



What can we do about alleged Cartel activity? - Improving Competition Act Compliance

Leading Commissioning Professionals

Doug Forbes, Director, Institute of Commissioning Professionals

020 8886 2462

www.commissioning.org.uk
Doug.forbes@iocp.co.uk



Why Commissioning Professionals?

- What do most people associate with Commissioners?

- Pith Helmet



- Door Staff



Vision – A Heavyweight Institute

- Punching above its weight
- £110bn+ of Commissioned Services
- Commissioners need to Network and learn from each other
- Education
- Ethics
- Commissioning needs promotion and understanding
- Probably 25000 will be involved in Commissioning. Another 65000 need to have an appreciation.



What is Commissioning?

- **“Commissioning means securing the services that most appropriately address the needs and wishes of the individual service user, making use of market intelligence and research, and planning accordingly.”**



What are Cartels?

- Groups which distort free and unfettered competition



Types of cartel activity

- Bid rigging or price fixing
- Cover pricing – bidding for a job with no intention of winning
- What is illegal is the discussion to ensure that prices are sufficiently high to ensure losing
- Also illegal is any attempt to share the surplus



The Competition Act 1998

- **The prohibition**
- **Agreements etc. preventing, restricting or distorting competition**
- agreements between undertakings, decisions by associations of undertakings or concerted practices which—
- may affect trade within the United Kingdom, and
- have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom



OFT Enquiry into Cover Pricing

- 112 Firms investigated
- Nearly 40 plead leniency
- Only allegations at this stage
- Majority of quoted firms not involved
- OFT cannot quantify the loss
- Not just Public Sector problems



What can be done to enforce Competition Compliance?

- Encourage firms to train staff and develop Competition Compliance policies
- Change staff handbooks
- Need to make staff aware of their personal liability
 - Unlimited personal liability
 - Imprisonment
- Secure valid contestability data
- Use experienced advisers



What happens with Health and Safety?

- PQQs ask for policies
- Accident records
- Responsible director



What should your officers be doing in the PQQ?

- Ask for a copy of their Competition Act compliance policy
- Ask for the responsible Director?
- Ask for the firm's whistleblowing/ confidant policy
- Seek guidelines on behaviour at social events
- Be critical about Anti-collusive tendering practice
- Apply contestability data



What does OFT say?

- **OFT spokesperson commented** - 'We would encourage procurers to ask questions about competition compliance to tenderers where appropriate'.



Is this just for Construction?