



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
PRACTICES**

**ANTI-COMPETITIVE
AGREEMENTS
(Sec. 4)**

**ABUSE OF DOMINANT
POSITION
(Sec. 10)**

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?

- 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?

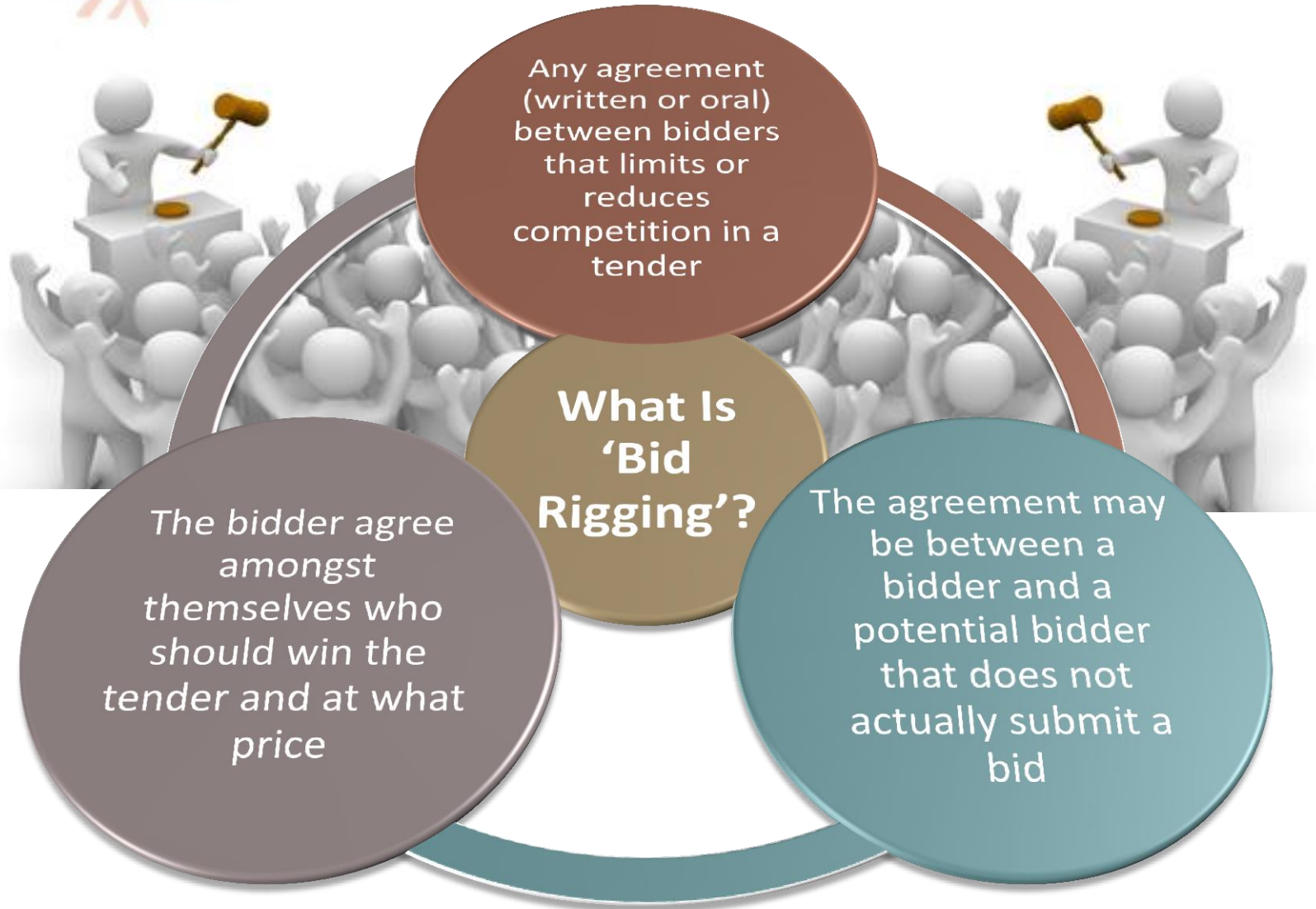
- any entity carrying on commercial activities relating to goods or services



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





Bid-rigging = Serious prohibition?



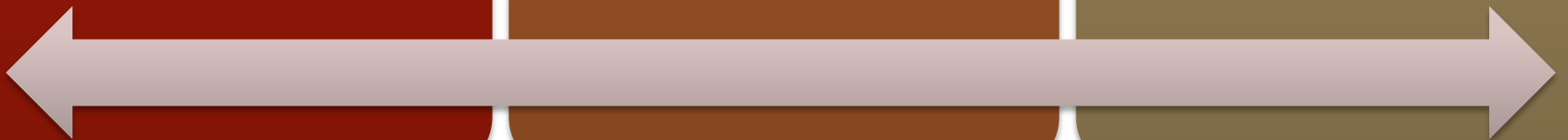
Under the Malaysian Competition Act 2010, bid rigging is considered as serious prohibition



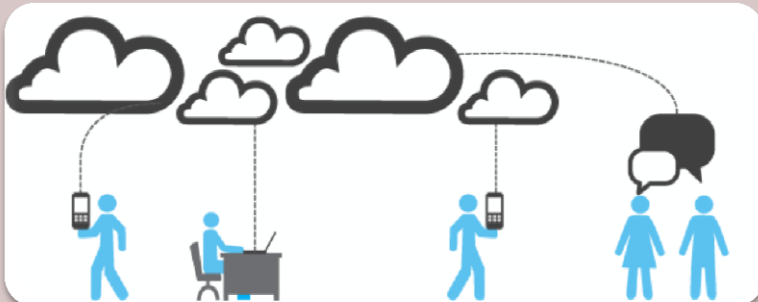
As a result, Section 4(2) of the Competition Act 2010 **deems** these types of agreements to have the **object** of significantly preventing, restricting or distorting competition.



This means that MyCC does not have to prove that the agreement has an **anti-competitive effect**



EFFECTS OF BID-RIGGING



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



Short term

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

TYPES OF BID RIGGING

**COVER
BIDDING**

**BID
SUPPRESSION**

**BID
WITHDRAWAL**

BID ROTATION

**NON-
CONFORMING
BIDS**



TYPES OF BID RIGGING

COVER BIDDING

- 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

BID SUPPRESSION

- Where competitors agree not to tender to ensure that the pre-agreed participant will win the contract

BID WITHDRAWAL

- Where competitors withdraw its winning bid so that an agreed competitor will be successful instead

BID ROTATION

- Where competitors agree to take turns at winning tender, while monitoring their market shares to ensure they all have a predetermined outcome profit

NON-CONFORMING BIDS

- Where competitors deliberately include terms and conditions that they know will not be acceptable to the client

ESTIMATED PUBLIC PROCUREMENT LEVELS IN ASIA



INDIA:
up to 30% of GDP

PHILIPPINES:
up to 29% of national
budget

SINGAPORE:
4% of GDP

MALAYSIA :
up to 25% of GDP

INDONESIA:
up to 30% of national
budget

Sources : OECD

**POINTS
TO
PONDER**

Bid rigging can occur in any country and in any market

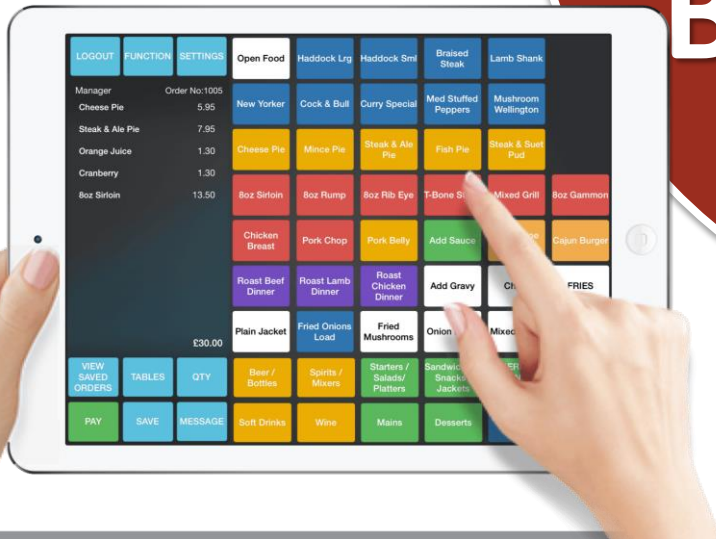
Bid rigging significantly increases prices of goods and services up to 20% more

Public procurement typically accounts for approximately 10-25% of GDP in most countries

Potential wastage of tax payer can be significant



DECIDED CASES ON BID RIGGING



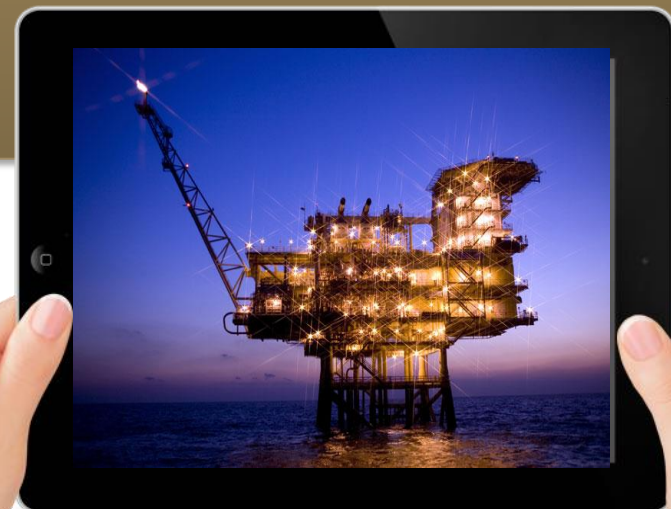
CASE 1: Korean Fair Trade Commission v Marine Hose Manufacturers

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



CASE 2:**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



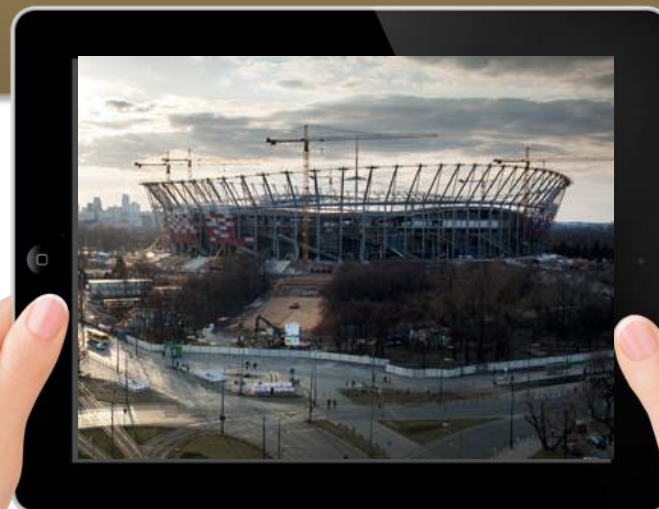
CASE 3: European Commission v District Heating Pipe Cartel

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

- Prices across 18 tenders declined by approximately 20% after competitive bidding

JAPAN



- Prices of health care products declined by approximately **27%** after antitrust intervention

SOUTH AFRICA



- **43%** savings in the cost of purchasing medicines

GUATEMALA



- **USD 3.1 million** savings for the Karachi Water and Sewerage Board

PAKISTAN



- Implementation of the EC Directive on public procurement in the period between 1993 and 2002 generated cost savings of between **EUR 5 billion** and **EUR 25 billion**

EUROPE



- The investigation into graphite case is estimated to have prevented the economic loss of **183.7 billion won** to domestic companies

KOREA



PENALTY BY MyCC

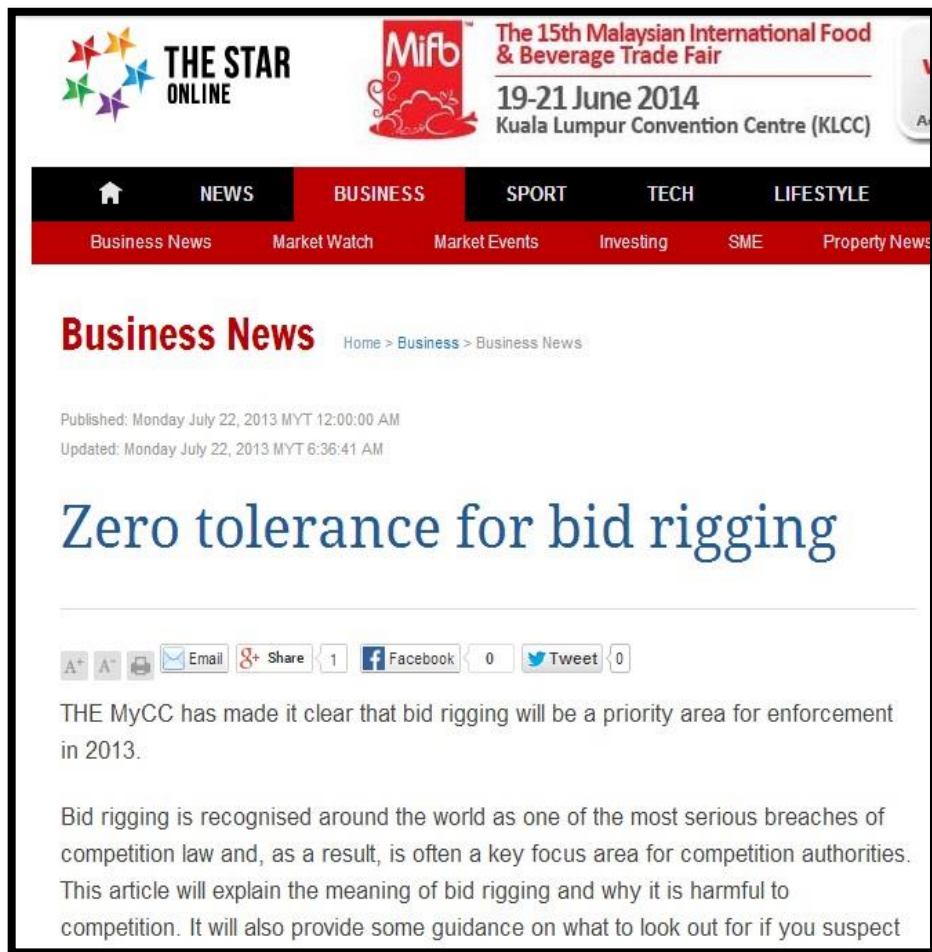
If there is an infringement, the Commission

- 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.

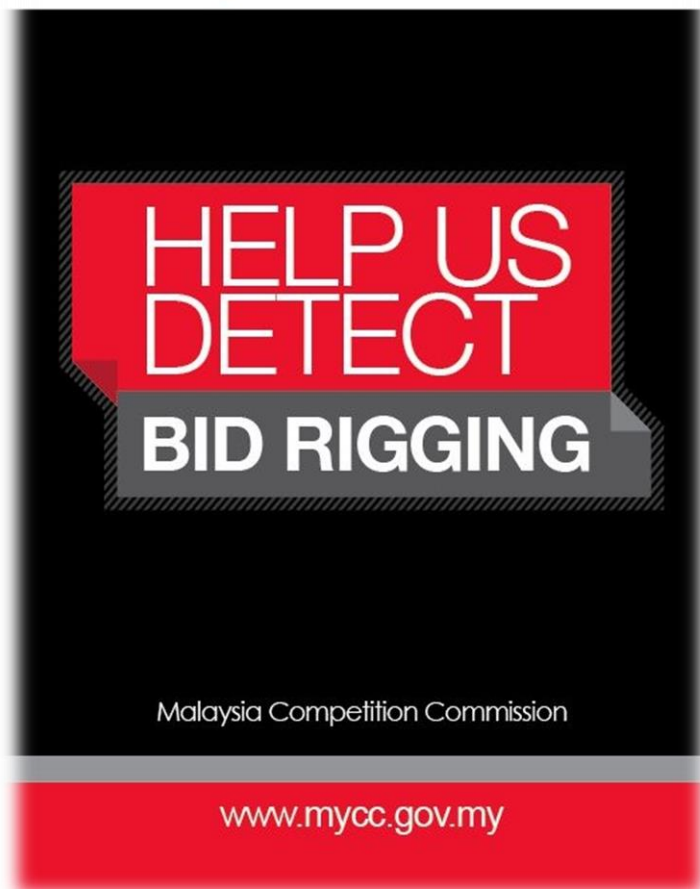
MyCC'S INITIATIVES ON BID RIGGING

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 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.



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