



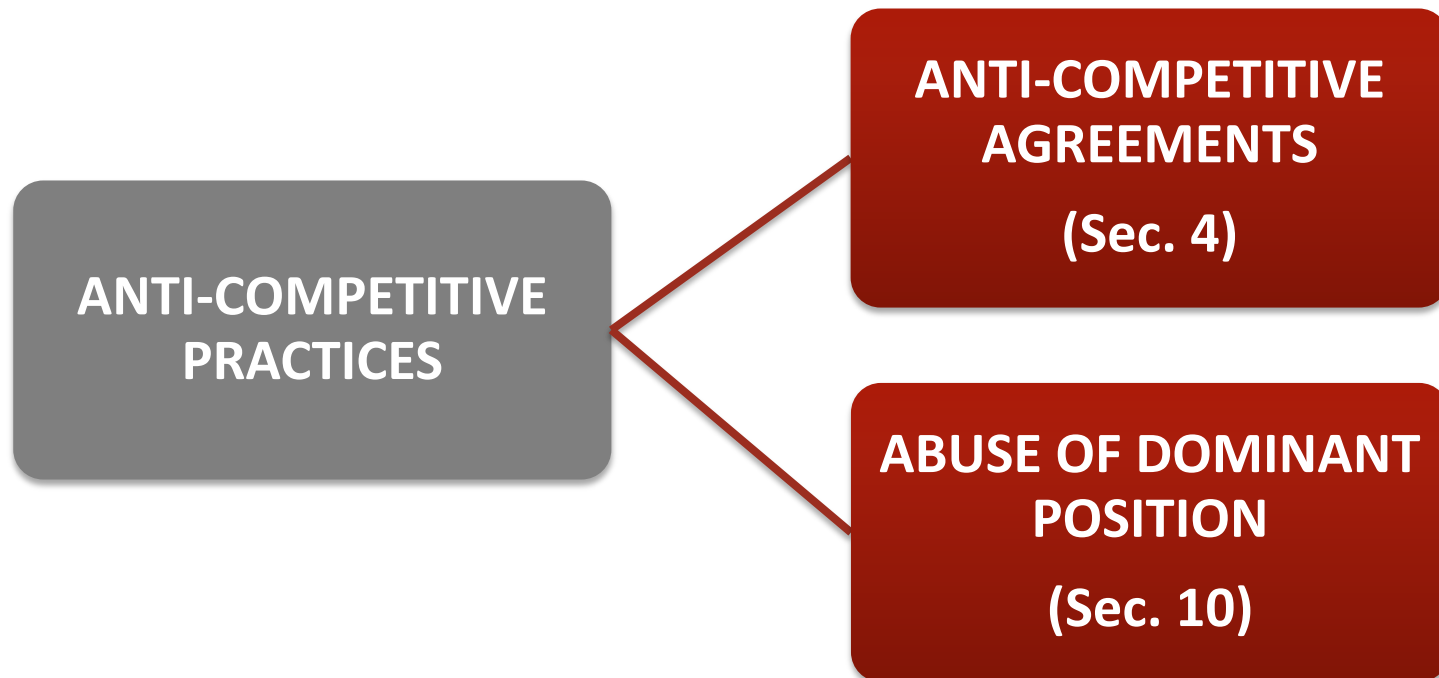
# Malaysia Competition Commission

# **OVERVIEW OF BID RIGGING UNDER THE COMPETITION ACT 2010**

# SCOPE OF COMPETITION ACT 2010

**Applies to all commercial activities  
both within and outside of  
Malaysia that have negative or anti-  
competitive effects in any market in  
Malaysia**

# MAIN PROHIBITIONS OF THE COMPETITION ACT 2010



# ANTI-COMPETITIVE AGREEMENTS

## Competition Act 2010, section 4:

### PART II

#### ANTI-COMPETITIVE PRACTICES

#### Chapter 1

#### *Anti-competitive agreement*

#### **Prohibited horizontal and vertical agreement**

4. (1) A horizontal or vertical agreement between enterprises is prohibited insofar as the agreement has the object or effect of significantly preventing, restricting or distorting competition in any market for goods or services.

# ANTI-COMPETITIVE AGREEMENTS

## Competition Act 2010, section 4:

(2) Without prejudice to the generality of subsection (1), a horizontal agreement between enterprises which has the object to—

- (a) fix, directly or indirectly, a purchase or selling price or any other trading conditions;
- (b) share market or sources of supply;
- (c) limit or control—
  - (i) production;
  - (ii) market outlets or market access;
  - (iii) technical or technological development; or
  - (iv) investment; or
- (d) perform an act of bid rigging,

is deemed to have the object of significantly preventing, restricting, or distorting competition in any market for goods or services.

# Agreement? Enterprise?

- **Agreement** : any form of contract, arrangement or understanding, whether or not legally enforceable, between enterprises, and includes a decision by an association and concerted practices
- **Enterprise** : any entity carrying on commercial activities relating to goods or services

## WHAT IS 'BIDDING'?

- Bidding are competitive processes used to achieve better value for money in procurement activities
- Bidding can be organised in a variety of different ways – open bids, sealed bids etc





## WHAT IS 'BID RIGGING'?

- Any agreement (written or oral) between bidders that limits or reduces competition in a tender
- The agreement may be between a bidder and a potential bidder that does not actually submit a bid
- The bidder agree amongst themselves who should win the tender and at what price



## **BID-RIGGING = HARD-CORE CARTEL?**

- Under the Malaysian Competition Act 2010, bid rigging is considered as hard-core cartels
- As a result, Section 4(2) of the Competition Act 2010 **deems** these types of agreements to have the **object** of significantly preventing, restricting or distorting competition. This means that MyCC does not have to prove that the agreement has an **anti-competitive effect**

## EFFECTS OF BID-RIGGING

- **Short term**

- Contract prices remain high. Procurement agencies are forced to pay unnecessary expenses
- Impediment to efficient allocation of resources

- **Long term**

- Companies no longer need to compete with each other
- Preservation of inefficient companies and industries
- Quality of products may not be proportionate with costs
- Inefficient and improper use of tax money



# TYPES OF BID RIGGING

**COVER BIDDING**

**BID  
SUPPRESSION**

**BID  
WITHDRAWAL**

**BID ROTATION**

**NON-  
CONFORMING  
BIDS**



# TYPES OF BID RIGGING

<b>COVER BIDDING</b>	Where competitors choose a winner and everyone but the winner deliberately bids above an agreed amount to establish the illusion that the winner's quote is competitive
<b>BID SUPPRESSION</b>	Where competitors agree not to tender to ensure that the pre-agreed participant will win the contract
<b>BID WITHDRAWAL</b>	Where competitors withdraw its winning bid so that an agreed competitor will be successful instead
<b>BID ROTATION</b>	Where competitors agree to take turns at winning tender, while monitoring their market shares to ensure they all have a predetermined outcome profit
<b>NON-CONFORMING BIDS</b>	Where competitors deliberately include terms and conditions that they know will not be acceptable to the client

## ESTIMATED PUBLIC PROCUREMENT LEVELS IN ASIA

Some examples :

- **MALAYSIA** – up to 25% of GDP
- **PHILIPPINES** – up to 29% of national budget
- **INDIA** – up to 30% of GDP
- **INDONESIA** – up to 30% of national budget
- **SINGAPORE** – 4% of GDP

Sources : OECD

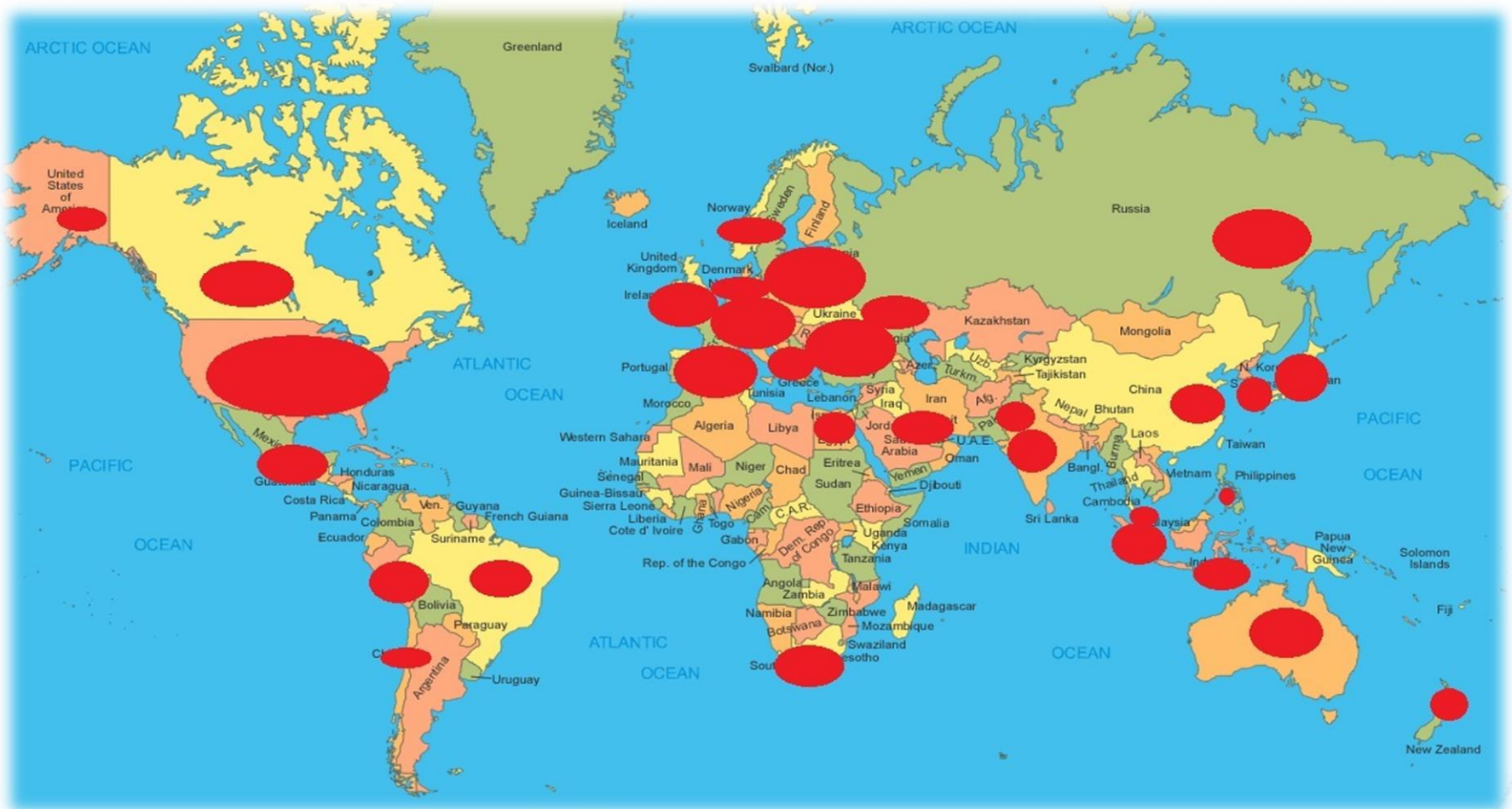
# POINTS TO PONDER

- Bid rigging can occur in any country and in any market
- Bid rigging significantly increases prices of goods and services up to 20% more
- Public procurement typically accounts for approximately 10-25% of GDP in most countries
- Potential wastage of tax payer can be significant





# BID RIGGING- AROUND THE GLOBE





## BID RIGGING CASE EXAMPLE :

### Korean Fair Trade Commission v Marine Hose Manufacturers

**INDUSTRY:** Oil & Gas

**COMPANIES:** Bridgestone Corporation, Yokohama Rubber Company, Dunlop Oil & Marine Ltd, Trelleborg Industrie SAS, Parker ITR Srl, Manuli Rubber Industries SpA,

**TYPE(S) OF BID RIGGING:** Bid Rotation

**PENALTY:** 557-million-Won



## BID RIGGING CASE EXAMPLE :

### Japan Fair Trade Commission v Automotive Parts Manufacturers

**INDUSTRY:** Automotive

**COMPANIES:** Honda Motor Co, Suzuki Motor Corporation, Nissan Motor Co and Nissan Shatai Co, Denso Corporation, Calsonic Kansei Corporation, T.RAD Co. Ltd.

**TYPE(S) OF BID RIGGING:** Bid Suppression

**PENALTY:** 3.3 billion USD



# BID RIGGING CASE EXAMPLE :

## European Commission v District Heating Pipe Cartel

**INDUSTRY:** Construction

**COMPANIES:** ABB, Løgstør, Henss/Isoplus, Tarco, Pan-Isovit, Dansk Rør, Brugg, KWH, Sigma, Ke-Kelit

**TYPE(S) OF BID RIGGING:** Cover Pricing

**PENALTY:** 92.21 million EURO



# FIGHT AGAINST BID RIGGING – THE POSITIVE EFFECTS

<b>JAPAN</b>	Prices across 18 tenders declined by approximately <b>20%</b> after competitive bidding
<b>SOUTH AFRICA</b>	Prices of health care products declined by approximately <b>27%</b> after antitrust intervention
<b>KOREA</b>	The investigation into graphite case is estimated to have prevented the economic loss of <b>183.7 billion won</b> to domestic companies
<b>PAKISTAN</b>	<b>USD 3.1 million</b> savings for the Karachi Water and Sewerage Board
<b>EUROPE</b>	Implementation of the EC Directive on public procurement in the period between 1993 and 2002 generated cost savings of between <b>EUR 5 billion</b> and <b>EUR 25 billion</b>
<b>GUATEMALA</b>	<b>43%</b> savings in the cost of purchasing medicines

# PENALTY BY MyCC

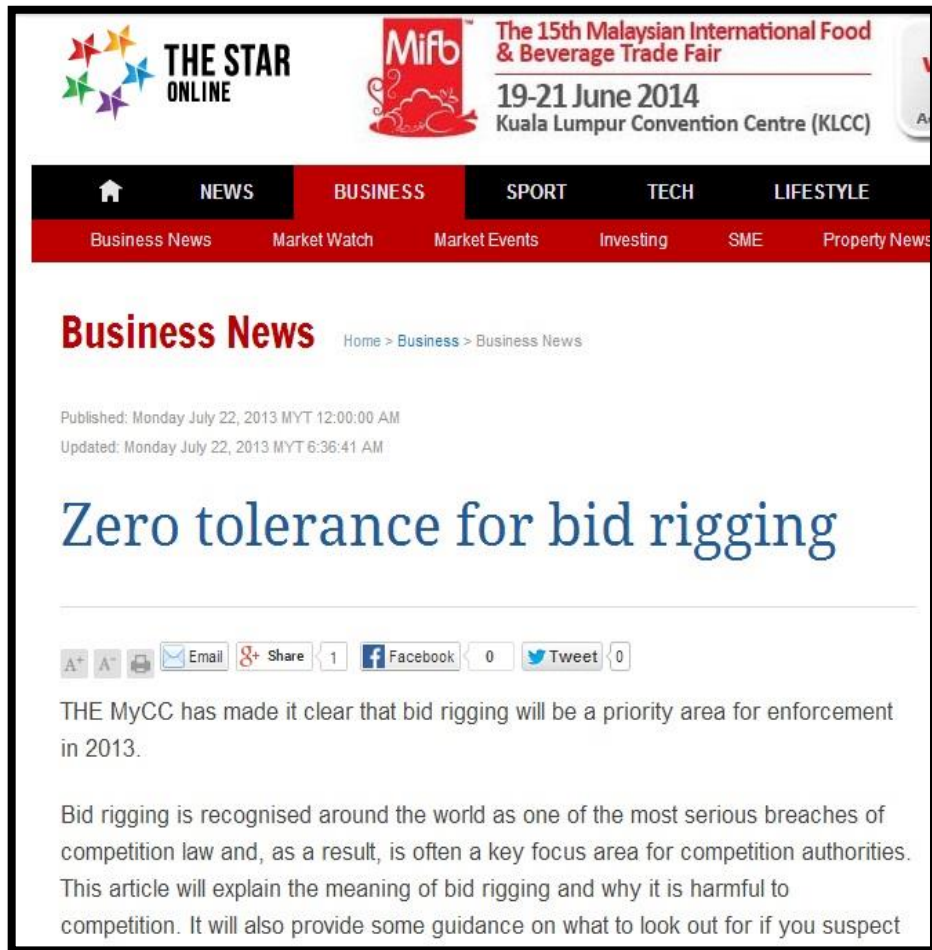
If there is an infringement, the Commission

- Shall issue a cease and desist order
- May specify steps to bring an end to the infringement
- May impose financial penalty:

**MAXIMUM 10 % OF THE  
WORLDWIDE TURNOVER**



## MyCC'S INITIATIVES ON BID RIGGING



**THE STAR ONLINE**

**Mifb** The 15th Malaysian International Food & Beverage Trade Fair  
19-21 June 2014  
Kuala Lumpur Convention Centre (KLCC)

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## Zero tolerance for bid rigging

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THE MyCC has made it clear that bid rigging will be a priority area for enforcement in 2013.

Bid rigging is recognised around the world as one of the most serious breaches of competition law and, as a result, is often a key focus area for competition authorities. This article will explain the meaning of bid rigging and why it is harmful to competition. It will also provide some guidance on what to look out for if you suspect

1 Cover pricing - where Bidder A shares its proposed bid price so that Bidder B can price higher to ensure that Bidder A wins the contract.

1 Bid suppression - where Bidder A agrees to suppress his bid (either by not bidding or withdrawing his bid) so that Bidder B can win the contract.

1 Bid rotation - where Bidder A and Bidder B both bid but take it in turns to submit the lowest priced bid to win the contract.

1 Bid withdrawal - Bidder A withdraws its bid to leave Bidder B as the only bidder.

1 Non-conforming bids - Where a bidder deliberately submits a bid that does not comply with the specifications of the tender requirements.

## MyCC'S INITIATIVES ON BID RIGGING

### HOW TO FIGHT BID RIGGING EFFECTIVELY

- Work for competition agencies
  - ✓ Effective cartel law and regulation
  - ✓ Effective leniency program
  - ✓ Effective enforcement procedures and institution
  - ✓ Effective sanctions
- Work for procurement agencies
  - ✓ Raise awareness of procurement officials and bidders concerning the risk of bid rigging (checklist and guidelines)

## **MyCC's TV Commercial on Bid Rigging**



## MyCC'S INITIATIVES ON BID RIGGING

- By launching new guidelines entitled “**HELP US DETECT BID RIGGING**”
- These guidelines are to provide point of reference to the public and private sector regarding bid rigging
- It also explains types of bid rigging, possible signs of bid rigging, and ways to reduce risk of bid rigging
- Therefore it is vital for all parties to work together with MyCC to reduce and finally cut down bid rigging activities in Malaysia.



## WAYS TO REDUCE RISK OF BID RIGGING

- **Develop prior information about the market**
  - Collect information on potential suppliers and recent price changes or substitutes for the items and services.
- **Encourage participation in the procurement process**
  - Streamline tender procedures across time and products and allow adequate time for suppliers to prepare and submit a bid.
- **Avoid predictability in tender process**
  - A comprehensive definition of the need is a key to good procurement
- **Reduce opportunities for communication among bidders**
  - Keep bidders information secret, use reference numbers rather than names and avoid potential bidders face-to-face in pre-bid meetings
- **Provide clear evaluating and award criteria**
  - Weigh criteria other than price aspect and do not favour incumbents

## **SIGNS OF POSSIBLE BID RIGGING**

- Receive identical bids or close amount of number from different companies
- There is some indication of a physical alteration of bids, particularly at the last minute
- The range of bids shows a clear gap between the winner and all others
- All companies submit high bids when the cost for work are less on paper
- Qualified bidders do not bid especially if they initially took steps to bid
- If a contract is re-bid because all initial bids are unacceptable, the bidders come back in the same order or some bidders fail to re-bid

## CONCLUDING REMARKS

- ✓ In realising the importance of Government procurement, the Malaysian Government has in fact, recognized the importance of Government procurement and endeavoured to improve its practices.
- ✓ The role of MyCC is to supplement the Government's effort in improving the procurement processes by combating anti-competitive practices such as bid rigging.
- ✓ Thus, co-operation between public procurement agencies and MyCC will be crucial in realizing the Government's efforts to create a healthy pro-competitive environment.

**THANK YOU**



**[www.mycc.gov.my](http://www.mycc.gov.my)**