

**Comments by the *Business at OECD (BIAC) Competition Committee to the  
OECD Competition Committee*****Competition and Corruption in Public Procurement**

26 June 2026

**I. Introduction**

1. *Business at OECD* (BIAC) appreciates the opportunity to provide its views to the OECD Competition Committee roundtable discussion on Competition and Corruption in Public Procurement.

2. Building on previous BIAC submissions, the intersection between collusion and corruption in public procurement has been well-established.<sup>1</sup> Corruption and collusion are mutually reinforcing. BIAC reiterates its previous positions that corruption, in particular in public procurement, is contrary to the long-term interests of the business community. It is therefore essential to address the practical challenges faced by the respective authorities and firms to ensure effective collective enforcement.

3. The OECD's updated Guidelines for Fighting Bid Rigging in Public Procurement recognise that bid rigging can go hand in hand with other offences, including corruption and fraud.<sup>2</sup> The OECD's guidelines further state that competition authorities should cooperate with procurement teams within other authorities to assist in developing a regular training programme for procurement officials to be implemented in relation to bid rigging and cartel detection.<sup>3</sup> This is an essential step to ensuring cooperation between enforcement agencies to address both antitrust and anti-corruption issues.

4. A consistent message has been that corruption impacts growth. Meaningful enforcement provides a workable solution when (competition and anti-corruption) authorities strengthen and prioritise efforts collectively.<sup>4</sup>

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<sup>1</sup> OECD, *Collusion and Corruption in Public Procurement*, DAF/COMP/GF(2010)6 (Oct. 15, 2010), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2010/10/collusion-and-corruption-in-public-procurement\\_c8731b63/ef957f70-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2010/10/collusion-and-corruption-in-public-procurement_c8731b63/ef957f70-en.pdf).

<sup>2</sup> OECD, *OECD Guidelines for Fighting Bid Rigging in Public Procurement (2025 Update)* 11-12 (June 19, 2025), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/09/oecd-guidelines-for-fighting-bid-rigging-in-public-procurement-2025-update\\_127880ea/cbe05a56-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/09/oecd-guidelines-for-fighting-bid-rigging-in-public-procurement-2025-update_127880ea/cbe05a56-en.pdf). [hereinafter *OECD Bid Rigging Guidelines*].

<sup>3</sup> *Id.* at 14.

<sup>4</sup> OECD, *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development* (2015), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2015/03/consequences-of-corruption-at-the-sector-level-and-implications-for-economic-growth-and-development\\_g1g51392/9789264230781-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2015/03/consequences-of-corruption-at-the-sector-level-and-implications-for-economic-growth-and-development_g1g51392/9789264230781-en.pdf).

5. Taken together, these considerations underscore that tackling corruption in public procurement requires more than well-articulated frameworks. It demands coordinated, practical enforcement that bridges competition and anti-corruption mandates, supported by sustained institutional cooperation and capacity building.

6. Our submission on Competition and Corruption in Public Procurement is structured as follows: an overview of the market conditions which facilitate corruption and collusion in Section II; tools for effective enforcement and deterrence of collusion and corruption in public enforcement in Section III; inter-agency cooperation in Section IV; and the role of civic organisations and the press in enforcement of collusion and corruption in Section V.

## **II. Market Conditions and Factors Which Facilitate Corruption and Collusion**

7. One of the main conditions which facilitate corruption is a lack of transparency. Transparency across the entire procurement lifecycle is an important factor for effective procurement process, including the pre-tendering, tendering and post-award phases.<sup>5</sup> Transparent procurement processes in turn ensure that relevant stakeholders can assess and scrutinise the decisions of key decision makers. Absent this transparency and accountability, there is a heightened risk of corruption and collusion.<sup>6</sup>

8. Conversely, significant transparency can provide competitors with insights into the pricing and commercial strategies of their competitors and, therefore, have the concomitant effect of facilitating collusion.<sup>7</sup>

9. It is, therefore, imperative that public procurement processes find a balance between ensuring a sufficient degree of transparency to deter against corruption while ensuring that public bidding processes remain competitive. The OECD has published extensive recommendations and established best practice procedures aimed at promoting and maintaining transparency in public procurement, such as:

- recording decisions at each decision-making point, from needs assessments to end-payment;
- using technology to track and monitor compliance with public procurement processes; and
- utilising "one-stop-shop" type portals opposed to traditional and offline mediums.<sup>8</sup>

10. The prevalence of corruption in public procurement is also facilitated where state departments have weak internal controls or where procurement processes can be deviated by key decision makers.<sup>9</sup> Specifically, if (i) parties can identify who key decision makers are

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<sup>5</sup> OECD (2010), *supra* note 1, at 25.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> OECD, *OECD Principles for Integrity in Public Procurement* 22-23 (2009), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2009/03/oecd-principles-for-integrity-in-public-procurement\\_g1gh9fbe/9789264056527-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2009/03/oecd-principles-for-integrity-in-public-procurement_g1gh9fbe/9789264056527-en.pdf).

<sup>9</sup> *Id.* at 34.

and (ii) key decision makers have discretion to deviate from internal procedures, there is a heightened risk of corruption influencing procurement outcomes.<sup>10</sup> It is important for government departments to have effective anticorruption protocols and for States to have effective sanctions to deter corruption.<sup>11</sup>

11. As set out in more detail below, BIAC respectfully submits that there are a number of tools that competition and prosecutorial agencies may utilise to increase enforcement and deterrence of both corruption and collusion, including implementing effective corporate leniency and non-trial resolution policies and the blacklisting of firms and disqualification of directors from public procurement.

### **III. Tools For Effective Enforcement and Deterrence of Collusion and Corruption in Public Procurement**

#### **A. Corporate Leniency Policies and Non-Trial Resolutions**

12. Given the secretive nature of cartel and corrupt conduct, their identification and prosecution are inherently challenging for competition and prosecutorial agencies.<sup>12</sup> In those OECD Member States where hardcore cartel conduct also attracts criminal sanctions,<sup>13</sup> in addition to administrative penalties, these challenges are often exacerbated and, therefore, undermine deterrence efforts. In particular, the under-enforcement of criminal sanctions can be associated with the fact that the pursuit of criminal sanctions is resource-intensive and requires extensive evidence to meet the presumptively higher criminal standard of proof.<sup>14</sup>

13. It is for this reason that while hardcore cartel conduct may be a criminal offence, there is a general lack of criminal convictions by prosecutorial authorities.<sup>15</sup> This dynamic undermines the deterrent effect of criminal sanctions.

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<sup>10</sup> OECD, *Integrity in Public Procurement: Good Practice from A to Z*, 22-23 (2007), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2007/04/integrity-in-public-procurement\\_g1gh7e20/9789264027510-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2007/04/integrity-in-public-procurement_g1gh7e20/9789264027510-en.pdf).

<sup>11</sup> OECD, *Preventing Corruption in Public Procurement* 24 (2016), [https://baselgovernance.org/sites/default/files/2020-03/oecd\\_preventing\\_corruption\\_in\\_public\\_procurement\\_2016.pdf](https://baselgovernance.org/sites/default/files/2020-03/oecd_preventing_corruption_in_public_procurement_2016.pdf).

<sup>12</sup> OECD, Roundtable on Challenges and Co-ordination of Leniency Programmes – Note by BIAC, DAF/COMP/WP3/WD(2018)34 (May 23, 2018), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2018\)34/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2018)34/en/pdf) [hereinafter BIAC Leniency Note].

<sup>13</sup> Nineteen OECD Member States impose criminal sanctions against all forms of hard-core cartels, including bid-rigging, while another eleven Member States criminalise bid rigging specifically while subjecting other cartel activities to only administrative sanctions. *Fighting Bid Rigging in Public Procurement*, OECD, <https://www.oecd.org/en/topics/sub-issues/competition-enforcement/fighting-bid-rigging-in-public-procurement.html>.

<sup>14</sup> OECD, *Criminalisation of Cartels and Bid Rigging Conspiracies: A Focus on Custodial Sentences – Background Note by the Secretariat*, DAF/COMP WP3(2020)1, ¶¶ 25-26, 61-63, 136 (Apr. 22, 2020), [https://one.oecd.org/document/DAF/COMP/WP3\(2020\)1/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3(2020)1/en/pdf)

<sup>15</sup> Australia provides instructive examples of criminal cartel enforcement. In September 2022, the first individuals were sentenced for criminal cartel offences since cartel conduct was criminalised

14. BIAC respectfully submits that there is a need for competition and prosecutorial authorities to implement effective corporate leniency policies (CLP) and non-trial resolutions (NTR) to (i) identify collusive or corrupt practices in public procurement; and (ii) obtain sufficient evidence to sustain prosecutions of the collusive and/or corrupt practices against other implicated parties.

15. CLPs involve a submission to and cooperation with the respective competition authority by way of provision of evidence relating to cartel conduct by a firm that participated in such conduct. As noted in previous submissions to the OECD, BIAC maintains that CLPs remain the most effective tool that competition authorities have to detect and prosecute cartel conduct.<sup>16</sup> It is of significant concern that the OECD has documented in a study a sharp decline in CLP applications across surveyed jurisdictions (from 577 in 2015 to 210 in 2020) with a concomitant reduction in the number of cartel decisions globally.<sup>17</sup>

16. While BIAC has previously addressed the likely factors attributable to the decline of CLPs, the key factors can be summarised as including “private enforcement, the costs associated with multi-jurisdictional applications, and, ultimately, the inconsistency between leniency programmes across different jurisdictions and the lack of certainty created by enabling an effective confluence between administrative, private *and criminal enforcement*.”<sup>18</sup>

17. BIAC respectfully submits that the risk of criminal sanctions decreases the incentive for cartelists to approach competition authorities for a CLP application. There is a risk that

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in 2009, with four individuals receiving suspended prison terms for price-fixing of exchange rates and transaction fees in the money remittance sector. Press Release, Austl. Competition & Consumer Comm’n, First Individuals Are Sentenced for Criminal Cartel Conduct (Sept. 8, 2022), <https://www.accc.gov.au/media-release/first-individuals-are-sentenced-for-criminal-cartel-conduct>. In November 2022, an Australian pharmaceutical company, Alkaloids of Australia, and its former export manager were sentenced for criminal price-fixing cartel conduct. Press Release, Austl. Competition & Consumer Comm’n, Alkaloids of Australia and Its Former Export Manager Sentenced in Criminal Price Fixing Cartel (Nov. 29, 2022), <https://www.accc.gov.au/media-release/alkaloids-of-australia-and-its-former-export-manager-sentenced-in-criminal-price-fixing-cartel>.

In Canada, between 2024 and 2025, the Competition Bureau prosecuted seven corruption matters relating to public procurement, including bid-rigging in respect of paving contracts in Quebec, municipal infrastructure contracts in Quebec City, and price fixing with respect to social housing refurbishment contracts. *Cases Of Bid-Rigging, Price-Fixing And Other Illegal Agreements Between Competitors*, COMPETITION BUREAU, <https://competition-bureau.canada.ca/en/bid-rigging-price-fixing-and-other-agreements-between-competitors/cases-and-outcomes/cases-bid-rigging-price-fixing-and-other-illegal-agreements-between-competitors>.

In South Africa, cartel conduct was criminalized in May 2016. To date, however, there have been no criminal arrests or prosecutions following findings of parties having engaged in cartel conduct.

<sup>16</sup> BIAC Leniency Note, *supra* note 12, at 4.

<sup>17</sup> OECD, OECD Competition Trends 2022, at 12 (2022), [https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/oecd-competition-trends-2022\\_c266719c/a9c9f711-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/02/oecd-competition-trends-2022_c266719c/a9c9f711-en.pdf).

<sup>18</sup> OECD, The Future of Effective Leniency Programmes – Note by BIAC, DAF/COMP/WP3/WD(2023)31, at 7 (June 5, 2023), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2023\)31/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2023)31/en/pdf) (emphasis added) [hereinafter BIAC 2023 Leniency].

the information provided to a competition authority as part of the CLP can be used against firms and individuals in criminal prosecutions.<sup>19</sup>

18. There is, therefore, a need to ensure transparency and certainty in the relationship between CLPs and criminal prosecutions, failing which it will remain increasingly difficult for competition authorities to detect and enforce cartel conduct.<sup>20</sup>

19. NTRs are an effective tool aimed at settling criminal litigation, without formal court proceedings, on the basis of the defending party making full and frank disclosures regarding the particular criminal allegations. NTRs generally afford prosecuting authorities the discretion to avoid custodial sentences.<sup>21</sup>

20. Effective detection of collusion in public procurement relies heavily on cooperation mechanisms such as NTRs and CLPs. These mechanisms are crucial to detection and evidence gathering and ultimately effective enforcement. CLPs and NTRs, therefore, require harmonisation to incentivise proactive disclosure by key protagonists.<sup>22</sup>

21. Ensuring there is greater alignment between competition and anti-corruption enforcement frameworks would in turn strengthen both regimes. This would require clear guidance on information sharing, sequencing of investigations, and the treatment of leniency applicants across authorities which would enhance legal certainty while maintaining accountability objectives. These coordinated approaches would serve to reduce duplicative investigative burdens, mitigate risks of inconsistent outcomes or disproportionate cumulative sanctions, and encourage earlier engagement by firms seeking to remedy misconduct.

## **B. Director Disqualification and Bidder Exclusion**

22. BIAC has previously submitted that there are two primary justifications for director disqualification as a deterrence: (i) director disqualification protects the public from

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<sup>19</sup> *Id.* at 6-7.

<sup>20</sup> *Id.* at 5-6.

<sup>21</sup> OECD, *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention* 12 (2019), <https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/fighting-foreign-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf>.

<sup>22</sup> See, e.g., Press Release, U.S. Dep't of Justice, SAP to Pay Over \$220M to Resolve Foreign Bribery Investigations (Jan. 10, 2024), <https://www.justice.gov/archives/opa/pr/sap-pay-over-220m-resolve-foreign-bribery-investigations>. See also Press Release, U.S. Dep't of Justice, McKinsey & Company Africa to Pay Over \$122M in Connection with Bribery of South African Government Officials (Dec. 5, 2024), <https://www.justice.gov/archives/opa/pr/mckinsey-company-africa-pay-over-122m-connection-bribery-south-african-government-officials>.

McKinsey completed all of its financial obligations under these resolutions in December 2024, and the South Africa's National Prosecuting Authority withdrew its charges against in January 2025. Press Release, McKinsey & Company, McKinsey South Africa Has Entered into a Final Resolution with the U.S. Department of Justice (DOJ), and South Africa's National Prosecuting Authority (NPA). McKinsey welcomes the resolution of these matters (updated Jan. 2025), <https://www.mckinsey.com/za/our-work/statements/mckinsey-statement-december-2024>.

individuals who are involved in anti-competitive conduct; and (ii) director disqualification deters other directors from engaging in misconduct.<sup>23</sup>

23. BIAC submits that director disqualification is an appropriate sanction where individual directors have been directly, personally, and knowingly involved in misconduct that justifies further sanctions and where traditional sanctions (e.g., criminal sanctions) are inadequate.<sup>24</sup>

24. On bidder exclusion, BIAC has previously submitted that the removal of a market participant for anticompetitive conduct has broader economic and socio-economic implications, including market concentration and retrenchments, and should only be reserved for the most egregious offences.<sup>25</sup> Insofar as corruption in public procurement is concerned, BIAC maintains that bidder exclusion should only be applied in the most egregious of circumstances and that any exclusion period applied should be proportionate to mitigate the effect that the exclusion may have on competition and employment.<sup>26</sup> This is particularly so where the employees who were directly and intimately involved in the conduct have already been, or would be, subject to further administrative and criminal sanction, e.g., director disqualification and criminal proceedings.<sup>27</sup>

### **C. Ex Ante Tools to Mitigate Collusion and Corruption in Public Procurement**

25. BIAC submits that government departments and procurement authorities should have an understanding of market dynamics prior to issuing tender requests to gain a better understanding of market dynamics, including any relevant cost structures, subcontracting patterns, and sectors that may have a history of abuse of dominance or collusion.<sup>28</sup> By understanding the relevant market prior to the issuing of tenders, procurement authorities would be better equipped to develop appropriate tender specifications to promote competition while also being better able to potentially collusive or corrupt tenders.<sup>29</sup>

26. Additionally, BIAC recommends that procurement authorities look to implement guidelines that require a systematic recording and analysis of all bids, including those non-winning bids, to assist in identifying any recurring patterns or anomalies indicating coordinated or anti-competitive conduct. A useful tool to consider in the structure of these guidelines include the OECD Bid-Rigging Detection List which lists different “red flags” to assist in identifying bid-rigging schemes, suspicious bidder conduct and statements.<sup>30</sup> In this respect, BIAC notes that where multiple agencies engage in procurement activities, consistent implementation of such guidelines, or even establishment of a single procurement “hub” used by multiple agencies, would facilitate more efficient identification

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<sup>23</sup> OECD, Director Disqualification and Bidder Exclusion – Note by BIAC, DAF/COMP/WD(2022)85, at 6 (Nov. 21, 2022), [https://one.oecd.org/document/DAF/COMP/WD\(2022\)85/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2022)85/en/pdf).

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.* at 9.

<sup>26</sup> *Id.* at 10.

<sup>27</sup> *Id.* at 6.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> *Id.*

<sup>30</sup> *OECD Bid Rigging Guidelines, supra* note 2, at 26.

of patterns for enforcement agencies. Further recommendations with respect to inter-agency cooperation are described in the section IV below.

27. Generally, BIAC also notes and supports the OECD's previous works and recommendations focused on reducing collusive and corrupt conduct in public procurement, such as:

- OECD's lot-design checklists to vary the size and structure of tenders as a means to reduce predictability and increasing the difficulty for coordinated conduct;<sup>31</sup>
- Reducing participation constraints through simplified procedures and broader outreach, for example, would similarly strengthen competition by increasing the pool of bidders;<sup>32</sup>
- Implementing structured post-award contractual supervision;<sup>33</sup> and
- Developing guidelines for suppliers in relation to procurement processes.<sup>34</sup> There is also a need to provide guidance on compliance programs and policies to ensure legitimate programs are accounted for in the instance of an investigation into collusive and/or corrupt activities.<sup>35</sup>

#### **IV. Inter-Agency Cooperation**

28. The above-mentioned tools are aimed at increasing detection and deterrence efforts. Where anticompetitive and collusive conduct is identified in public procurement, BIAC respectfully submits that there is a clear need for competition and prosecutorial authorities to cooperate to ensure the imposition of administrative, civil and criminal sanctions to increase deterrence efforts in the longer-term.

29. The 2025 OECD Guidelines emphasise that institutionalised cooperation between competition agencies and procurement authorities, as well as with anti-fraud authorities and prosecutors, is a critical step in fighting bid-rigging, and that this cooperation is mutually beneficial.<sup>36</sup> This dynamic is especially important in jurisdictions where responsibility for prosecution may be divided, e.g. between federal and state/provincial governments.

30. The United Kingdom's Competition and Markets Authority (CMA) and Serious Fraud Office entered into a Memorandum of Understanding providing for information sharing where legally permitted, coordination of overlapping investigations of cartel activity and bribery, avoidance of investigations duplication, and inter-agency referrals.<sup>37</sup> Despite these

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<sup>31</sup> *Id.* at 21.

<sup>32</sup> *Id.* at 17.

<sup>33</sup> *Id.* at 11.

<sup>34</sup> *Id.* at 20-21.

<sup>35</sup> OECD, Competition Compliance Programmes – Note by BIAC, DAF/COMP/WP3/WD(2021)25, at 9 (May 31, 2021), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2021\)25/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2021)25/en/pdf).

<sup>36</sup> *OECD Bid Rigging Guidelines*, *supra* note 2, at 13-14.

<sup>37</sup> Memorandum of Understanding Between the Competition and Markets Authority and the Serious Fraud Office, Oct. 21, 2020, <https://www.gov.uk/government/publications/cma-and-sfo-memorandum-of-understanding>.

arrangements, criminal cartel prosecutions remain rare, suggesting that formal cooperation frameworks, while necessary, may not alone ensure effective parallel enforcement.<sup>38</sup>

31. The U.S. Department of Justice (DOJ) established its Procurement Collusion Strike Force (PCSF) in November 2019.<sup>39</sup> The PCSF is a coordinated national response to combat antitrust crimes and related schemes at all levels of government. The PCSF comprises of the DOJ Antitrust Division, several United States Attorneys' Offices, the Federal Bureau of Investigation, and the Inspectors General for multiple Federal agencies.<sup>40</sup> As of September 2025, the PCSF has trained over 46,000 agents and procurement officials; opened over 195 investigations; secured over 75 guilty pleas and trial convictions; and obtained more than \$70 million in fines and restitution.<sup>41</sup> The PCSF demonstrates that sustained inter-agency commitment, combined with training and data driven detection, can yield meaningful enforcement outcomes.<sup>42</sup>

32. Canada has a multi-layered enforcement framework that illustrates the complexity of addressing procurement-related misconduct across different legal regimes.<sup>43</sup> For matters involving bid-rigging and price fixing – both of which are offences under Canada's *Competition Act*, the Canadian Competition Bureau leads government enforcement issues, providing education and resources for the business community and procurement officials alike, and promoting collaboration between government agencies.<sup>44</sup> To that end, the Bureau announced the establishment of a working group with other federal, provincial, and municipal domestic partners to "share best practices and deepen ties."<sup>45</sup> The Bureau has

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<sup>38</sup> Susanna Rogers & Georgia Cairns, *The Future of the Criminal Cartel Offence in the UK*, NORTON ROSE FULBRIGHT (Jan. 2021), <https://www.nortonrosefulbright.com/en/knowledge/publications/51dd9da8/the-future-of-the-criminal-cartel-offence-in-the-uk>.

<sup>39</sup> Press Release, U.S. Dep't of Justice, Justice Department Announces Procurement Collusion Strike Force: a Coordinated National Response to Combat Antitrust Crimes and Related Schemes in Government Procurement, Grant and Program Funding (Nov. 5, 2019), <https://www.justice.gov/archives/opa/pr/justice-department-announces-procurement-collusion-strike-force-coordinated-national-response>.

<sup>40</sup> *Id.*

<sup>41</sup> *Procurement Collusion Strike Force*, U.S. DEP'T OF JUSTICE, <https://www.justice.gov/atr/procurement-collusion-strike-force>.

<sup>42</sup> *Id.*

<sup>43</sup> For example, corruption offences under the *Competition Act* are handled by the Competition Bureau (in respect of criminal behaviour, in partnership with the Public Prosecution Service of Canada (the PPSC). Other aspects of corrupt behaviour that may impact competition in public procurement can be addressed from a criminal perspective under Canada's *Corruption of Foreign Public Officials Act* (investigated by the Royal Canadian Mounted Police and prosecuted by the PPSC) and Canada's *Criminal Code* (investigated and prosecuted by Canada's provincial police agencies and prosecution services). An additional mechanism through which these may be addressed include administrative and debarment actions under the *Federal Office of Supplier Integrity and Compliance* under the *Financial Administration Act* and *Federal Accountability Act*, as well as equivalent provincial and municipal legislations.

<sup>44</sup> See *Procurement Hub*, COMPETITION BUREAU, <https://competition-bureau.canada.ca/en/how-we-foster-competition/compliance-and-enforcement/procurement-hub>.

<sup>45</sup> John Pecman, Comm'r of Competition, Targeting Bid-Rigging to Safeguard Private and Public Sector Procurement, Remarks Before the Ontario Gen. Contractors Ass'n Bd. of Dir. Meeting (Oct.

also established a federal contracting fraud tip line that is jointly operated with Public Services and Procurement Canada and the Royal Canadian Mounted Police, which in 2024-2025 received more than 350 tips<sup>46</sup> and partnered with competition agencies in Mexico and the United States to detect and combat anti-competitive conduct in procurement relating to the 2026 FIFA World Cup.<sup>47</sup>

33. However, the Bureau has commented previously on the “structural constraints” inherent in Canada’s bifurcated law enforcement system (in which the Bureau must coordinate on prosecutions with other independent agencies, such as the Public Prosecution Service of Canada, who has independent discretion to accept or reject the Bureau’s recommendations).<sup>48</sup> In addition, Canada’s Office of the Procurement Ombud recently highlighted the lack of a consistent federal government-wide framework for procurement data collection, which limits the ability to identify trends in procurement processes (including trends that would support more efficient detection of corruption issues).<sup>49</sup> Canada’s federal system, in which non-*Competition Act* related corruption offences, such as bribery, are prosecuted by provincial attorneys general under Canada’s *Criminal Code*, also poses structural challenges for coordinated detection and prosecution of the wider range of corruption in public procurement.<sup>50</sup>

34. Establishing formal inter-agency cooperation mechanisms (as in the case of the United Kingdom) and ensuring those mechanisms are deployed – that cooperation is visible and effective – will improve investigatory processes and outcomes, ultimately leading to more effective enforcement regimes.<sup>51</sup> Axiomatically, BIAC submits that effective inter-agency cooperation should facilitate the exchange of evidence and intelligence between competition, anti-corruption, and prosecutorial authorities, clear case referral

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21, 2017), [https://www.canada.ca/en/competition-bureau/news/2017/10/targeting\\_bid-riggingtosafeguardprivateandpublicsectorprocuremen.html](https://www.canada.ca/en/competition-bureau/news/2017/10/targeting_bid-riggingtosafeguardprivateandpublicsectorprocuremen.html).

<sup>46</sup> *Report Cheating in Federal Government Contracts: Submit a Tip*, GOV’T OF CANADA, <https://ised-isde.canada.ca/site/report-cheating-federal-government-contracts/en>; COMPETITION BUREAU, A NEW ERA FOR COMPETITION IN CANADA: 2024-25 ANNUAL REPORT 8 (Oct. 2, 2025), <https://competition-bureau.canada.ca/sites/default/files/documents/cb-annual-report-2024-2025-eng.pdf>. (noting that the federal contracting tip line received 369 tips in fiscal year 2024-25).

<sup>47</sup> Press Release, Competition Bureau, Competition Bureau Partners With the United States and Mexico to Deter Anti-Competitive Conduct Leading to 2026 FIFA World Cup (Sept. 22, 2023), <https://www.canada.ca/en/competition-bureau/news/2023/09/competition-bureau-partners-with-the-united-states-and-mexico-to-deter-anti-competitive-conduct-leading-to-2026-fifa-world-cup.html>.

<sup>48</sup> OECD, Roundtable on Challenges and Co-Ordination of Leniency Programmes – Note by Canada, DAF/COMP/WP3/WD(2018)25, at 4 (May 4, 2018), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2018\)25/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2018)25/en/pdf).

<sup>49</sup> OFF. OF THE PROCUREMENT OMBUD, EXPLORING ROOT CAUSES OF A LACK OF COMPETITION IN FEDERAL PROCUREMENT (Mar. 17, 2026), <https://opo-boa.gc.ca/manqueconcurrency-lackcompetition-eng.html#a10>.

<sup>50</sup> For example, Ontario recently obtained convictions relating to misconduct in the bidding process for a hospital construction contract. See Zach Dubinsky, *Former Ontario Hospital Exec and Construction Company President Guilty of Fraud Tied to \$300M Project*, CBC (Oct. 07, 2025), <https://www.cbc.ca/news/business/st-michaels-hospital-trial-georgiou-aquino-1.7652947>.

<sup>51</sup> *OECD Bid Rigging Guidelines*, *supra* note 2, at 14.

protocols specifying when and how matters should be transferred between agencies, coordination of investigative timelines to avoid duplicating or conflicting proceedings, joint training programmes to ensure officials understand each other's mandates, legal powers, and evidentiary requirements, and aligned treatment of cooperating parties across competition and criminal regimes to ensure businesses have certainty when engaging with multiple enforcement bodies.<sup>52</sup>

## V. The Role of Civic Organisations and the Press

35. Civic oversight which allows non-state actors to monitor, scrutinise and hold public authorities, agents and private firms to account, functions as an external governance constraint to mitigate principal agent problems inherent in the public procurement system. It serves to reduce the information asymmetries between citizens, firms, state actors, civic organisations and the press result in an increased probability that any irregularities may be detected.

36. BIAC notes, however, that the role of civic organisations and the press in detecting and identifying collusion and corruption is complementary to government enforcement, serving to support the work of relevant authorities rather than impose undue burdens.

37. These non-state actors holding public authorities to account provide an opportunity to informally monitor and reshape the incentive structure faced by both procurement officials and bidders. Civic actors have a tendency to influence competition primarily through enhancing transparency, detecting red flags and disseminating structured information regarding procurement outcomes. Public exposure increases the expected cost of coordination between firms and raises uncertainty about the sustainability of a corrupt or collusive arrangement.

38. Whistleblower facilitations can be considered as mechanisms with which to uncover insider information.<sup>53</sup> The OECD has noted that whistleblower systems can act as an alternative detection tool that offers anonymity and rewards in exchange for vital bid-rigging information.<sup>54</sup> Leniency programmes may face limitations in certain socio-economic contexts, making whistleblower systems an important complement.

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<sup>52</sup> *Id.*

<sup>53</sup> Civic oversight in cartel detection could be further strengthened by expanding the role of whistleblowers beyond existing mechanisms such as the Corporate Leniency Policies in place at various antitrust authorities, and non-trial resolutions, particularly given the persistent challenges associated with uncovering collusion.

Whistleblowers can play a critical role in providing insider information that is otherwise difficult for authorities to detect through conventional screening and investigative tools. It is notable that several jurisdictions either have already or are in the process of developing legislative measures to incentivised whistleblowing through financial rewards for actionable information. For example, the United States, where whistleblower provisions are linked to enforcement of federal regulatory violations and have demonstrated the effectiveness in enhancing detection by increasing both the likelihood and timeliness of disclosures. Strengthening these mechanisms globally would complement existing enforcement tools and improve overall cartel detection outcomes.

<sup>54</sup> *OECD Bid Rigging Guidelines, supra* note 2, at 21.

39. Media investigations and NGO complaints can reduce screening costs for authorities and improve case selection, particularly in instances where resources are limited. In the event a mandate overlaps between a competition and an anti-corruption authority, it would be most helpful to ensure a coordinated response be utilised between these agencies as a means to address both collusive conduct and bribery which frequently coexist in procurement markets.

40. Notwithstanding the above, BIAC cautions that allegations and investigations by civic organisations can cause significant reputational damages for firms, including adverse effects on stakeholder confidence, investor sentiment and customer relationships. BIAC, therefore, submits that it is critical that any investigative process strikes a careful balance between transparency and procedural fairness, ensuring businesses are not subject to undue reputational harm before findings have been adequately established.

## **VI. Conclusion**

41. Collusion and corruption in public procurement are often inter-connected and inter-agency cooperation is needed. Criminal prosecution of cartel conduct faces practical barriers and requires more effective implementation. Without robust enforcement, legal frameworks alone cannot deter misconduct.

42. Some recommendations might include establishing formal inter-agency cooperation and coordination protocols for procurement related cases, developing prosecutorial related guidance, and capacity for criminal cartel enforcement. These recommendations may extend to promoting transparency in enforcement processes and consideration of existing international best practices and peer learning between authorities.