

How to recognise a cartel?

Cartels can dictate increased prices, causing substantial damage to their customers. Such customers may include end-consumers, other companies or institutions spending public money that may come into conflict with an illicit alliance of their suppliers. The GVH makes its best efforts to discover cartels and imposes heavy sanctions on cartelists. Breaking up a cartel requires proof of its existence, which is greatly facilitated by information provided by buyers. With due care even buyers and experts in charge of procurement can identify signs indicative of cartel activity and in addition to notifying the competition authority they can do quite a lot to protect themselves from sellers working in cartels. First of all, however, they must be able to recognise the cartel. The following list presents some of the signs that may be indicative of cartel activities in tendering procedures.

In general

In essence, any form of conduct that is different from the way of bidding and the behaviour of competitors normally to be expected and any sign that may indicate such a conduct should raise suspicion. These include, among others, the following:

- The price is falling sharply when a new bidder or one that has rarely participated in tendering (but is similar to the others) appears.
- A company submits substantially different tenders in different procedures, despite the fact that the costs concerned are highly similar.
- Identical prices, particularly when prices remain unchanged for a long period of time or become stable after a period of volatility.
- A substantial price increase that is not justified by changes in costs.
- The output declines despite great demand for the product.
- Sudden withdrawal of discounts.
- Market participants adjust – unify – their terms of sale to those of their competitors.

- Information on certain competitors' holding meetings or coordinating with one another.
- Local businesses and businesses delivering products from longer distances charge the same transport costs or calculate transport costs in the same way.

In tendering procedures, in addition to the above

- A lot fewer bids are submitted than normally before.
- One or more companies withdraw their bids (or their request for a review of the decision) and then they work for the winner as its subcontractors in the project.
- Similarities in the format and appearance of the bids submitted by different bidders, with identical errors (misprints, content errors).
- Some bidders quote identical prices, including identical price components.
- The same accessories, attachments and certificates are missing from bids.
- There is a marked difference between the cheapest price quoted and the other ones offered.
- Any of the tenderers reveals certain knowledge about the bids of its competitors even before the bids are opened.
- Bid rotation: practically the same bidders participate in several biddings and the next tender is always won by another participant.
- The winner of the contract retains the others or some of them as sub-contractors.
- The winner suddenly abandons his intention to contract the work won, forcing the person which put out the work to tender to sign a contract with the second best bidder.
- The same company wins successive biddings with almost always the same competitors submitting unsuccessful bids.

As a matter of course, these are only signs of a possible cartel, without necessarily indicating its existence.

Identifying cartels and bringing them to light serves the interest of the public. Similarly to other competition authorities the GVH has published a booklet entitled '*Collusion of bidders in bidding and its possible signs*' (Hungarian title: *Az ajánlattevők versenytárgyaláson való összejátszása és annak gyanút keltő jelei*) to help those working in procurement to recognise cartel activities. The booklet, which contains lots of details concerning factors facilitating collusion between competitors as well as signs indicating cartel activity, is available at the authority's enquiries and on its home page.

What is to be done?

When suspecting cartel activity the buyer itself can take some action against a cartel, respond to an unfair offer and thereby achieve a reduced price. When suspicion of a cartel arises in a tendering procedure it is possible to put out another invitation for tenders encouraging suppliers not involved in the cartel to submit their bids. It is also possible for those who have been injured by the operation of a cartel to claim damages in court. Contracts violating competition rules are null and void, the legal consequences of which can be enforced in civil court actions.

Delivering signs and evidence of a cartel activity to the GVH can be a very useful contribution to the actions of the authority. The GVH has its means to eliminate cartels by imposing fines or other sanctions. A suspicion of collusion between competitors may be notified to the authority and the authority's Cartel Section is ready to provide customers with relevant information. Having received a notice of this kind, the bureau's staff members will contact the notifier and decide whether to start a proceeding.