



**FIFTH MEETING OF THE
LATIN AMERICAN COMPETITION FORUM
(20 September 2007)
Puebla, Mexico**

THE OECD LATIN AMERICA BID RIGGING PROJECT

Background Note

1. Introduction

1. “Hard core” cartels are anticompetitive agreements by competitors to fix prices, restrict output, submit collusive tenders, or divide or share markets. Cartels are often condemned as the most egregious violations of competition law, noting that by raising prices and restricting supply they make goods and services completely unavailable to some purchasers and unnecessarily expensive for others.¹

2. Bid rigging concerns a type of cartel that operates frequently in procurement settings. Bid rigging continues to be a great concern in many jurisdictions. Frequently, the best placed authority to detect signs of unlawful bidding arrangements is the procurement authority as it has good knowledge of the relevant industry sector, and can observe patterns in bidding processes that could indicate unlawful collusive activity. Moreover, procurement authorities can to some extent influence how bidding procedures are organised to make the formation of cartels more difficult. Yet, discussions at the OECD Competition Committee demonstrate that programmes to systematically educate procurement officials exist only in a few member countries, while some other countries have more recently started to develop their own, more limited programmes. This suggests that in many countries procurement authorities and officials are not yet sufficiently aware of the danger of cartels among companies participating in bidding procedures and of the important role they can play in preventing and detecting cartels.²

3. A comprehensive OECD project is planned to tackle bid rigging – starting in Latin America. The purpose of this brief note is to describe the goals of the Latin America bid rigging project as well as to

¹ OECD, 1998 Recommendation of the Council on Effective Action Against Hard Core Cartels, see at <http://www.oecd.org/competition>.

² OECD, Hard Core Cartels: Third Report on the Implementation of the 1998 Recommendation, see at <http://www.oecd.org/competition>.

describe its key features and possible programs for capacity building within a country. This project is seen as a long term project involving a number of missions to a country. Ultimately, it is hoped to involve numerous countries during the next several years.

4. This OECD project is intended to build the capacity of a country to detect and prevent bid rigging. At a minimum, accomplishing this goal means providing training to competition authority officials to detect and prosecute bid rigging as well as helping procurement officials detect bid rigging and design tendering processes so as to reduce bid rigging. The project could help promote the competition authority's outreach efforts towards various stakeholders such as governmental bodies, the antitrust bar, the prosecutor's office, businesses, trade associations, the media, and the public as well as designing or strengthening leniency and sanction systems, facilitating relationships with the prosecutor's office on criminal cases, assessing investigation powers and designing methods for strengthening them, as well as other issues.

2. Budget and Country Contributions

5. The Latin America bid rigging project is seen as a multiyear effort. and efforts are being made to coordinate with other OECD member countries. At present, there does not seem to be a need for financial contributions from beneficiary countries. Of course,, to the extent that beneficiary countries are able to contribute towards this project then additional efforts, including, extra missions to that country, may be possible.

3. Mission Duration

6. In general, missions to Latin America are expected to last about 1 week. Visiting experts would likely fly to a beneficiary country on Sunday, begin work on Monday and leave Latin America on Saturday. The duration of a mission within a given country is likely to be an entire week, at least initially. Then, as work within a country continues, specialised teams are likely to be sent (e.g., procurement specialists). For missions involving specialists, it is likely that they will spend fewer days within a country (e.g., 2 days) in order to keep the duration of a mission assignment for an expert at approximately 1 week. Keeping the time spent within a country to 2 days for missions involving specialist allows those experts to visit two different countries within the same week.

4. Countries Involved in Project

7. Work will begin with Brazil and Chile in the fall of 2007 and continue through the end of 2008.

8. Although the plan is to work initially with only two countries, mainly for practical reasons, it is planned to expand the bid rigging project to other Latin American countries as well as countries in the Caribbean to the extent feasible. To date efforts to enhance the scope of the project have largely focused on involving OECD member countries. To aid these efforts, more involvement by beneficiary countries in locating and working with donors would be welcomed.

5. Schedule of Work

9. Plans are to conduct a variety of missions over the course of 2007 and 2008 to both Brazil and Chile. Table I and II lay out a tentative schedule of mission dates for Brazil and Chile. Readers should keep in mind that although these tables focus on Brazil and Chile they should be regarded as a possible approach for building capacity in any country.

10. As these tables indicate, week-long missions to both Brazil and Chile are scheduled in October, and December, 2007. The purpose of these initial missions is to provide some initial training to the

officials of the competition authority and to procurement officials as well as to establish a work plan for building capacity within each country.

Table I. Brazil: Tentative Schedule of Missions and Topics Addressed for 2007 and 2008

Date	Topics
October 1-5, 2007	Training for the <u>Competition Authority</u> /Needs Assessment/Work Plan
December 3-7, 2007	Training for <u>Procurement Officials</u> /Needs Assessment/Work Plan
March 17-18, 2008	Carry Out Work Plan
July 7-8, 2008	Carry Out Work Plan
September 29-30, 2008	Carry Out Work Plan

Table II. Chile: Tentative Schedule of Missions and Topics Addressed for 2007 and 2008

Date	Topics
October 8-12, 2007	Training for the <u>Competition Authority</u> /Needs Assessment/Work Plan
December 10-14, 2007	Training for <u>Procurement Officials</u> /Needs Assessment/Work Plan
March 20-21, 2008	Carry Out Work Plan
July 10- 11, 2008	Carry Out Work Plan
October 2-3, 2008	Carry Out Work Plan

11. After the initial set of missions in 2007 have been completed and a suitable work plan established then specialised experts might be used to meet the needs of beneficiary countries. For example, establishing best practices in procurement obviously demands a certain amount of specialized knowledge. And, as indicated previously, procurement specialists are likely to be sent to more than one country on a given mission. While the schedule of activities indicates that specialists may be in Latin American for roughly a week at a time, it may be possible for them to stay longer if needed.

6. Recommendations and Outcomes

12. After each mission is completed experts will be expected to draft reports detailing their experiences in Latin America, comments on that work, and suggestions for future work. Using these reports, the OECD would consolidate and re-present them to the experts and selected countries for fact checking. These reports in turn would be used for making recommendations for strengthening the competition authority's ability to detect and prosecute bid rigging as well as reducing bid rigging in procurement.

7. Establishing the Work Plan

13. Establishing the work plan will be an important part of the early missions. As the goal of the project is to work on priority areas identified by a competition authority, significant efforts will need to be invested early on in identifying areas that are suitable to the nature of this project. During this part of the work program, the OECD is seeking to engage senior officials from established competition authorities

who speak Spanish and Portuguese. Although these officials are unlikely to be specialist in a given area (e.g., auction design) they will undoubtedly have excellent knowledge of enforcement issues that relate to bid rigging. Both their language and work experience should greatly facilitate the establishment of a work plan.

14. These visiting officials will be employees of their own competition authority. Thus, a great deal of emphasis should be paid towards jointly establishing a work plan that allows visiting officials to offer their knowledge to a country but at the same time explicitly acknowledges that those officials cannot be expected to work full time for a lengthy period on a given topic. Thus, one needs to see visiting officials more as experienced advisors than as long-term advisors to that country. While this undoubtedly does create some difficulties, it is hoped that through careful selection of work plan topics and through repeated interaction both on missions and through email and phone conversations that substantial progress will be made.

8. Possible Programs for Capacity Building

15. Brief descriptions of areas on which joint work might focus are outlined below. The purpose of this list is only to suggest areas for joint work. Countries participating in the Latin American bid rigging project should feel free to suggest other priority areas.

Building Capacity at Competition Authorities

16. Among other issues, work at the competition authority on reducing bid rigging could focus on how to identify bid rigging, best practices for investigating such cases, and methods for determining the penalties to be applied. In addition, practical lessons on working with the procurement officials and other stakeholders could be addressed.

Building Capacity at Procurement Agencies

17. Work with procurement agencies might focus on how to identify bid rigging as well as best practices for reducing bid rigging and increasing competition. Auction design might be another area of focus.

Leniency and Sanctions

18. Numerous issues relate to leniency programs. Among these issues are establishing a marker system for applicants, provisions for anonymous leniency discussions, less than full leniency, the ability to grant leniency even after the investigation is begun, disclosure and cooperation requirements, and ring leader prohibitions. Less typical features include amnesty and penalty plus programs, hypothetical applications, restitution, affirmative amnesty, and others.

19. Leniency programs also require strong penalties. Without strong penalties there is likely to be little reason for those involved to stop the illegal activity, let alone report activity and apply for leniency. Sanctions issues touch upon corporate fines, personal fines, imprisonment, and debarment from future bidding.

Coordination and Cooperation between the Public Prosecutor's office and the Competition Authority.

20. In some jurisdictions criminal enforcement and enforcement of the competition laws are separated. In these jurisdictions various issues related to cooperation and coordination between the competition authority and the public prosecutor's office need to be addressed. These issues include for

example, leniency/immunity issues, obligations to inform about the initiation of a case, prosecution discretion, leadership, obligations to exchange information, evidence handling, and cooperation MoUs, among others.

Obstruction of Justice and Other Crimes

21. Obstruction of justice can involve false statements, perjury, document destruction, concealing or withholding documents, witness tampering, bribery and other issues. In addition, the ability to charge cartel participants with other crimes such as money laundering, mail and wire fraud, conspiracy and tax evasion help stop illegal activities.

9. Conclusion

22. This brief background notes offers a way in which the Latin America bid rigging project might be structured. It is hoped that from this note countries will be able to see the outline of the program and offer concrete ways forward on which joint work with OECD could be organised. Ultimately, the goal of the project is to reduce bid rigging in Latin America and in turn increase competition.