget funds at all levels. Thus, the economy of budget funds on public procurement in 2008 made up about \$9.7 billion compared to \$6.7 billion in 2007 and \$4.3 billion in 2006.

3. Nevertheless, this sector is considered to be one of the most corruptional ones. The biggest amount of financial violations can be seen in this sphere. According to experts’ estimates the Russian budget loses approximately from \$5 billion to \$7 billion as a result of absence of proper control over public procurement. Besides, there is a sphere of corporate procurements, carried by the Russian industrial and commercial companies. The corruption problem is also topical in this sphere because the national economy losses here are not less than budget ones.

4. The “National Plan on Fighting against Corruption” no. 1568 of July 31, 2008 approved by the President of the Russian Federation contains specific provisions related to the public procurement issues. In accordance with the implementation of this Plan the amendments to the Federal Law no.94-FZ of July 21, 2005 “*On placement of orders to supply goods, carry out works and render services for meeting state and municipal needs*” were made in 2009.

5. These amendments aimed to increase quality and transparency of public procurement placement, provide for the following:

- *Creation of single Russian-wide portal* for public procurement placement in 2011 that will help monitoring authorities to ensure proper control over published information. Availability of single information source considerably reduces risks connected with the unauthorised adjustment of information on the web sites or its unplacing, allowing creation of unified system of automatic control over procedures violations when placing public procurements;
- *Introduction of electronic auctions.* Usage of internet service for public procurements placement will provide for an opportunity to solve the corruption problem more effectively. The advantage of the electronic auctions is the opportunity to track the current price level on the market, almost excepting the possibility of participation of maximum number of suppliers regardless their geographical location in purchasing tenders that give the great opportunity to choose the most

profitable co-operation conditions due to natural initiation of competition between the suppliers. Introduction of electronic auctions is aimed at development of fair competition as well as prevention of corruption and other abuses in the field of public procurements. Electronic auction is one of the most effective instruments of fighting against “home” tenders. It eliminates possibilities of “face to face” direct negotiations of public authorities and specific companies. Along with that, trend for the electronic auctions may allow to save more than 50% of budget funds on a number of cases.

6. The measures indicated above contribute to the reduction of corruption risks during the public procurement placement.

7. With regard to the antimonopoly control of public procurement, the Article 11 of the Federal Law no. 135-FZ “On Protection of Competition” provides for “*per se*” prohibition of bid-rigging, which is one of the types of hard-core cartels and one of the major problems in the field of public procurements. There are two types of bid-rigging that can block businesses to enter public procurement process:

- Collusion between tender participants;
- Collusion between tender participants and a customer.

8. When considering claims by the participants of public procurement and carrying out inspections of customers the FAS Russia reveals the following major industries where bid-rigging prevails:

- Construction of large objects, including roads;
- Medicine (procurement of pharmaceuticals and medical equipment);
- Research scientific works.

9. The administrative responsibility for bid-rigging is provided for in the Code on Administrative Violations of the Russian Federation.

10. The amendments made to the Criminal Code of the Russian Federation in 2009 provide for more efficient application of Article 178 of this Code. It establishes imprisonment for the period of up to 3 years, inter alia, for bid-rigging. However, there is a possibility for gaining immunity under the leniency programme.

11. During the first half of 2009 the FAS Russia conducted the following:

- Considered 8319 claims and as a result of its consideration issued 3780 directions;
- Initiated 6010 case proceedings on administrative violations;
- Issued 1487 decisions on imposing fines for the amount of \$3 million.

12. Hereby as a result of the reform in the field of public procurements, measures taken to control over the observance of the Law and prevention of violations in the field of public procurements, in 2008 the amount of \$7 billion of the Russian budget was saved.