



# **PUBLIC PROCUREMENT & BID RIGGING**

## **-An Introduction**

**Competition Commission of India**

**Workshop on Public Procurement & Competition Law**  
**Monday, 9<sup>th</sup> March 2015, New Delhi**

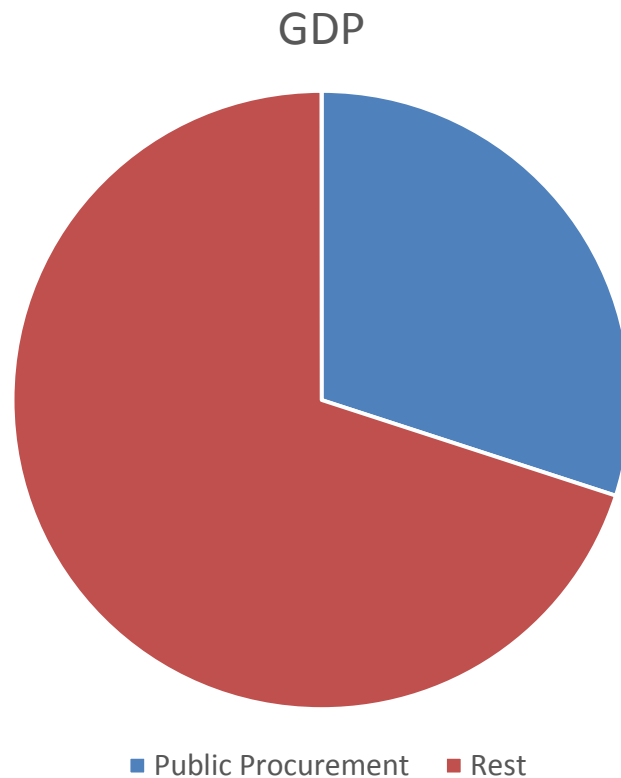


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## MAGNITUDE OF PUBLIC PROCUREMENT IN INDIA

- ❑ Accounts for almost 30% of GDP in India.
- ❑ Major departments like Defence, Railway, Power and Telecom, Aviation etc. spend about 50% of their budget on procurement.
- ❑ Around 26% of the Union Budget allocated for health is devoted to procurement.
- ❑ India roughly spends around 10 lac crores per annum on public procurement





# OBJECTIVES OF PUBLIC PROCUREMENT POLICY



Public Procurement plays a significant role in socio-economic progress. It should ensure:

- Effective development of infrastructure and promotion of industrial sector;
- Maximisation of economic efficiency and effectiveness;
- Encouragement of competition between the suppliers;
- Transparency in the procurement procedures and processes.



# PROBLEMS IN PUBLIC PROCUREMENT



## From the Suppliers'/Bidders' side:

- [Collusive bidding or bid rigging](#)

## From the Government's/Procurer's side:

- Competition Distortions by way of Government policies:
  - Exclusionary qualifying criteria limiting the number of suppliers;
  - Barriers to entry
  - Lack of [Competitive Neutrality](#);
  - [Denial of level playing field](#);
  - Information Asymmetry
- Lack of transparency
- [Issues related to Corruption](#)



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# COLLUSIVE BIDDING OR BID RIGGING?



- ❑ Bidders agree to eliminate competition in the Public Procurement;
- ❑ Leads to higher prices and denial of fair price.
- ❑ Competition Regulator's Role: Enforcement as well as advocacy initiatives to create deterrence and effective implementation of the Competition Law.
- ❑ Public Procurers' role: Designing auction and procurement tenders in such a way that the bidders' ability and incentives to reach collusive arrangements are significantly reduced, if not eliminated.



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Fair Competition  
For Greater Good

# ISSUES RELATED TO CORRUPTION

- Unfair and Opaque conditions to favour a few;
- Too much discretion to allow rent seeking behaviour;
- Faulty and Defective bidding packages facilitates collusion;
- Match is already fixed before the game starts;
- Magnitude of procurement gives temptation to the decision maker.



# LEVEL PLAYING FIELD- PRINCIPLES



- ❑ Level playing field—external interference affects the ability of the players to compete fairly.
- ❑ Not necessarily requires equal chance to succeed, but all bidders play by the same set of rules.
- ❑ No differential/Preferential treatment should be given to one area/ sector/ industry/ class of enterprises over others.
- ❑ Government regulations must be competition neutral.
- ❑ Rules of the game are based on fair play.



# COMPETITIVE NEUTRALITY



- ❑ No undue competitive advantages or disadvantages;
- ❑ Many-a-times, SOEs enjoy competitive advantages as a consequence of their public ownership.
- ❑ Unjustified relaxation of rules or qualifying criteria for SOEs;
- ❑ Purchase price preference in public procurement.
- ❑ Subsidies, tax exemptions, Concessional financing.





# COMPETITION—PUBLIC PROCUREMENT INTERFACE

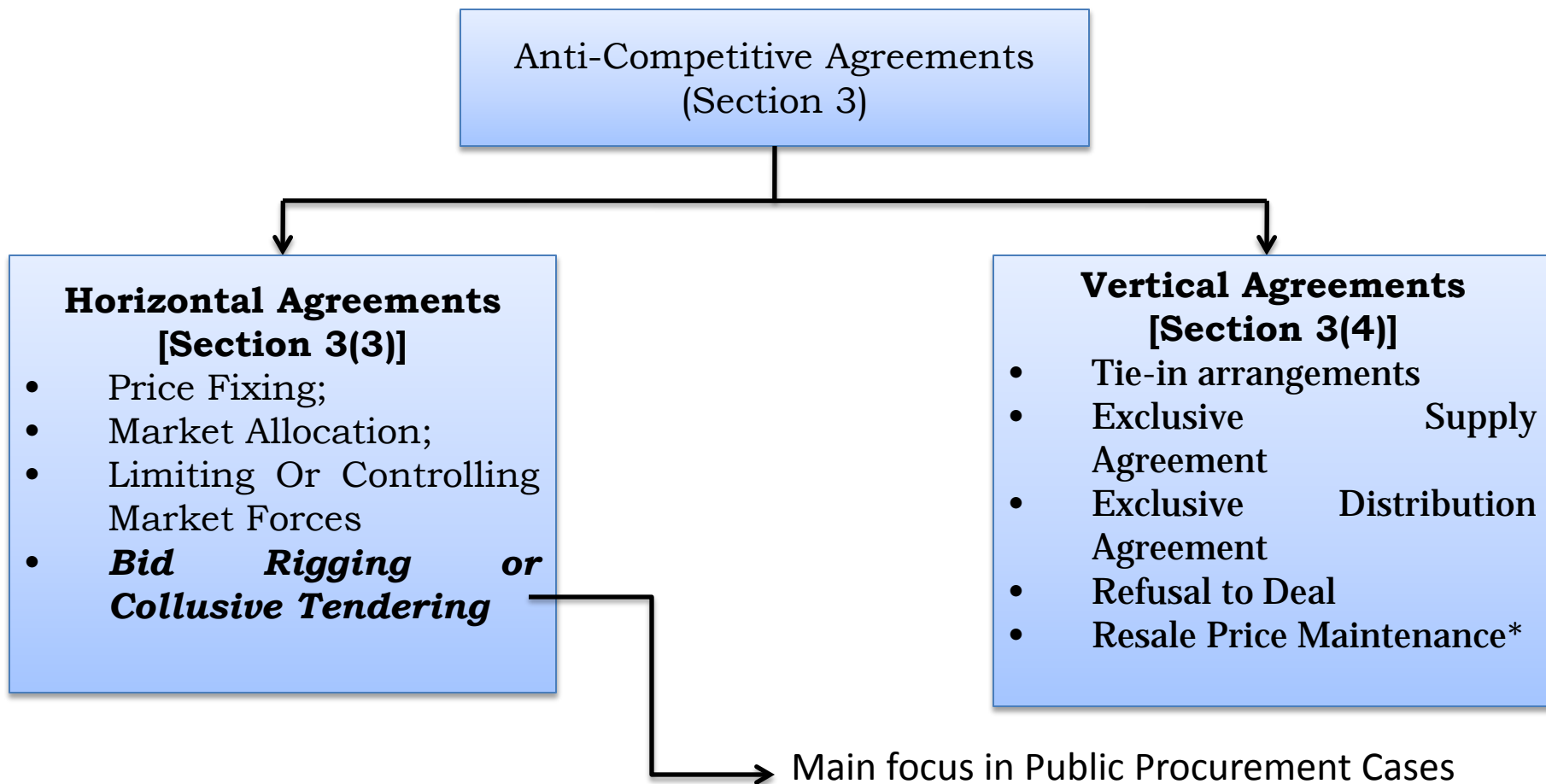




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## Section 3: ANTI COMPETITIVE AGREEMENTS





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# PROVISIONS RELATING TO BID RIGGING

## ❑ Section 3(3)(d) of the Competition Act:

Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) xxxx;

(b) xxxx;

(c) xxxx;

(d) **directly or indirectly results in bid rigging or collusive bidding,**

*shall be presumed to have an appreciable adverse effect on competition (AAEC).*

[Presumptive rule applies](#)



# TYPES OF BID RIGGING



Without affecting the generality, following are the types of collusive bidding/bid rigging:

- ❑ Identical Bids: where competitors agree to submit identical bids;
- ❑ Cover Bids: where competitors agree as to who shall submit the lowest bid, agreements for the submission of cover bids (voluntarily inflated bids);
- ❑ Bid Suppression: where competitors agree not to bid against each other;
- ❑ Bid-Withdrawal: where a competitor(s) withdraws its winning bid so that an agreed competitor will be successful instead;
- ❑ Bid-Rotation: Agreements designating bid winners in advance on a rotational basis, or on a geographical or customer allocation basis;
- ❑ Non-conforming bids - where businesses deliberately include terms and conditions that they know will not be acceptable to the client;
- ❑ Sub-Contracting- colluding Competitors receive sub-contracts from successful bidder.



# PRESUMPTIVE RULE



‘Shall presume’ standard in Sec 3(3);

- ‘*Shall Presume*’ rule is applicable—Burden of proof is on the accused entity;
- Once the agreement is proved—the AAEC will be presumed
- Rebuttable Presumption—can be rebutted by showing efficiency considerations;
- Penalty imposable: Up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher;



# INTERNATIONAL EXPERIENCE



Benefits from implementation of transparent and competitive procurement regime:

- ❑ *OECD Survey*: 17 to 43% savings to the public treasury in some developing countries;
- ❑ *Bangladesh*: Substantial reduction in the electricity prices;
- ❑ *Columbia*: 47% saving in the procurement of military goods;
- ❑ *Guatemala*: 43% cost saving in the procurement of medicines;
- ❑ *Mexico*: Reduction in procurement costs by \$3billion over 3 years and savings were almost equal to 1% of their GDP;
- ❑ *Nicaragua*: Substantial reduction in the budget for expenditures on pharmaceuticals;
- ❑ *Pakistan*: Saving of Rs. 187 million by the Karachi Water and Sewerage Board through introduction of an open transparent bidding process.



THANK YOU