

Time to integrate competition and anti-corruption enforcement?

Monday, 3 March 2014 (4 months ago)

David Vascott

Competition agencies should become part of the fight against bribery and corruption, according to a high level meeting at the OECD that seems to pave the way for serious work into the nuts and bolts of so doing to begin. *David Vascott in Paris.*

At the OECD's Global Forum on Competition, held in Paris last week (Thursday and Friday) there was broad consensus among delegates that competition agencies have a major role to play in combating corruption. With competition violations and corruption frequently going hand in hand – particularly in public procurement – competition agencies are well placed to detect and, in some cases, prosecute corrupt organisations and individuals.

In a keynote speech, Obiageli Ezekwesili, co-founder of anti-corruption organisation Transparency International, said that by creating a level playing field and a competitive market economy, countries are better placed to tackle corruption.

“Everything that corruption likes, competition dislikes,” she said. “Corruption wants to do things in a clandestine environment, but... the more transparency the greater the competition. Corruption does not care for value for money, but competition is about value for money. Corruption does not care about the interests of the greater majority, but competition cares about the interests of the greater majority.”

Ezekwesili highlighted the difference between petty corruption, in which poorly paid government officials accept bribes to supplement their income, and grand corruption on the part of senior politicians who determine major government contracts. There is a “nexus between the two” she said: grand corruption reduces the probability of development, because the market is inefficient and money is siphoned off. But without development, there is less chance of wages and living standards increasing, so government officials will continue to look for bribes.

Later, the forum heard that competition agencies, in tackling bid rigging and other anti-competitive behaviour, are well placed to pick up on corruption issues. This can – and in some jurisdictions does – include direct working relationships between competition agencies and corruption enforcers. Evidence gathered

during dawn raids, for example, often reveals other issues besides competition violations.

Sweden's delegate - who wasn't introduced by name - called for a broader definition of corruption to include other related offences, such as bid rigging in public procurement: "Because of the likelihood of connections between corruption related crimes, cartels and illegal direct awards of public contracts, the Swedish Competition Authority has intensified its cooperation with the Swedish National Anti-Corruption Unit."

The delegate said that one of the chief roles of competition authorities, besides targeting collusive practices, is to offer expertise in how to create and maintain well-functioning markets. "We should join forces with other institutions in creating a seamless cooperation of anti-corruption that will allow us to deter corruption in all its forms," he said.

Calvin S Goldman QC, a partner at Goodmans in Canada and a member of the OECD's Business and Industry Advisory Committee (BIAC), said that businesses and other investors abhor unpredictability and prefer stable governments and the rule of law. Consequently, he said, it is important to realise that bribery and corruption "is a two-way street", with supply and demand. Enforcement should focus on the demand side of corruption as well supply: government officials who accept bribes should also be investigated and prosecuted.

In a paper submitted to the forum, BIAC proposed that for the competition framework established in a corrupt country to be efficient, it needs to include "three pistons of effective competition": the independence and accountability of the decision maker; the transparency of the process; and the application of normative substantive principles.

Michael Kramer, a lawyer and co-founder of International Anti-corruption Resource Centre said that investigative agencies, whether focused on competition or corruption, need to have experienced personnel. Cases "cannot be assigned to inexperienced people".

He said authorities need to develop "special investigative tactics", including the ability "to collect and effectively present circumstantial evidence".

"There is a misconception... that assumes the only evidence of collusion is going to be documentary," Kramer said. "A well managed collusion and corruption investigation, investigators can use the circumstantial evidence... to generate the cooperation of witnesses."

He said these witnesses, properly handled, will "tell you what happened, and give you evidence of the collusion, including emails between the parties".

Agencies also require the resources to do this, including software to analyse bidding submissions and to trawl through deleted emails between competitors. He added that often, collectively agreed “loser companies” in rigged bids for public tenders are shell companies, which can be identified in five minutes simply by checking on the internet. But many agencies fail to do this most basic of background checks.

The forum also saw Drago Kos give his first public speech since taking over as chairman of the Working Group on Bribery at the OECD’s anti-corruption division. Discussing the enforcement of competition laws and anti-corruption laws, he said: “It’s amazing to see how close we are – this is our future, to work together.”