Means of Bid-Rigging Detection

How to Detect Bid-Rigging in Public Procurement in Korea

Workshop on Bid-Rigging in Public Procurement

Putrajaya, Malaysia, 23th June 2014

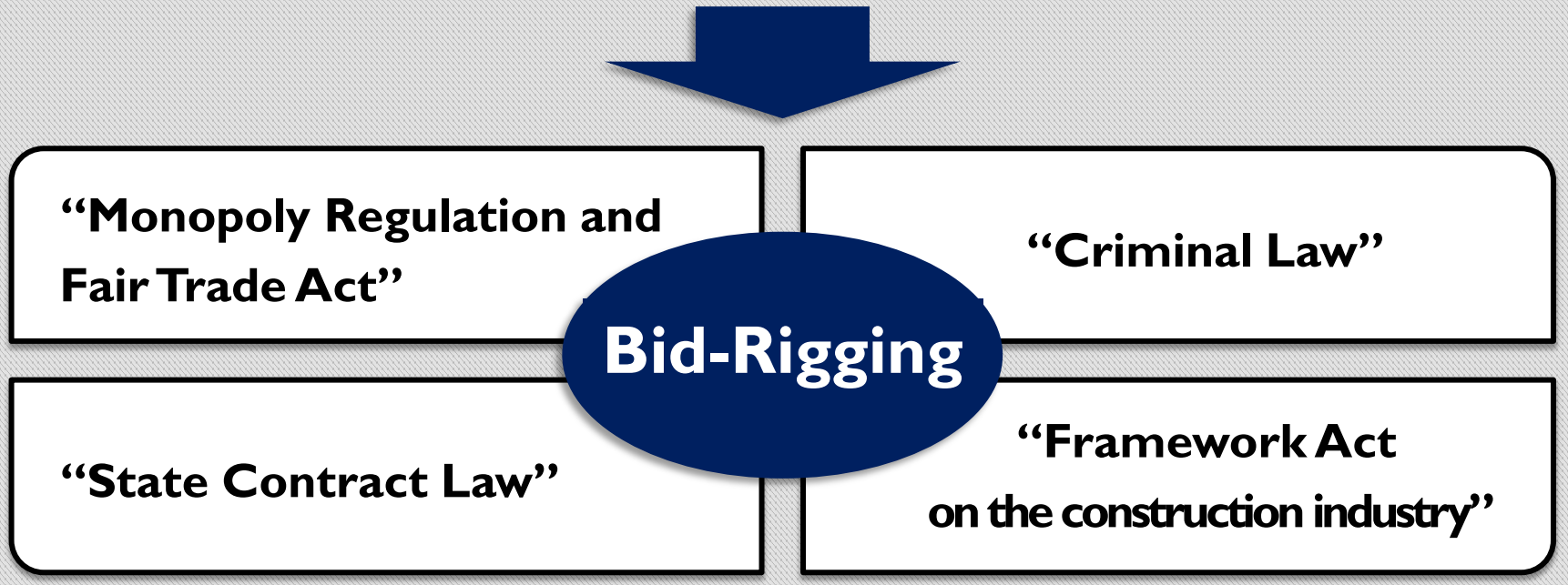
Hong-Geun Kim
Deputy Director, Cartel Policy Division
Korea Fair Trade Commission

Contents

I . General Features

1. Regulations

Cartel enforcement is one of the top priorities of competition law enforcement
Especially, "bid-rigging" as a hard core cartel is enforced strongly and by many related laws



1. Regulations

Monopoly Regulation and Fair Trade Act

Article 19 provides :

"No entrepreneur shall agree with entrepreneurs by contract, agreement, resolution, or any other means, to jointly engage in an act falling under the following subparagraphs, which unfairly restrict competition or allow other entrepreneur to perform such unfair collaborative act."

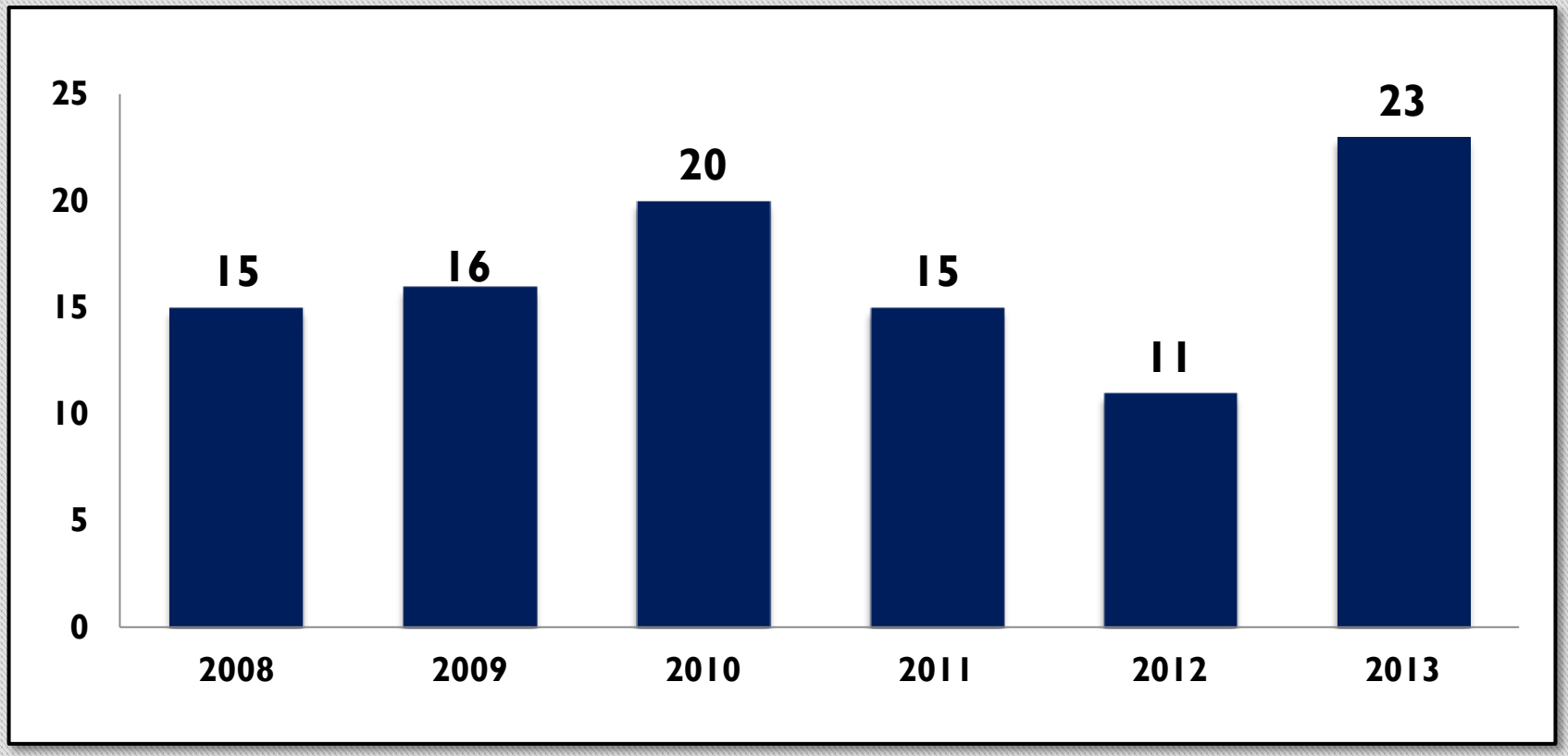
8. Deciding successful bidder, successful auctioneer, bidding price, highest price or contract price, and other matters prescribed by Presidential Decree

Guidelines for Fair Transactions in Bidding

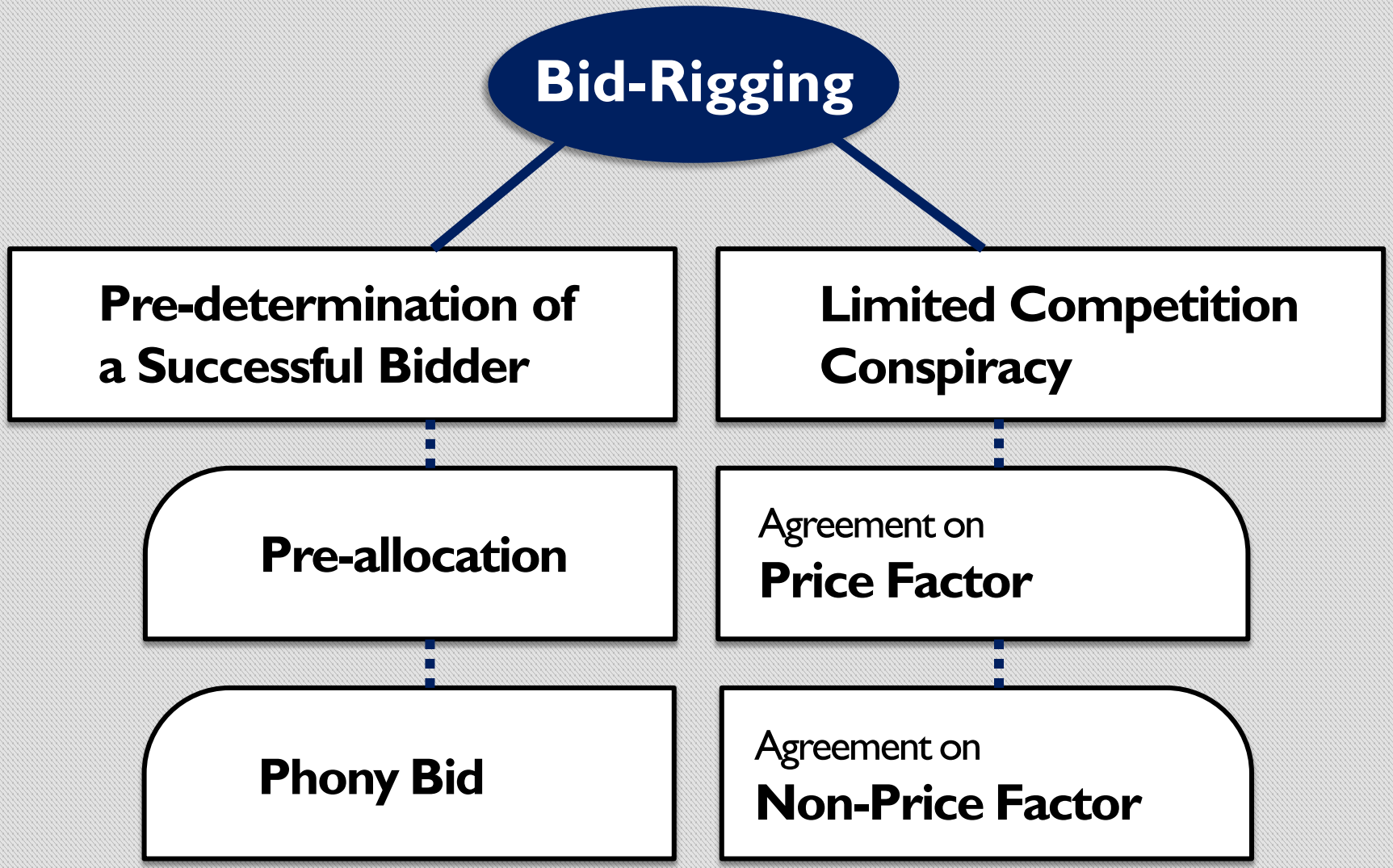
- ✓ Provides the list of bid-rigging examples
- ✓ Informs potential bid-rigging participants of applicable law enforcement

2. Trends

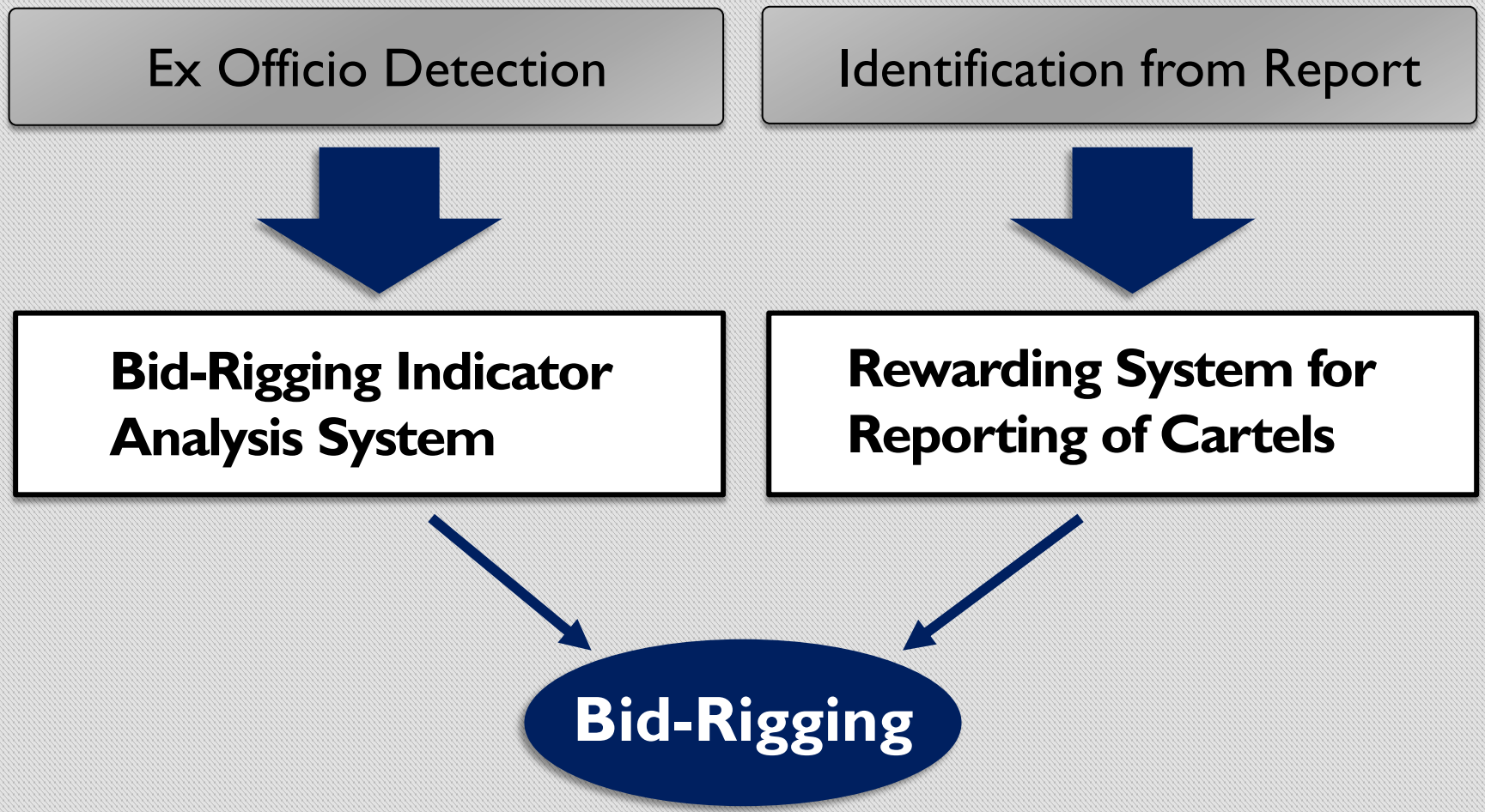
KFTC measures ordered against bid-rigging



3. Types


Bid-Rigging
Pre-determination of a Successful Bidder
Limited Competition Conspiracy
Pre-allocation
Agreement on Price Factor
Phony Bid
Agreement on Non-Price Factor

4. Detection Methods

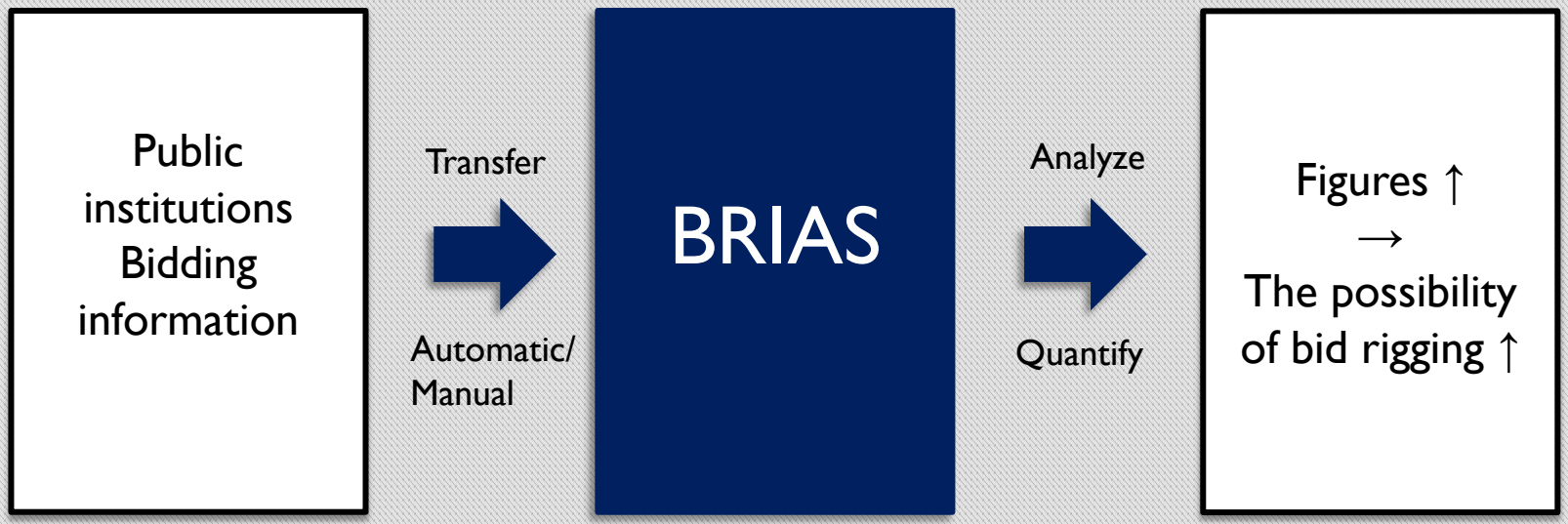


Ⅱ. Bid-Rigging Indicator Analysis System

I. Overview

BRIAS (Bid-Rigging Indicator Analysis System)

- ✓ Analyze and quantify the bidding information
- ✓ High figures means high possibility of bid-rigging



2. History

- ✓ **2006 :** The KFTC developed BRIAS / Public Procurement Service's bidding
- ✓ **2007 :** Legal ground was formulated / four major public enterprises
- ✓ **2008 :** Central administrative bodies, local governments and state enterprises
- ✓ **2013 :** automatically receive the information from PPS's foreign procurement system

3. Operation Mechanism

Example : Construction of Han Gang Bridge

Score		Weight		Score × Weight
① Forms of bidding : 7	×	① Forms of bidding : 1.3	=	① Forms of bidding : 9.1
② Number of bidders : 8		② Number of bidders :0.7		② Number of bidders :5.6
③ Number of failures in bidding : 9		③ Number of failures in bidding : 1.8		③ Number of failures in bidding : 16.2
④ Contents of bidding practice : 6		④ Contents of bidding practice : 1.9		④ Contents of bidding practice : 11.4

Gross Score : 42.3

4. Case

Seoul Subway Line 7 Extension Construction

- ✓ Order : **PPS in 2004**
- ✓ Bidding Method : **Alternative tender**
- ✓ Budget : **1,040 billion won**
- ✓ Number of Construction Sites : **6 (701~706)**

Detection : BRIAS

701	702	703	704	705	706
"A"	"B"	"C"	"D"	"E"	"F"
90	90.5	95	82.5	93	93

5 sites
Over 85

4. Case

Findings

- ✓ Documents that shows each construction districts matched with the 6 construction companies respectively
- ✓ Reports that explains the existence of communication among the companies

Anti-trust Claims

6 companies

- entered into horizontal agreement
- allocated the contracts
- maintained the superficial appearance of a competitive bidding

Ⅲ. Rewarding System for Reporting of Cartels

I. Overview

Rewarding System for Reporting of Cartels

- ✓ It is the system that gives rewards to those who reported unlawful behaviors and submitted the evidence
- ✓ There are about 50 similar reward systems in Korea

Examples of Reward System

Subject	Institution
Illegal Financial Brokers	Small and medium Business Administration
Distribution of illegal food	Ministry of Food and Drug Safety
Traffic violation	District police station
Tax evasion	National Tax service
Poaching	Ministry of Environment

2. Compare to Leniency

	Reward system	Leniency program
Subjected behaviors	7 violation of the Korea Competition Act including Cartel	Cartels only
Entities who can report	Any entity except for bid riggers and public officials investigating the case	Bid-riggers
	only the first applicant rewarded	Up to the second applicants
Effect	Reward money	Exemption or reduction of remedies, surcharges and accusations

3. Operation Mechanism

Reward = First Reward × Adjustment Ratio

Level (Ratio)	Surcharge	First Reward
1 (10%)	$0 ~ $0.45 mil.	$45,000
2 (5%)	$0.45 mil. ~ $1.8 mil.	$67,500
3 (1%)	$1.8 mil. ~	$α
Total		$112,500 + α

×

Level of evidence	Ratio
Highest	100%
High	80%
Middle	50%
Low	30%

4. Case

Incheon Subway Line 2 Construction

- ✓ Order : **PPS in 2009**
- ✓ Bidding Method : **Turn-Key Base**
- ✓ Budget : **1,261 billion won**
- ✓ Number of Construction Sites : **16 (201~216)**

Detection : Report

- ✓ Report of cartel of just one site. Submit no objective evidence but only statement
- ✓ Extension to all of 16 site by analyzing report

4. Case

Findings

- ✓ Reports, memos and digital files that explains the existence of communication among the companies
- ✓ Circumstantial evidences like cross-phony bidding, minor design, many memos mentioned non-competitive

Anti-trust Claims

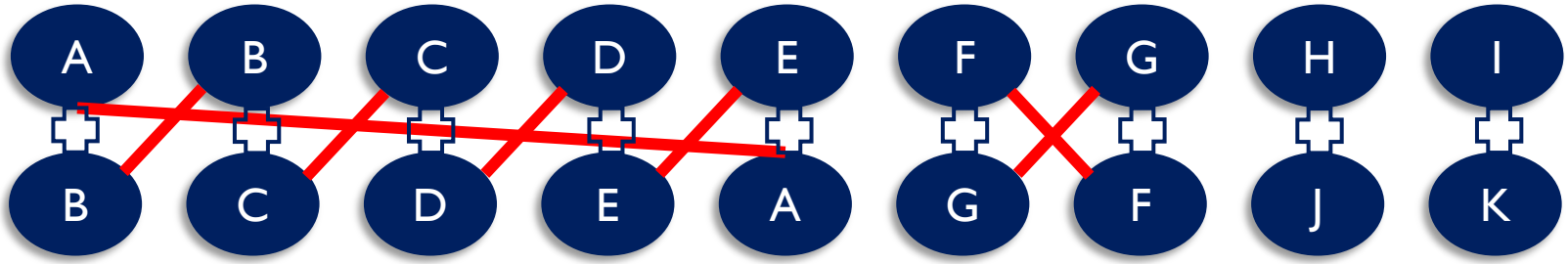
21 companies

- entered into horizontal agreement
- allocated the contracts
- maintained the superficial appearance of a competitive bidding

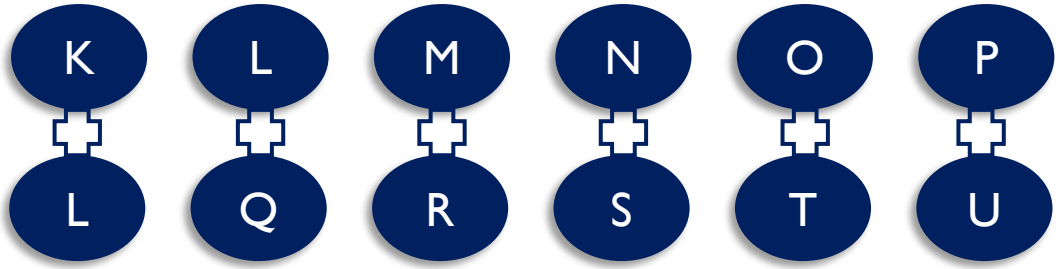
4. Case

Agreement

✓ 9 majors



✓ 6 middles



Ⅳ. Closing

Closing

But hard to find cartels nowadays

Immediate Discard of Evidence • Learning effect • FTC, prosecutor's office, the board of audit, etc.	**Digitalized Documents & Outsourcing** • Understanding IT system • "Server is not here" ex. cloud computing
Personal Connection • Leniency gets weak esp. Asian cultural background • Gov't-inspired bid-rigging	**Legal Issues on Investigation** • Limited legal ground for investigation • Lawyers getting smarter

Thank you for your attention

redot@ftc.go.kr