

Interplay between Competition Law and Public Procurement



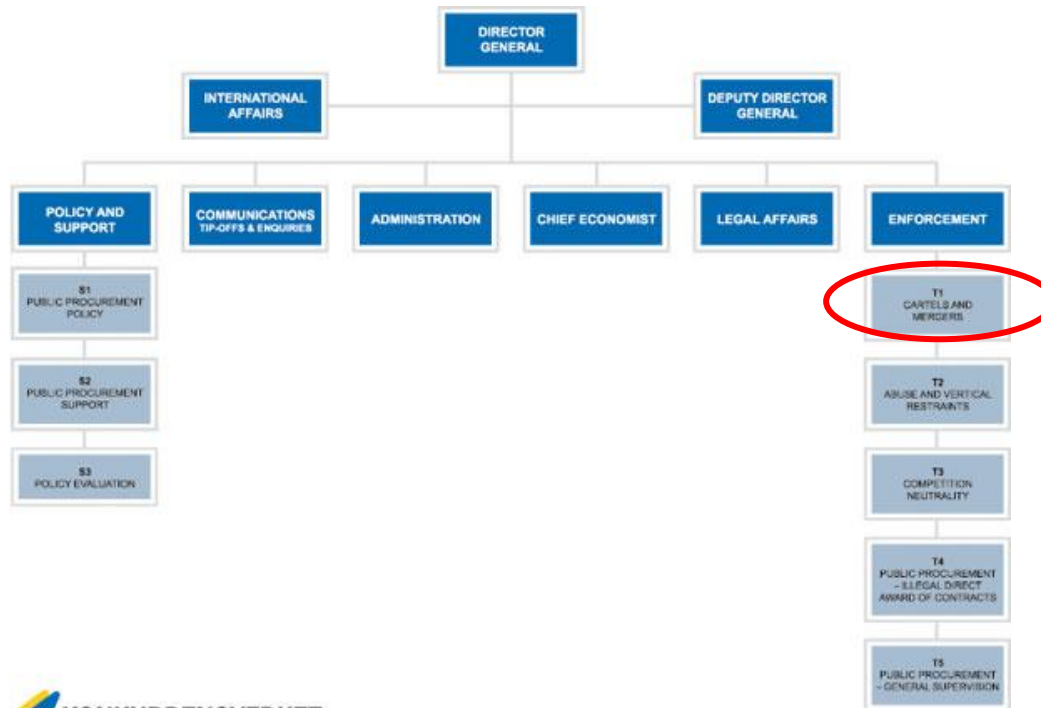
11th Baltic Competition Conference

10 September 2014

Göran Karreskog

Our organisation

Cartels and mergers unit



Public procurement and the pursuit of cartels

- **Cartel detection**
 - Tip offs
 - Economic and statistical analysis
- **Leniency**
 - Exclusion of tenderers
- **Obstruction of bid rigging**
- **Outreach activities**
 - Contracting authorities
 - Suppliers



Welcome!

The Competition Authority wants to make it as simple as possible for companies to cooperate and submit joint bids in procurements when possible. With this guide you can quickly find out what kinds of cooperation are normally permitted.

Click on one of the questions to begin:

Can we cooperate in this procurement?

What form of cooperation is permitted?

When am I allowed to use a competitor as a subcontractor?

What may the consequences of illegal cooperation be?

I can't find my question!



Quiz:
What do
you know about
cooperating in
procure-
ments?

Can we cooperate in this procurement?

> Are you part of the same economic entity?

Yes

No

 What is an economic entity?

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Can we cooperate in this procurement?

 **OK to cooperate, but remember:**

If you are planning to merge with another company, you can not start cooperating until control has passed to the acquiring company.

Read about an example: Charter buses

Cooperation must cease when actual control is no longer held by only one company. If the economic entity is split up, for example by the disposal of a subsidiary, a cooperation that was permitted previously may now be infringing the competition rules.

Read about an example: Car part retailers

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Disclaimer: If you are worried that your company may be acting in a way that could infringe the competition rules, you should contact legal counsel with competition law expertise.

Car part retailers

Car manufacturer A owned the subsidiaries B and C. A sold most of its shares in B, but kept 21.7 percent of the shares. B and C were cooperating regarding the supply of spare parts and other accessories. After the majority of the shares in B had been sold by the parent company A, B and C were no longer considered as part of the same economic entity. The cooperation agreement was therefore in breach of competition law.

Commission decision (88/84/EEC)



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Can we cooperate in this procurement?

> Are you competitors?

Yes

No

Two companies are normally considered to be competitors if they offer the same products or services.



§ What does the law say?

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Can we cooperate in this procurement?

- > Does your company independently meet the requirements in the procurement, in other words, are you able to submit an independent bid?

Yes

No



When does a company have the capacity to submit an independent bid?

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Can we cooperate in this procurement?

Probably not OK to cooperate

If a company can submit an independent bid in a procurement it is normally not allowed to cooperate with another company, even if the other company cannot submit an independent bid.

[Read about an example: Construction companies](#)

[Read about an example: Taxi](#)

What may the consequences of illegal cooperation be?

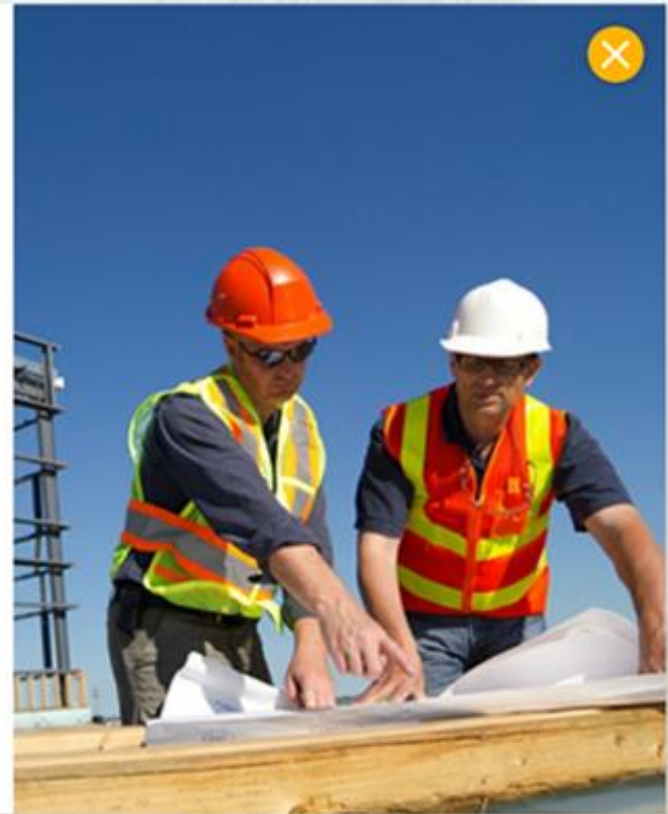
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Construction companies

Construction companies A and B wanted to cooperate and submit a joint bid to the Swedish Road Authority for the building of a bridge in Jämtland. According to the companies, B would not have submitted a bid in the procurement without this cooperation, since the company was about to liquidate its business in Sweden.

According to the Competition Authority however, A would have been able to submit an independent bid in the procurement and to build the bridge on its own. For this reason it was not necessary for A to cooperate in the procurement. The Competition Authority therefore considered the cooperation to be infringing the competition rules.



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What may the consequences of illegal cooperation be?

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What may the consequences of illegal cooperation be?

Participation in an illegal cooperation may have various consequences for a company. Click on one of the questions for further information.

Can a company get fined for breaching the competition rules?

Can a company be excluded from future procurements?

How is the company's reputation affected?

Can an agreement be declared invalid?

A company that infringes the competition rules may have to pay a fine. The fine can amount to up to 10 % of the company's annual turnover.

“Avoid getting fined”

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Cooperation may take different forms. Click on one of the questions to find out more.

Can we form an association, a company or a consortium to cooperate?

For how long may we cooperate?

What kind of information are we allowed to exchange?

It is important that the cooperation does not become permanent. The fact that it is allowed for two companies to cooperate in one procurement does not necessarily mean that it is allowed in the next one. An assessment of whether cooperation is permitted must be made in each specific case.

Read about an example: Cooperation on a lasting basis

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- **Economic unit?**
- **Competitors?**
- **Capacity?**



Thank you for your attention!

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