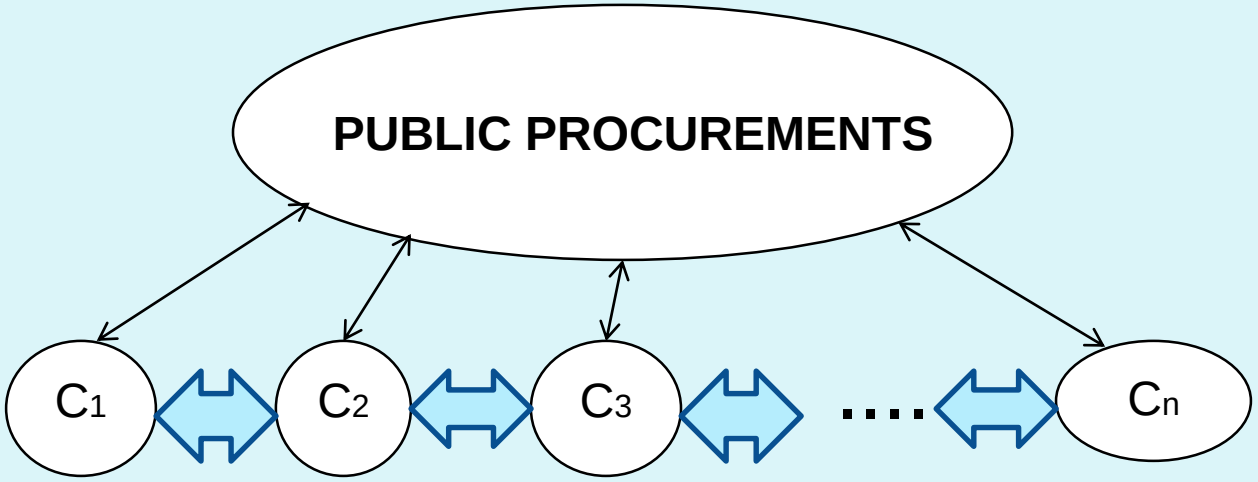
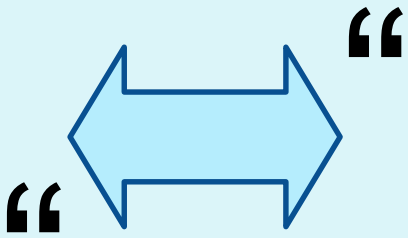
COMPETITION AND PUBLIC PROCUREMENT

Bogdan CHIRIŢOIU
President of the Romanian Competition Council



From the intention phase, the participating companies start a process of "knowing the environment" of a tender, the final target being the awarding of a higher percentage of the contract value.



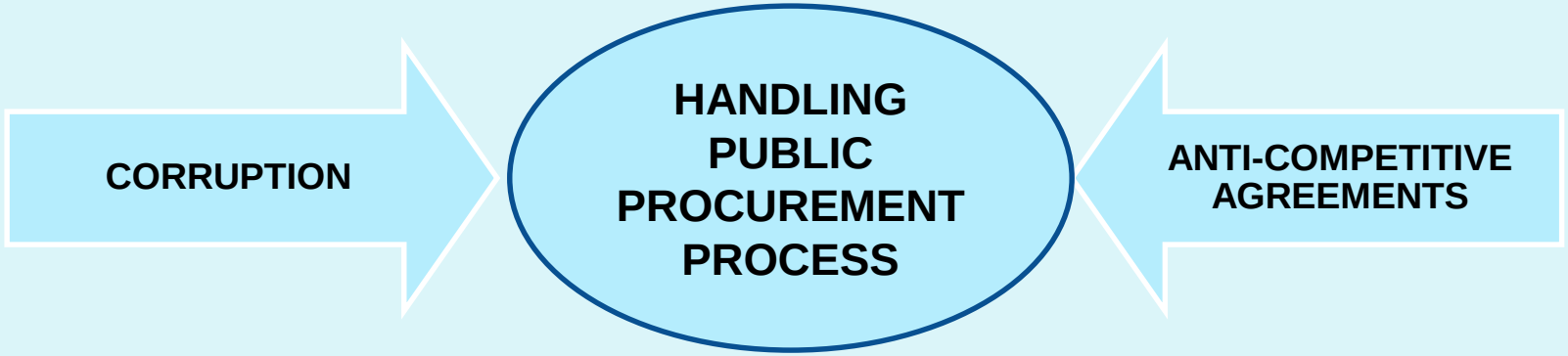
The more "intense" the **communication** between companies, the more likely they are to reach *bid rigging*

THE ROLE OF THE COMPETITION AUTHORITIES

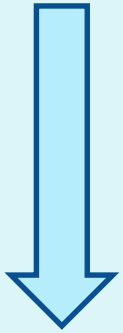
- policies to increase competition, liberalize markets, increase transparency and eliminate restrictions / barriers to market entry;

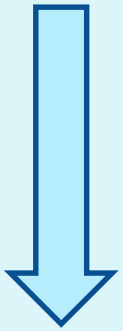
- sectorial studies to detect the distortions that exist on different markets

BID RIGGING


CORRUPTION
HANDLING PUBLIC PROCUREMENT PROCESS
ANTI-COMPETITIVE AGREEMENTS

THE OBJECTIVE OF COMPETITION AUTHORITIES





Real competition between companies

obtaining a correct price by the state

THE INTERVENTION OF THE ROMANIAN COMPETITION COUNCIL IN PUBLIC PROCUREMENT

- PREVENTING BID RIGGING
- SANCTIONING BID RIGGING

PREVENTING BID RIGGING

- the development of guides:

  - *Guide on detecting and discouraging anti-competitive practices in public procurement procedures*;

  - *Guide for following the competition rules in the situation of participation in the form of association to a public procurement procedure*;

- study on lock-in effect in public procurement;
- participation at seminars, workshops, conferences;
- ensuring a legal framework in public procurement that does not favor the anti-competitive agreements;
- the exclusion of suspected economic operators from the awarding procedure

THE BID RIGGING MODULE

Objective

ensuring a normal competitive environment on the public procurement market through institutional cooperation

Procedure

**quick exchange of information,
at an expert level,
in order to identify bid rigging**

SANCTIONING BID RIGGING

- conducting preliminary examinations in order to detect the anti-competitive practices;
- identifying and monitoring the markets with structures that are prone to collusion;
- investigating the anti-competitive facts committed by the bidders in public procurement procedures

BID RIGGING INDICATORS (usual)

- identical errors in tender documents or letters submitted by various companies;
- competitors submit identical offers or the presented prices increase uniformly;
- price increases cannot be explained through rising the costs;
- the unsuccessful offers are much higher than the winner's offer; the companies could use a closed bidding scheme;
- the same participant is most often the one who submits the most advantageous offer;
- a geographical allocation of the winning offers can be determined because certain companies submit offers with which they only win in certain areas;
- each participant, one at a time, seem to win some of the tenders;
- two or more companies submit a joint bid, although at least one of them could have participated individually in the respective tender

BID RIGGING CASES IN ROMANIA

The market for construction-assembly works for natural gas pipelines - national market

- 13 companies achieved an unique and continuous agreement and / or concerted practice through which they divided the pipeline construction works for natural gas transportation and the related works, acquired in 2011 by S.N.T.G.N. Transgaz S.A. through public procurement procedures.
- The Romanian Competition Council has collaborated with DIICOT, which provided the evidence needed to trigger the investigation.

- The applied fine: approximately 2.2 million euros

BID RIGGING CASES IN ROMANIA

The trading market of winter maintenance services on national roads and highways - regional market

- The organized open tenders were either canceled, as a result of the submission of non-compliant / unacceptable offers, or suspended, as a result of the submitted complaints, thus reaching the award of services through negotiation procedures.
- Although the involved companies have shown an increased interest in the open tender procedures, within each lot being submitted several offers, following the suspension or cancellation of the offers, the negotiations took place in the absence of competitive pressure. Thus, the companies either submitted the offers without competing or submitted the offers for several lots, but the negotiation took place without the participants actually competing.
- The applied fine : approximately 1,1 million euros

BID RIGGING CASES IN ROMANIA

The market for the supply of dairy products through the “Croissant and Milk Program" - local market

- During the public procurement procedures: in the first stage, five companies submitted offers for all the lots, and in the second stage – the electronic tender, they divided the lots for which they were bidding. Specifically, during each offer, each company has chosen 1 or 2 lots for which he has acted, the other companies not offering for them. In this way, they only placed the offers for the lots they knew they would win, thus eliminating the competition.
- The applied fine : approximately 1,9 million euros (2 of the 5 companies acknowledged the fact)