

Bid Rigging – Enforcement Efforts of the Bundeskartellamt

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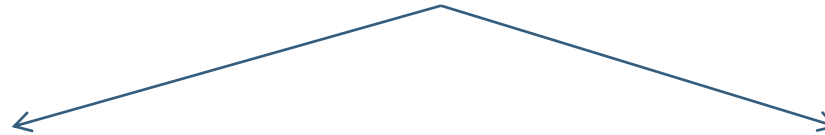


German Legal Framework

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Competition in public procurement

- both contracting parties have to be addressed -



Opening up of the public procurement procedures for competition

- => by public procurement authorities
- is one of the goals of EU directives and German procurement law
- rules for design and conduct of procurement procedures

Prevention of the distortion of competition

- => by bidders
- bid rigging is prohibited and penalised by
 - (EU and German) cartel law
 - German criminal law

Cases

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Sectors where bid-rigging has occurred:

- street markings
- combat boots
- building materials (concrete)
- house-moving services for military personnel
- large steam generator vessels
- fire engines
- turntable ladders for fire engines
- high voltage power transformers
- waste collection services
- railway tracks

The Fire Engine Case

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- **Four manufacturers of fire-fighting vehicles involved**
- **Price-fixing and quota agreements**
- **Implemented by thousands of bid rigging agreements**
- **Concerning almost all German municipalities (>10.000)**



The Fire Engine Case

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Initial suspicion

- Procurement authority noticed
 - suspicious market movements
 - exchange of staff among manufacturers
- Anomymous letter described
 - Detailed information about organisation



The Fire Engine Case

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Outcome

- >20 Mio. Euro fine for manufacturers
- Fine/prison sentence for managers
- Removal of managers
- Municipalities seek restitution
 - Infringement proved by decision of Bundeskartellamt (legally binding)
 - Clause in public contracts stipulates the amount of damage

Enforcement – some challenges in practice

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(P) Mix of competences and procedures due to criminalization

- ⇒ Public prosecutor competent for prosecution of individuals / competition authority competent for prosecution of companies
- ⇒ No leniency programme applicable concerning prosecution of individuals

Enforcement – some challenges in practice

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(P) Threshold for search warrant

⇒ Indications/tips, e.g. by

- Leniency applicants
- Other national enforcement authorities
- Procurement tribunals
- Anonymous whistle-blowers
- Procurement authorities

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Thank you for your attention!



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