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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM
Session III: Promoting effective competition in public procurement**

-- Calls for Country Contributions --

12-13 April 2016, Mexico City, Mexico

The attached document is circulated in preparation for the discussion under Session III of the Latin American and Caribbean Competition Forum at its forthcoming meeting to be held on 12-13 April 2016 in Mexico. Delegates are requested to send written contributions for that session to the Secretariat by 11 March 2016 at the latest. Advance notice of contributions by Monday 15 February 2016 would be useful.

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LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



**14th Latin American and Caribbean Competition Forum
12-13 APRIL 2016, Mexico City, Mexico**

Session III

Promoting Effective Competition in Public Procurement

**Part 1 Co-operation between anti-corruption bodies and competition authorities
in public procurement**

Part 2 The use of screens to prevent and detect bid rigging in public procurement

CALL FOR COUNTRY CONTRIBUTIONS

Introduction

1. This request for contributions is circulated in preparation for the discussions to be held at the 2016 Latin American and Caribbean Competition Forum in the session on “**Promoting Effective Competition in Public Procurement**” on the topics of “**Co-operation between anti-corruption bodies and competition authorities in public procurement**” and “**The use of screens to prevent and detect bid rigging in public procurement**”. You are invited to make a written contribution on these topics.

2. In this call we aim to identify some questions that you may wish to address in your contributions. Please note that this list is neither prescriptive nor exhaustive. You are free to raise other relevant issues that reflect your experiences.

3. To assist the OECD Secretariat in planning the session, please inform us by **15 February 2016** if you intend to submit a contribution. The contributions themselves should be sent by email (as a Word document in electronic format, 5 pages maximum for each of Parts 1 and 2, in Spanish or English) to Angélique Servin [Angelique.Servin@oecd.org] and copied to Lynn Robertson [Lynn.Robertson@oecd.org] by **11 March 2016 at the latest**. Country contributions will be circulated to participants through the LACCF website (www.oecd.org/competition/latinamerica and <http://laccf2016mexico.com/en/home-2/>).

SESSION III PART 1

CO-OPERATION BETWEEN ANTI-CORRUPTION BODIES AND COMPETITION
AUTHORITIES IN PUBLIC PROCUREMENT**Background**

4. Collusion and corruption are distinct problems within public procurement, yet they may frequently occur in tandem, and have mutually reinforcing effect¹.

5. Discussions in OECD roundtables suggest that corruption is a big barrier to competition, discouraging genuine competitors from bidding for a contract in cases where they are apprehensive of unfair competition or are unwilling, or unable, to pay bribes. Businesses can be unwilling to take the legal risk involved in dealing with corrupt authorities as they increasingly need to comply with national and international commitments against bribery and corruption. Businesses are generally more prepared to invest where there is increased transparency and accountability, as they can better predict factors that may affect their return on investment and work towards minimising risks².

6. For these reasons, fighting corruption is increasingly part of OECD members' and non-members' agenda to promote competition in public procurement. There is a growing understanding that fair competition and public sector integrity go hand in hand leading to more efforts to improve the effectiveness of co-operation between competition and anticorruption authorities.

7. Many countries, including in the Latin American and Caribbean region, have taken action in strengthening partnerships between competition and anti-corruption authorities. Such partnerships are either formalised in agreements or take place on a case-by-case basis.

8. This call for contributions aims to collect information on cases of co-operation between competition and anti-corruption authorities and the forms such co-operation takes. The Secretariat's background paper for the roundtable on *Corruption and Collusion in Public Procurement* and well as the background note on *Improving Effective Public Procurement: Fighting Collusion and Corruption* developed for the 2012 Latin American Competition Forum³ can be used as a starting point.

¹ See OECD (2010) Policy Roundtables: Corruption and Collusion in Public Procurement, at <http://www.oecd.org/competition/cartels/46235884.pdf>; OECD Competition Committee (2011), Competition and Procurement, Key Findings, at <http://www.oecd.org/regreform/sectors/competitionandprocurement-2011.htm>; Latin American Competition Forum (2012), Session III Improving Effective Public Procurement: Fighting Collusion and Corruption, Background Note, [DAF/COMP/LACF\(2012\)15](#). The reports include real life cases where corruption and collusion were found to coexist.

² Global Forum on Competition, Fighting Corruption and Promoting Competition, Summary of Discussion, [DAF/COMP/GF\(2014\)13/FINAL](#).

³ See footnote 1.

SESSION III PART 1

SUGGESTED ISSUES FOR CONSIDERATION IN COUNTRY CONTRIBUTIONS

1. How, if at all, does your authority co-operate with anti-corruption authorities: in which cases and how often?
2. Have you found co-operation useful? Are there specific factors which determine how useful or not, such co-operation will be?
3. Is this co-operation formalised in an agreement?
4. Do you conduct joint activities or investigations?
5. Do you exchange information with anti-corruption authorities? If so please give a brief explanation of steps and safeguards, and any legal and practical challenges in particular with respect to confidential information.
6. Do you have any suggestions on ways to improve the effectiveness of co-operation between competition and anti-corruption authorities?

SESSION III PART 2**THE USE OF SCREENS TO PREVENT AND DETECT BID RIGGING
IN PUBLIC PROCUREMENT****Background**

9. Bid rigging can be best detected through a combination of reactive detection tools, like leniency programmes, and pro-active ones, like screens of procurement-related information. In its 2013 roundtable on *Ex officio Cartel Investigations and the Use of Screens to Detect Cartels*, the OECD's Competition Committee debated the issue of relying on evaluations of procurement data to detect bid rigging and explored a number of successful cases⁴. Screens can be structural, involving the analysis of procurement markets characteristics and flagging those markets or sectors that make collusion more likely so that precautions can be taken, or behavioural, involving studying bidders' behaviour to assess whether it is more or less likely to be consistent with collusion.

10. Structural screening is based on economic theory and empirical research concerning the relationship between market characteristics and the likelihood of collusion occurring in markets, essentially by identifying certain structural features of products or markets which facilitate collusion. Competition agencies can screen markets or industries in order to flag those where a cartel is more likely to occur. Economic research has identified a number of factors that could influence the potential gains and costs - and therefore the rationality and stability- of cartels and collusion. These factors can be grouped into structural, supply-related, and demand-related factors. Structural factors that ease collusion include a small number of competitors, high entry barriers, frequent interaction between firms (e.g. repeated bidding opportunities), and market transparency. Demand-related factors include stable demand conditions, low demand elasticity, buying power, and the absence of club and network effects. Supply-related factors include the mature stage of an industry, the low pace of innovation, symmetry and commonality of costs, symmetric capacities, product homogeneity, multi-market contacts, structural links, and a history of anti-competitive conduct, as well as frequent contractual relationships between competitors (e.g. co-operation agreements).

11. Behavioural screens refer to a variety of methods designed to indicate whether or not collusion has in fact occurred. They involves painting a picture of what competition or collusion in a specific market would look like, based on the analysis of variables such as prices, quantities, market shares, bidding decisions, etc. Under this approach, economists look at the behaviour of markets and their participants and assess whether the observed behaviour is more or less likely to be consistent with collusion or competition. Behavioural screens flag situations where possible manipulations or conspiracies have taken place on the basis of two fundamental principles: (i) Improbable or unusual events can be a sign of manipulation or of a cartel conspiracy if these events cannot be explained but for industry co-ordination; and (ii) Comparing behaviour of individuals or groups in similar situations may reveal that one group's behaviour is subject to manipulation or conspiracy.

⁴ OECD, Policy Roundtables: Ex officio cartel investigations and the use of screens to detect cartels, at <http://www.oecd.org/daf/competition/exofficio-cartel-investigation-2013.pdf>. Also, on reactive (generated by an event, such as a complaint or leniency application) and proactive methods (initiated by the competition authority) to detect bid rigging, see International Competition Network (2010), Anti-cartel Enforcement Manual, Chapter 4 - Cartel Case Initiation, at <http://www.internationalcompetitionnetwork.org/uploads/library/doc628.pdf>.

12. The structural and behavioural approaches do not exclude each other. On the contrary, they are usually viewed as complementary, so that if the structural screening gives positive results, competition agencies can proceed with a more targeted review based on firms' behaviour and their consistency with a competitive process. Some competition authorities in OECD countries, such as Korea, systematically screen procurement information to detect bid rigging and have found it successful. Others, such as the United States, do not, having decided that screening was not helpful in identifying cartels⁵.

13. Competition authorities in the Latin American and Caribbean region, indicatively in Brazil, Chile, Colombia, Mexico and Peru, have started developing and using screening techniques to detect bid rigging, in particular behavioural screens based on the review and analysis of bidding data⁶.

14. The call for contributions aims to collect information on the use, advantages and disadvantages of screens to prevent and detect bid rigging and relevant Latin American and Caribbean initiatives. The Secretariat's background paper for the roundtable on *Ex officio cartel investigations and the use of screens to detect cartels* can be used as a starting point.

⁵ See country submissions in the roundtable on Ex officio cartel investigations and the use of screens to detect cartels at <http://www.oecd.org/daf/competition/exofficio-cartel-investigation-2013.pdf> as well as the Council report on the implementation of the Recommendation of the Council on Fighting Bid Rigging in Public Procurement [C(2016)10].

⁶ Ibid.

SESSION III PART 2

SUGGESTED ISSUES FOR CONSIDERATION IN COUNTRY CONTRIBUTIONS

1. Does your authority use, or have plans to use, screens (economic analysis of bidding data) to prevent, or detect, bid rigging? If so, could you please describe the techniques and steps?
2. What are the challenges faced in design or the implementation of a screening programme?
3. What other proactive measures have been used and found successful?
4. How would you say your proactive cartel detection tools (such as screening) and reactive tools (such as leniency programmes) interact?