



COMMERCE COMMISSION

Media Release

Issued 3 September 2010/No 19

Guidelines on recognising and deterring bid rigging released by Commerce Commission

The Commerce Commission has today released three related resources to assist purchasers in both the public and private sectors in recognising and deterring bid rigging.

Guidelines and two accompanying fact sheets give purchasers information about how potential bid rigging can be spotted and reported. There are also tips on how tender processes can be designed so that bid rigging can be prevented.

“Bid rigging, or collusive tendering, happens when there is an agreement among all or some of the bidders as to which of them should win a bid or a contract. Bid rigging and other cartel conduct is prohibited by the Commerce Act,” said Kate Morrison, Commerce Commission General Manager, Enforcement. “Illegal collusive conduct damages the welfare of New Zealanders by raising prices and negatively affecting other factors such as choice, innovation, quality and investment.”

“The guidelines will be useful for those involved in public procurement as international experience shows that government bodies can be targets for cartels, said Ms Morrison. “However, the private sector also stands to benefit from knowing how to recognise and deter bid rigging, as open and effective competition achieves best value for money.”

The guidelines and two fact sheets can be downloaded from the Commission’s website at www.comcom.govt.nz/bid-rigging

Background

Bid rigging is a form of cartel conduct, which is prohibited by the Commerce Act 1986. Cartels are formed when companies collude with their competitors to increase or maintain prices, divide geographical territories, customers or projects between themselves, agree to limit production and/or engage in bid rigging. This is usually done in secret.

Cartels may consist of one or more anti-competitive agreements that direct how the involved parties will act (eg, a minimum price to be charged for a product or service, or no discounting) – or in some cases not act (eg, not bidding on a tender). An anti-competitive agreement can be very informal (a ‘nod and a wink’) and still remain illegal. Although there are different types of cartel, the aim of each is the same – to maximise the profits of cartel members, while maintaining the illusion of competition.

Penalties under the Commerce Act

Only the courts can rule if the Commerce Act has been breached and set appropriate penalties. If the Courts finds an individual or body corporate has breached the Commerce Act, the penalties that can be applied are:

- for an individual, a maximum of \$500,000; or
- for a body corporate,
- the greater of \$10 million, or
- three times the commercial gain (if this can be readily ascertained) or 10 per cent of turnover.

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