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LATIN AMERICAN COMPETITION FORUM

Session III - Improving Effective Public Procurement: Fighting Collusion and Corruption

Contribution from Chile - FNE

18-19 September 2012, Santo Domingo, Dominican Republic

The attached document from Chile (FNE) is circulated to the Latin American Competition Forum FOR DISCUSSION under Session III of its forthcoming meeting to be held on 18-19 September 2012 in Santo Domingo, Dominican Republic.

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LATIN AMERICAN COMPETITION FORUM

-- 18-19 September 2012, Santo Domingo (Dominican Republic) --

Session III – Improving effective public procurement: fighting collusion and corruption

CONTRIBUTION FROM CHILE (FNE)

Introduction

1. There have traditionally been few links between the fight against corruption and competition policy in Chile. There have been no systematic studies on the hypothesis of the concurrence of corruption offences with anti-competitive offences. This would indicate that the national authorities in these spheres have been sceptical about the possibility of a set of facts infringing anti-corruption law and competition law at the same time. Such a scenario offers an opportunity for the coordination of joint strategies, in particular where cases of corruption in certain sectors of public procurement have encouraged the formation of cartels in the respective industry, or vice-versa¹.

2. The duties of the Chilean Competition Authority (Fiscalía Nacional Económica/FNE, hereinafter the Competition Authority) are to investigate and prosecute competition infringement cases, and the Competition Tribunal (Tribunal de Defensa de la Libre Competencia/TDLC) is a judicial body with the power to adjudicate and impose sanctions in competition matters. Final decisions of the Competition Tribunal can be appealed before the Supreme Court.

¹ David Lewis, head of the Competition Tribunal in South Africa for around ten years and author of the book, *“Thieves at the Dinner Table”* (2012), recently stated: *“I distinctly recall thinking that some of the more elaborate bid-rigging cartels that we dealt with, notably those in pharmaceuticals and basic infrastructure, could not have been sustained in the absence of a corrupt relationship between the bid-rigging suppliers and those on the demand side. These were invariably cartels in which the public sector was a major customer.”* Global Competition Review Daily News, 20 August 2012, *“An interview with David Lewis”*, by Katy Oglethorpe, 16 August 2012.

3. In addition, anti-corruption policies, based mainly on the principles of transparency in the actions and probity of public procurement officials and in the administrative, civil and criminal prosecution of corruption offences, are designed, implemented and applied according to different levels of coordination by various public state administration bodies, including the General Comptroller's Office (Contraloría General de la República), Prosecutor for the Fiscal Interest (Consejo de Defensa del Estado), the Government of Chile's public e-procurement authority (Dirección de Compras y Contratación Pública/ChileCompra), the National Criminal Prosecutor (Ministerio Público Penal), the Council for Transparency (Consejo para la Transparencia), the Constitutional Court (Tribunal Constitucional), the Courts of Justice (Tribunales de Justicia), the Auditor General's Office (Consejo de Auditoría Interna general), etc. The competent authority responsible for overseeing (ex-ante and ex-post) the legality of practices by the state administration is the General Comptroller's Office. Originally set up in 1927 and a constitutionally independent body as of 1943, it has general powers to administratively prosecute probity and corruption cases².

I. Size and policy objectives

- What fraction of the Chilean economy does public procurement account for?

4. According to an OECD report (2007)³, public procurement accounts for roughly 15% of GDP in OECD countries. In the case of Chile, OECD statistics for 2008 show that this percentage was around 7%⁴. In 2011 trading through the public e-procurement system (www.mercadopublico.cl) totalled around USD 8 billion⁵, equivalent to 3.2% of GDP for the same year of around USD 250 billion⁶. The Ministry of Public Works (Ministerio de Obras Públicas), which does not form part of the e-procurement system, on its own

² This role is recognised in different projects developed in recent years to improve anti-corruption policy in Chile. For example, in its Annual Report for 2011 (available online at: http://www.contraloria.cl/NewPortal2/portal2/ShowProperty/BEA%20Repository/Portal/Destacados/Cuenta_Publica/2011/CuentaPublica2011_2.pdf, p. 94), the General Comptroller's Office lists, among other things, a project to enhance its role in providing technical guidance to the internal oversight units of public services and entities and improving controls in administrative probity, knowledge management and information access. It also aims to implement an anti-corruption agreement between the Supreme Court, the Constitutional Court, the National Criminal Prosecutor, the Prosecutor for the Fiscal Interest and the General Comptroller's Office to improve and strengthen inter-agency exchange and coordination within the framework of the United Nations Convention against Corruption (UNCAC), the Inter-American Convention against Corruption (CICC), and the OECD's Anti-bribery Convention.

³ OECD, Bribery in Procurement, Methods, Actors and Counter-Measures, 2007.

⁴ OECD, Government at a Glance, 2011, 40. Size of public procurement market. Available online at: http://www.oecd-ilibrary.org/sites/gov_glance-2011_en/09/01/index.html?contentType=/ns/StatisticalPublication,/ns/Chapter&itemId=/content/chapter/gov_glance-2011-46-en&containerItemId=/content/serial/22214399&accessItemIds=&mimeType=text/html

⁵ Press release by the Chilean government's public e-procurement authority (Dirección de Compras y Contratación Pública/ChileCompra), 1 March 2012. Available online at: http://www.chilecompra.cl/index.php?option=com_content&view=article&id=967:8053-millones-de-dolares-transaron-los-organismos-publicos-a-traves-de-chilecompra-durante-el-2011&catid=157&Itemid=661

⁶ Press statement, based on information from the Central Bank (Banco Central), El Mercurio, 19 March 2012. Available online at: <http://www.emol.com/noticias/economia/2012/03/19/531498/pib-de-chile-anota-una-expansion-de-45-en-el-cuarto-trimestre-del-2011.html>

accounted for around USD 2.5 billion in public infrastructure investment in 2011, or the equivalent of 1% of GDP⁷ for the same year.

- What are the principle policy objectives of public procurement?

5. The main policy objectives of public procurement are contained in several statutes applicable to public administration in general and specifically to public procurement. The general legal framework for public administration provides for the principles of state responsibility, efficiency, effectiveness, co-ordination, probity, transparency and publicity, amongst other things⁸.

6. In relation to public procurement and in particular government contracts to supply goods and services, article 6 of the law on public procurement states that the combined objective of tenders is to “*establish conditions that provide for the most advantageous combination of all the benefits of the good or service being procured, together with all associated costs, both current and future*” and to give a “*higher score or rating to bidders offering the best conditions in terms in jobs and wages*”, together with the government's responsibility to “*ensure efficiency, cost effectiveness and savings in procurement*”⁹.

- To what extent do procurement policy objectives consider the impact of cost-savings from more effective procurement for other government funded social welfare or infrastructure projects?

7. Since the government's centralised public e-procurement system (Dirección de Compras y Contratación Pública, ChileCompra) was set up, the cost-savings obtained as a result of the system have been determined on an annual basis, together with the volume of transactions through the electronic (web-based) platform. In 2011 cost-savings of USD 280 million were reported, compared to USD 230 million in 2010^{10 11}.

⁷ Ministry of Public Works, Annual Report 2011, pp. 22-23. Available online at: http://www.mop.cl/participacion_ciudadana/Documents/Cuenta_publica_mop_2011.pdf

⁸ Law dealing with the regulatory framework for public administration law (Ley de Bases Generales de la Administración del Estado), Article 3.

⁹ Law dealing with the regulatory framework for the public procurement of goods and services (Ley de Bases sobre Contratos Administrativos de Suministro y Prestación de Servicios), 19.886/2003, Article 6. Various amendments to the labour laws in 2008 led to the introduction in public procurement law of this indirect way to promote and enforce respect for workers' rights, although the result was the interlocking of two different policies that should have perhaps been kept independent.

¹⁰ The methodology to calculate these savings consists of establishing the difference between the winning bid and a counterfactual value constructed using structural econometric techniques based on the series of data from 2009 onwards of unsuccessful bids using the boot-strap method, assuming that there was no electronic platform. The methodology is described in Singer, M. *et al*, “Does e-Procurement Save the State Money?”, Journal of Public Procurement, Volume 9, Issue 1, pp. 58-78, 2009. Available online at: http://www.chilecompra.cl/index.php?option=com_phocadownload&view=category&id=9&Itemid=154

¹¹ Press release by the public e-procurement authority (Dirección de Compras y Contratación Pública/ChileCompra), 1 March 2012. Available online at: http://www.chilecompra.cl/index.php?option=com_content&view=article&id=967:8053-millones-de-dolares-transaron-los-organismos-publicos-a-traves-de-chilecompra-durante-el-2011&catid=157&Itemid=661

- Are you aware of any initiatives undertaken or being considered by other government agencies in Chile (e.g. employment generation, economic development and education programmes) that were or are aimed at reducing poverty as a result of savings from more effective and competitive public procurement?

8. The system for budgetary administration in the public sector in Chile does not facilitate the easy identification or implementation of budget reallocations to different policies (e.g. employment, education or economic development) from cost savings made through more efficient and competitive tender procedures in other sectors¹². The reallocation of budgetary cost savings and unspent institutional budget allocations are generally earmarked for other objectives within the same body that made the savings. Any cost savings or deficits in budgetary implementation would otherwise result in general in the following year's budgetary allocation being reduced in the budget discussions held annually with the Ministry of Finance's National Budget Office (Dirección de Presupuestos).

II. Corruption

- What is the cost of corruption?

9. There are no official statistics or measurements concerning the cost of corruption in Chile. Over the last few years, Transparency International has placed Chile in the range from 6.9 to 7.2 on its scale of 0 to 10, ranking it in positions ranging overall from 21 to 23¹³.

- What factors facilitate corruption? Are some factors more important than others?

10. According to international studies, there are several factors that facilitate corruption, the most noteworthy of which are weak institutions and the lack of coordination between different public bodies; the absence of effective control over government expenditure and payments between public bodies or payments from public to private entities; the lack of transparency in the activities of government bodies; the absence or inadequacy of accountability in public projects and investments; and the tolerance by the community of minor corrupt practices that are compensated for by favouritism from government officials. It is important to also mention the complex nature of investigations and trials in these matters, which often take several years to complete, and, for the same reason, public opinion loses its initial interest in such cases. Relatively light administrative and criminal penalties are also a factor that facilitates corruption. It is not easy to point to the greater prevalence of any one of these factors; pro-transparency reforms do however appear to point to good results in the medium term.

- In what ways do transparency programmes help in the fight against corruption?

11. Transparency has proven to be a main instrument in the fight against corruption in that it enables civil society to gain access to most of the facts behind the adoption of decisions by government agencies¹⁴.

¹² For example, for the period subsequent to the earthquake that hit the country in February 2010 important budget reallocations were made to finance the cost of rebuilding efforts, however no evidence linking this item of priority expenditure with savings from greater efficiencies in public procurement procedures has been found. On the other hand, there is mention in studies on public finance of budget and macroeconomic instruments among the reasons that helped to keep public spending under control, for example, the structural surplus rule.

¹³ <http://www.chiletransparente.cl/publicaciones/presentaciones/218-chile-transparente-presenta-indice-de-la-percepcion-de-la-corrupcion>

- What other policies help fight corruption? What methods and techniques seem particularly effective in Chile?

12. Training aimed at preventing corruption, in both the public and private sectors, is fundamental. The drafting of codes of conduct that set standards of behaviour for procurement officials and corporate executives when there is the occurrence of corruption is also recommended. In addition, the development of interagency linkages and exchanges between different bodies interested in fighting corruption is also very important¹⁵.

- Are firms required to certify during the procurement process that they have not bribed any officials?

13. This is not a general requirement for participants in public procurement processes in Chile. Nevertheless, several agencies have been progressively implementing integrity pacts as instruments that set out the ethical commitments acquired by participants in the procurement process. In particular, the government authority that handles the public e-procurement system (Dirección de Compras y Contratación Pública/ChileCompra) has started to incorporate these pacts in several of its tenders, and the fact that they are required is viewed positively by the General Comptroller's Office, which is responsible for controlling the legality of practices by the state administration. According to the current wording of these pacts, firms participating in procurement tenders acknowledge that bidding takes place in accordance with anti-collusion and anti-corruption principles, and with regard to the working conditions of employees and aspects of corporate social responsibility such as sustainability and the integration of persons with disabilities.

- What sanctions can be applied to firms and individuals who have engaged in corruption or bribery in Chile?

14. Any individual who has engaged, or tried to engage, in bribery can be imprisoned for up to three years¹⁶. If a tax fraud has been committed, imprisonment may be for a longer period¹⁷. In addition, fines up to three times the amount of the bribe offered or paid may be imposed¹⁸. Furthermore, as a penalty, the individual may be suspended for up to three years and possibly temporarily or definitively debarred from holding public office^{19, 20}.

¹⁴ See Chile Transparente, "Promoviendo valores ciudadanos desde la escuela" (2011). Available online: <http://www.chiletransparente.cl/publicaciones/presentaciones/222-seminario-promoviendo-valores-ciudadanos-desde-la-escuela->

¹⁵ In the area of control, one of the instruments used by the General Comptroller's Office is to carry out audits as a legal enforcement mechanism, as a safeguard to protect public property and as support for administrative probity. This includes the auditing of accounts of individuals who administer public funds and/or assets and special investigations based on inspection and inquiry in reference to situations where the rule of law and the principles of probity and the protection of public property have been infringed. Public income statement (Cuenta Pública) for 2011, General Comptroller's Office. Available online at: http://www.contraloria.cl/NewPortal2/portal2/ShowProperty/BEA%20Repository/Portal/Destacados/Cuenta_Publica/2011/CuentaPublica2011_2.pdf,

¹⁶ Criminal Code, article 250 in relation to articles 248, 248b and 249.

¹⁷ Criminal Code, article 250 *in fine*, in relation to articles 468, 473, 470 no.8.

¹⁸ Criminal Code, article 250 in relation to articles 248, 248b and 249.

¹⁹ Criminal Code, article 250 in relation to articles 248, 248b and 249.

15. Firms engaging in corruption or bribery in the past usually avoided prosecution. Provisions were introduced in Chilean criminal law in 2009 that provide for sanctions for firms in the case of the following crimes: money laundering, terrorism and the bribery of national and foreign public officials²¹. According to these regulations, firms sanctioned for corruption can be fined, with the temporary partial or total suspension of their activities, annulment of their legal status, or the order to wind up the company; the loss of public benefits, such as subsidies, and the order to cease and desist from the practice/s for which they have been sanctioned²².

16. Penalties against public officials who have engaged in corruption are determined by the administrative statute that provides for administrative penalties, and the Criminal Code, which contains more serious sentences, and regulations equivalent to those described above for private individuals who engage in corrupt practices.

- What are the competent authorities for prosecuting corruption cases? Does the competition authority have any power in this area?

17. In general terms, the competition authorities in Chile do not have the powers to prosecute cases of corruption beyond disciplinary authority over their own personnel, without prejudice to the obligation of officials to report any crimes or irregularities identified in connection with the performance of their duties to the competent authority. Nonetheless, the competent authority with general powers to administratively prosecute corruption cases is the General Comptroller's Office (Contraloría General de la República). The National Criminal Prosecutor (Ministerio Público), which is a constitutionally independent body, is responsible for investigations and the processing of cases in the criminal justice system. There is also a Prosecutor for the Fiscal Interest (Consejo de Defensa del Estado) that usually participates as a plaintiff in the criminal prosecution of corruption cases and to pursue the civil law consequences.

18. Transparency Act 20.285/2008 established the Transparency Council (Consejo para la Transparencia), the main functions of which is to safeguard the respect for the principle of publicity and transparency in administrative review cases and resolve claims in connection with enforcement. The council is a collegial administrative body with quasijudicial powers and is made up of professional staff appointed by means that provide for independence in the decision-making process. Resolutions by the Council can be challenged before the higher courts.

III. Collusion

- What factors facilitate collusion in procurement? What industries seem especially vulnerable to bid rigging?

19. Contracts that are poorly designed by public entities, and in particular the tender requirements, can either create artificial barriers that affect the number of bidders participating or lead to excessive predictability in the industry. These effects are reinforced by certain structural features of the markets relevant to a tender, such as those referred to in the OECD's Guidelines for Fighting Bid Rigging in Public Procurement²³.

²⁰ The prosecution of private individuals in corruption cases and imprisonment in cases of bribery are the result of statutory amendments and changes in jurisprudence and criminal prosecution policy made over the last twelve years.

²¹ Law 20.393, 2009, on the criminal liability of legal persons.

²² Law 20.393, 2009, the criminal liability of legal persons, article 8.

²³ OECD Guidelines for Fighting Bid Rigging in Public Procurement.

- What sectors in Chile have been affected by bid rigging conspiracies in public procurement? What experience has your agency had in helping design procurement systems in order to minimize the risks of bid rigging?

20. Up until now, convictions in cases of collusion between bidders in public tenders have been relatively rare. In 2006 the Competition Tribunal convicted four producers of oxygen for use in public hospitals²⁴. Another case in 2008 involved suppliers of asphalt for road resurfacing²⁵. In 2010 the Competition Tribunal dismissed a case involving suppliers of ambulances²⁶, and another case concerning advertising agencies is pending resolution²⁷. The most interesting case settled to date was in the tender of rights to radio spectrum frequencies for broadcasting²⁸.

21. The participation of the competition authorities in designing procurement systems for goods and services in order to minimise the risk of collusion between bidders has mostly been the exception to the rule. It has been above all in other cases dealing with bids for concessions or the allocation of essential or scarce products where the competition authorities have been involved in assuring the competitive nature of public procurement.

22. The abovementioned case of medical oxygen illustrates quite well how it is possible to improve competition in public procurement tenders through modifications to the design of these processes. Prior to this case coming to the attention of the Competition Authority, and following the advice of a team of university consultants, a series of significant modifications were made to the bidding process to make it more competitive than it had been previously²⁹.

- Are certificates of independent bid determination employed in Chile?

23. There is no general legal requirement that stipulates the use of this type of document is required in Chile. As mentioned above, the government authority that handles the public e-procurement system (Dirección de Compras y Contratación Pública) now recommends the use of “integrity pacts” that, amongst other matters, consider the participants' commitment to competition in public procurement. The

²⁴ Sentence 43, Competition Tribunal, 07.09.2006, with a ruling that went against the four companies concerned. The decision of the Competition Tribunal was overturned by the Supreme Court.

²⁵ Sentence 79, Competition Tribunal, 10.12.2008, dismissed the claim by the Competition Authority. The sentence was confirmed by the Supreme Court.

²⁶ Sentence 106, Competition Tribunal, 02.12.2010, which dismissed the claim by the Competition Authority.

²⁷ Proceedings pending before the Competition Tribunal, contested case no. 177-08.

²⁸ Sentence 112, Competition Tribunal, 22.06.2011, conviction. This sentence was upheld by the Supreme Court. From the point of view of legal doctrine, the resolution that was adopted in this case by both the Competition Tribunal and the Supreme Court is fundamental, particularly in a system like that in Chile where it has usually been understood that agreements between bidders are subject to an accredited standard that has a real or potential effect in the market, and not a per se rule or one that governs illicit purpose. The case involved the coordinated participation of eight radio stations in different tenders for the rights to radio spectrum frequencies, which involved bid-rigging to alter the outcome of the tender. How the relevant market was determined in the case (confined to the tender/s in question), together with the way in which the illicit nature of the behaviour in this offense was dealt with, is similar to that of other countries, which should facilitate the analysis of cases referred to the Competition Tribunal in the future.

²⁹ These modifications included changes such as demand aggregation and a reduced number of tenders (just three in an industry made up of four companies), extending the duration of contracts to five years, and secrecy regarding the reserve price up until the third stage in the process, amongst others.

Competition Authority also introduced certificates of independent bid determination in 2008, which prompted the Pensions Regulator to include them in an important tender once every two years.

- When firms have engaged in collusion, should they be prohibited from bidding in public procurement auctions for a period of time?

24. According to the original regulations of public procurement law, conviction on successive occasions by the competition authorities was considered cause for temporary debarment from activities in public procurement. This ban was repealed by a reform to the regulations in 2009 and it is currently not explicitly provided in the system.

IV. Fighting collusion and corruption

- What cases have there been in Chile involving both corruption and collusion in public procurement?

25. No elements of corruption were identified in any of the abovementioned cases (paragraph 20). Nevertheless, in line with the experience of the Competition Authority, the General Comptroller's Office, which has powers that cover cases involving corruption more than collusion, has on various occasions referred cases to the Competition Authority for investigation that have probably included elements of corruption as a result of their nature. It is therefore particularly important for public procurement in Chile to identify and understand how the facts and the law interact in cases that include both collusion and corruption in order for efforts to fight these to be better coordinated.

- Have collusion and corruption cases or allegations occurred predominantly at the local government level, provincial government level, or national government level?

26. There is no public information available regarding corruption cases. All collusion cases referred to in paragraph 20 occurred at either a national or pluri-regional level

- What methods and techniques for fighting corruption would aid the fight against collusion?

27. One method is the use of general audits in public procurement that are carried out by the General Comptroller's Office, which was convinced by the Competition Authority to include criteria referring to the detection of bid rigging in its audits. This subsequently resulted in the referral of potential cases of collusion to the Competition Authority for investigation.

28. Regular internal audits at national, provincial and local government levels are another useful technique for increasing the detection of both corruption and collusion.

29. It is also important to develop working methods and practices that foster inter-agency work, with joint sessions, the exchange of information, collaboration, reciprocal training programmes, parallel investigations, etc.

30. The training of public procurement officials is also an important role of both the anti-corruption and competition authorities in order to raise the awareness of officials regarding the possible occurrence of these offences and to help them set standards of behaviour when identifying cases of corruption and collusion.

31. Making the private sector aware that different public agencies are working together in a coordinated way can also be a very effective deterrent. The Competition Authority has sought to make this evident by widely publicising initiatives that have been carried out to this end, and disseminating the content of collaboration agreements that have been reached.

- When individuals or firms have engaged in bribery or corruption, are they able to receive leniency in Chile?

32. There are no special leniency rules for bribery or corruption offences, although the Criminal Code does establish general rules that provide for the raising or reduction of penalties. Criminal procedural law also provides for alternative solutions in certain cases.

V. Advocacy and institutional arrangements

- How do regulatory or institutional conditions help facilitate bid rigging and corruption?

33. Several factors have been identified in international studies as facilitators of corruption. These include the absence or weaknesses in controls on public spending and transactions between different entities within the public sector and/or in public-private cooperation, and the lack of transparency in the activities of government agencies.

34. Inadequate decisions concerning bidding processes and tender requirements by public entities can lead to excessive predictability for industry members and/or raise artificial barriers of entry. This may result in effective bid rigging agreements between firms.

35. High levels of transparency have proved to be a good tool against corruption although excessive or unnecessary transparency should be avoided in order to prevent bid rigging.

36. The important issue, depending on the context, is whether preference is given to pro-competition and anti-bid rigging strategies or pro-transparency and anti-corruption strategies, given that there may be a possible controversy between the two.

- In what ways can the competition authorities work to improve the efficiency of public procurement?

37. Competition authorities must help to identify situations where there is a risk of bid rigging and, once a risk has been identified, assist the procurement authority in the choice of strategy from the available alternatives. With the preventive strategy, experts from the Competition Authority can cooperate and help to design changes aimed at establishing a framework for pro-competitive incentives. With the ex-post or enforcement strategy, experts from the competition authority need to collaborate in developing detection and enforcement mechanisms in conjunction with experts from the procurement authority.

- What steps have been taken to improve the efficiency of the public procurement process in Chile? What specific measures (if any) have been adopted to reduce collusion and corruption in public procurement? If so, what has been the experience to date? Have other approaches to reduce collusion and corruption been tried in Chile and what have been the results?

38. One important step towards improving the efficiency of public procurement in Chile was taken in 2004 with the setting up of a public body (Dirección de Compras y Contratación Pública/ChileCompra) responsible for managing a public e-procurement system. Significant savings have been made by the agency since that time³⁰.

39. While most measures aimed at reducing corruption refer to corruption in general and not just corruption in public procurement, the following initiatives are worthy of mention. First, the signing by

³⁰ See paragraph 7 above.

Chile of international conventions on the prevention, detection and prosecution of corruption³¹. Second, the setting up of various presidential commissions to tackle problems of corruption: the National Public Ethics Commission (Comisión Nacional de Ética Pública, 1994); a political and legislative agreement to modernise the state and for transparency and the promotion of economic growth (Acuerdo Político-Legislativo para la Modernización del Estado, la Transparencia y la Promoción del Crecimiento, 2003); and the Probity and Transparency Agenda (Agenda de Probidad y Transparencia, 2006). Third, various amendments have been made to different laws to enhance transparency and impose more severe punishment for corruption. Various initiatives aimed at identifying and disseminating best practices are also worthy of mention.

40. In terms of measures aimed at fighting collusion, in 2008 the Competition Authority, with the support of the OECD and the Competition Bureau Canada, launched a programme aimed at raising the awareness of public procurement officials and institutions regarding the problems of collusion and bid rigging and the importance of competitive tender design. This programme acted as a link between the competition authorities and the public procurement sector and resulted in the subject of "the fight against bid rigging" being added to the agendas of various different public bodies. Subsequent to this initiative, various modifications to tender procedures began to be introduced and the number of cases being investigated by the competition authorities has increased.

- When adopting measures to reduce collusion and bid rigging in public procurement, have you taken into account the impact that such measures may have on the risks of corruption?

41. There have been relatively few instances where the competition authorities have intervened in cases of collusion between bidders (bid rigging) in Chile, and there are no cases to illustrate the occurrence of this.

- Has your competition agency undertaken competition advocacy in this area?

42. In May 2008, the Competition Authority brought together several public bodies and an association of public procurement officials to set up a working group, known as the Inter-agency Bid Rigging Taskforce (Comité Anti-Colusión entre Oferentes en Licitaciones de Abastecimiento Público). This team included representatives from the General Comptroller's Office, the public e-procurement authority (Dirección de Compras y Contratación Pública/ChileCompra), the Ministry of Public Works, the Auditor General's Office (Consejo de Auditoría Interna General de Gobierno) and REDABA (an association of procurement officials from different bodies). Representatives from the Department of Housing and Urban Planning, the Transport Regulator and the Pensions Regulator later joined the group. A total of 9 meetings were held during 2008 and 2010.

43. Following on from this initiative, seminars were held and training activities took place as a result of bilateral links between the Competition Authority and the agencies participating in the taskforce, with bid rigging also being introduced in the agendas of these agencies. Around 1,000 public officials have taken part in these activities. A market research study on the construction industry with a focus on public works was commissioned at the end of 2009, which was highly useful for identifying areas in the sector with a high risk of bid rigging.

44. During 2011, the Competition Authority also signed an agreement with the public e-procurement authority (Dirección de Compras y Contratación Pública) pursuant to which this body will provide the

³¹ Inter-American Convention against Corruption (1996); OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

Competition Authority access to its databases, which should facilitate the development of pro-active strategies for detecting cases of bid rigging and the screening of statistical samples for suspicious patterns

- If your agency has prosecuted procurement corruption or collusion cases, what types of remedies have you considered?

45. As pointed out above, the competition authorities are not involved in prosecuting cases of corruption in general.

46. With regard to cases of bid rigging, the participating firms have in general been given fines. In other cases involving anti-competitive tender design – although not necessarily bid rigging – requests have been made to the Competition Tribunal for measures referring to the conditions and/or requirements for procurement, in order to make bidding processes more competitive.

47. An amendment to the Competition Act (Legislación de Libre Competencia en Chile) came into force in October 2009 with provisions for instruments to be set in place to improve effective action against hard cartels (leniency, raids, the interception of communications, etc.). In addition to these modifications, it is envisaged that penalties for bid rigging will be raised in the near future.

- What institutional arrangements are in place in Chile to deal with the interface between anti-corruption and anti-collusion policies? Do you have established and institutionalised relationships with those empowered to prosecute corruption cases (for example, memoranda of understanding, cooperation agreements, inter-agency taskforce)? Are competition officials obliged to report on alleged instances of corruption that are discovered during the investigation of bid rigging cases? If yes, has this ever occurred?

48. Pursuant to Chilean law, administrative agencies of government are vested with the responsibilities of coordination. This is reflected more specifically in the obligation of all public officials to report any crimes and irregularities to the competent authorities, meaning that competition officials must report cases of corruption that come to their knowledge and likewise procurement officials must report cases of bid rigging. The Competition Authority has also signed collaboration agreements with different public procurement institutions, including the General Comptroller's Office, the public e-procurement authority (Dirección de Compras y Contratación Pública/ChileCompra) and the Ministry of Public Works, among others. This framework has served as the basis for exchanges of information that take place regularly between the authorities.