

Evaluation of the impact of the OFT's investigation into bid rigging in the construction industry

A report by Europe Economics

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1 EXECUTIVE SUMMARY

Background

- 1.1 In September 2009, the OFT announced its decision to fine 103 construction companies a total of £129.2 million for infringing UK competition law by engaging in bid rigging activities, largely in the form of cover pricing, on 199 tenders between 2000 and 2006. Prior to this, the OFT had issued a Statement of Objections in April 2008 against 112 construction companies for alleged bid rigging. The OFT's decision followed a four year investigation into the sector, and constituted one of the OFT's largest investigations under the Competition Act.
- 1.2 Cover pricing is an illegal form of bid rigging, where a firm submits an artificially high bid after discussion with another bidder. These types of bids are not priced to win the contract but clients are not aware of this or of the discussion between the bidders, giving them a misleading impression with regards to the real extent of competition.
- 1.3 This report explores the impact of the OFT's recently concluded investigation and decision on bid rigging in the construction sector in comparison with the impact of earlier interventions. The first phase for assessing the impact of the OFT's most recent investigation was a baseline survey of contractors and procurers conducted by Europe Economics in 2008 (which was concluded before the OFT issued a Statement of Objections), partnering with GfK NOP, examining the impact of previous OFT infringement decisions concerning bid rigging, primarily in the roofing sub-sector, between 2004 and 2006. The report on the 2008 survey results is attached at Annexe A. The second phase of this work has been a survey of contractors and procurers carried out in 2010 by GfK-NOP.

Research Methodology

- 1.4 This research is based principally on responses to online surveys of construction companies and procurers of construction goods and services. Our overall research approach and methodology remained

consistent between the surveys. Any firms currently appealing the OFT decision were excluded from the 2010 contractor survey.¹ Aside from these appellant firms, this survey did not exclude other firms with prior involvement with the OFT (whether during the OFT's recent or earlier investigations).

- 1.5 The surveys were designed to explore perceptions of the prevalence of bid rigging, knowledge of and compliance with UK competition law and awareness of OFT activities in the sector. Our questionnaires were designed to balance the trade-off between ensuring comparability between surveys and ensuring that all of the objectives of this particular phase were met.
- 1.6 When considering the survey findings that follow, it is worth bearing in mind that the context of the survey (that is, an OFT-sponsored survey on the subject of competition law compliance) may, to some extent, influence responses, for example by influencing the willingness to respond and/or the responses given. The survey sought to minimise these effects by careful questionnaire design, by emphasising the independence of the research, the confidentiality of the responses given and the fact that the responses would not be attributable to any individual or firm.

Main Findings

Perceptions of the prevalence of bid rigging practices in the UK construction sector

- 1.7 In general, a majority of contractors in both phases of the research perceived bid rigging practices to be either non-existent or only seldom occurring in the UK. This finding is in contrast with statements by construction companies and industry bodies that have referred to the endemic nature of cover pricing in the sector and the findings of the

¹ 25 appeals have been lodged with the Competition Appeal Tribunal.

recent OFT investigation and decision. This difference may, in part, be driven by the survey context as outlined above.

- 1.8 There appears to be little change between our 2010 and 2008 surveys in the perceptions of contractors surveyed concerning the prevalence of bid rigging. Where bid rigging does occur, cover pricing is perceived to be the most prevalent form (being cited by 13 per cent of contractors and 17 per cent of procurers as a common practice), a finding that is consistent with our baseline survey.
- 1.9 Nevertheless, the comparison of both surveys points to a sustained decrease in the perceived prevalence of cover pricing among contractors. In our 2010 survey, 44 per cent of contractors report cover pricing to be less common than in 2008. This compares with 28 per cent of contractors in our baseline survey who believed it had become less common since 2005.
- 1.10 With respect to the reasons underlying cover pricing and bid rigging, client retention still appears to be the main reason given by contractors for cover pricing and bid rigging more generally in the sector. 'Business management' is cited as a main reason by a substantially higher proportion of contractors than in our baseline survey.
- 1.11 Approximately one third of contractors surveyed believe that they have been disadvantaged in some way when their competitors had engaged in bid rigging activities.

Knowledge of and compliance with UK competition law

- 1.12 The increase in awareness of the legality and illegality of various practices between surveys has been marginal. Whilst knowledge levels appear good overall, some 14 per cent of contractors still appear not to be aware that cover pricing is illegal.
- 1.13 However, our survey found that the awareness of penalties applicable if found guilty of cover pricing has improved markedly. The awareness of fines as a penalty has improved the most, rising from 49 per cent in 2008 to 76 per cent in 2010.

- 1.14 Compliance-focused activities and measures aimed at detecting and preventing bid rigging activities are relatively common in the sector. About one third of contractors surveyed have some form of internal mechanism in place to ensure that competition law is complied with across supply-chains. 65 per cent of procurers have introduced a new mechanism over the last two years to detect and/or prevent anti-competitive practices.
- 1.15 Only 7 per cent of contractors with no prior involvement with the OFT have participated in competition law training programmes compared with 51 per cent of contractors with some prior involvement with the OFT. In the case of procurers, competition law training appears to be a higher priority for public sector procurers than for private sector procurers as they are more likely to have undertaken competition training over the last two years.
- 1.16 Only 18 per cent of contractors claim to be aware of any recently created competition codes of conduct in the sector, despite 30 per cent of the contractors surveyed reportedly being a member of one of the trade bodies that have recently introduced a code of conduct of this type in the sector. This may be due to the fact that these codes have only recently been developed.

Procurement method and bid rigging

- 1.17 Competitive tendering remains the most commonly used method of procurement. Attracting high quality bids and facilitating a low price are still considered as the most important factors underpinning this choice of procurement method.
- 1.18 When asked whether they would still invite firms which had failed to provide bids to respond to invitations to tender for other construction projects, 52 per cent of procurers state that they would still do so, while 13 per cent say that they would not. However 35 per cent report that they are unable to provide a clear answer to this question.

Awareness and impact of the OFT's recent investigation and decision on bid rigging in the UK construction sector

- 1.19 Our work indicates that there is a high degree of awareness among contractors and procurers with regards to OFT actions in the construction sector.
- 1.20 Around three quarters of respondents are aware of the OFT's decision in September 2009 to fine 103 construction firms. This contrasts with the position in 2008 when only 29 per cent of contractors and 26 per cent of procurers indicated awareness of any of the six earlier OFT cases in the construction sector.
- 1.21 Media reports are by far the most important source of information on the OFT's recent actions in the sector. These are cited as an information source by over 80 per cent of contractors and procurers. Trade and industry bodies are also important channels of communication, particularly for contractors, and have increased in importance since our baseline survey. OFT publications were cited as an information source by 27 per cent of contractors.
- 1.22 Our survey also suggested that the recent OFT decision in the sector has had a greater impact on improving the knowledge of procurers about the illegality of a range of bid rigging practices than the earlier OFT infringement decisions in the sector between 2004 and 2006. In 2010 28 per cent of procurers have revised their understanding of the illegality of these practices compared with 16 per cent in 2008.
- 1.23 Our findings suggest that the recent OFT decision in relation to bid rigging activities in the construction sector has had a much larger impact on business behaviour and, more importantly, business practices of contractors compared with the OFT's six earlier decisions in the sector.
- 1.24 For contractors aware of the recent OFT decision, the fines imposed by the OFT on 103 construction firms for bid rigging activities appear to have had most impact on business behaviour in the last two years, with 19 per cent citing the imposition of fines as having had the largest

impact on their firm's behaviour. Our 2010 survey shows that the OFT's earlier roofing cases had a lower impact on firms' recent behaviour, having had an impact on only 2 per cent of this group of contractors.

- 1.25 Further, we also found that the impact of the OFT's actions in the sector on business behaviour was far greater among those contractors that had had some prior involvement with the OFT; the OFT's actions had impacted on the business behaviour of 64 per cent of contractors surveyed with some prior involvement with the OFT compared with only 19 per cent of those with no previous involvement with the OFT.

Factors that create deterrence

- 1.26 Our findings on the perceived effectiveness of various penalties in deterring bid rigging are broadly consistent with our baseline survey findings. Strong penalties, including company fines, exclusion from bidding for further work, and criminal prosecution are still perceived as the most important deterrents, while the proportion of procurers in our 2010 survey believing that increasing incentives to report bid rigging are an important deterrent has fallen by 11 percentage points.

2 INTRODUCTION

2.1 This report explores the impact of the OFT's recently concluded investigation and decision on bid rigging in the construction sector in comparison with the impact of earlier interventions. The first phase for assessing the impact of the OFT's most recent investigation was a baseline survey of contractors and procurers conducted by Europe Economics in 2008 (which was concluded before the OFT issued a Statement of Objections), partnering with GfK NOP, examining the impact of previous OFT infringement decisions concerning bid rigging, primarily in the roofing sub-sector, between 2004 and 2006. The report on the 2008 survey results is attached at Annexe A. The second phase of this work has been a survey of contractors and procurers carried out in 2010 by GfK-NOP.

Objectives of the Study

2.2 The objective of this study is to evaluate, based on surveys of contractors and procurers in the industry, the impact of the recent OFT investigation and decision on bid rigging in the construction sector in terms of:

- Awareness of recently concluded investigations and decisions and the sources through which this awareness was raised;
- Changes in awareness of competition rules as a result of the OFT's activities, including penalties that can be imposed and their effect in deterring anti-competitive behaviour;
- Steps taken to ensure compliance with competition law and mitigate the risk of such behaviour;
- The awareness of companies and procurers of recently created codes of conducts as well as other relevant guidelines existing at the UK and OECD level;
- Shifts in industry attitudes and practices post the OFT's decision; and

- How far procurers' awareness of bid rigging activities has changed in the last two years and any steps they are taking to limit this risk during the procurement process, for example whether they seek guidance on competition issues.

2.3 When possible, the analysis assesses whether the findings on the issues highlighted above differ either by sector (public or private) and/or by country (England, Scotland, Wales and Northern Ireland).

Structure of the Report

2.4 The structure of this report is as follows:

- Section 3 – provides some background on the OFT's recent decisions in the sector, and sets out our methodology;
- Section 4 – presents the main findings from our surveys;
- Section 5 – summarises the conclusions from the main findings;
- Annexe A – presents our analysis of the baseline survey, entitled 'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)'; and
- Annexe B – presents supporting material for our 2010 research, including the questionnaires for the contractor and procurer surveys.

3 CONTEXT OF THE STUDY AND OUR METHODOLOGY

OFT Activities in the Construction Sector

OFT cases

- 3.1 The first phase of research, with surveys completed in March 2008, focused on six OFT decisions involving price fixing or other cartel activity in the construction sector between 2004 and 2006. Five of these cases were in the flat-roofing sector and one was in aluminium spacer bars.
- 3.2 The second phase of our research has focused on the OFT's most recent decision on bid rigging in the construction sector (one of the OFT's largest Competition Act investigations). This investigation led to:
- The issue of the OFT's Statement of Objections (SO) against 112 construction companies for engaging in bid rigging activities (April 2008);² and
 - The announcement of the OFT's decision to fine 103 construction firms for bid rigging activities (September 2009).
- 3.3 The fieldwork for the first phase of our evaluation pre-dated the Statement of Objections issued by the OFT on 17 April 2008 and therefore the announcement of its decision to impose fines on 103 construction firms in September 2009.

² An SO gives notice of a proposed infringement decision under the Competition Act 1998 to the parties involved. The parties then have an opportunity to make written and oral representations in response to the case set out by the OFT. Such representations will be considered by the OFT before any final decision is made.

Summary of the OFT's recent decision in the construction sector

- 3.4 In April 2008, following one of its largest investigations under the Competition Act, the OFT issued a Statement of Objections, where it formally alleged that 112 firms in the construction sector in England named in the SO had engaged in bid rigging activities, and in particular cover pricing. According to the OFT's press release at the time of the SO, 'The OFT's investigation originated from a specific complaint in the East Midlands in 2004, but it quickly became clear from the evidence that the practice of cover pricing was widespread.'³
- 3.5 During the investigation, the OFT received information on approximately 4,000 suspect tenders involving over 1,000 companies, ranging from very small organisations to very large companies.⁴
- 3.6 In September 2009, the OFT issued its decision which saw fines totalling £129.2 million imposed on 103 construction firms in England that were found to have engaged in illegal anti-competitive bid rigging activities (mostly cover pricing) on 199 tenders from 2000 to 2006. In 11 of these bids, the winning bidder faced virtually no genuine competition as all other bids were cover bids. The OFT also found six instances where successful bidders had paid an agreed sum of money to the unsuccessful bidder ranging from £2,500 to £60,000.⁵
- 3.7 25 firms fined by the OFT have appealed against this decision to the Competition Appeal Tribunal (CAT) (six of these 25 parties are also claiming that they did not infringe the Competition Act). At the time of writing this report no judgments have been given on these appeals.

³ OFT press release 52/08, 17th April 2008

⁴ See page 253, paragraph II. 1460 of Decision of the Office of Fair Trading, No. CA98/02/2009, 'Bid rigging in the construction industry in England', 21 September 2009 (Case CE/4327-04).

⁵ OFT press release 114/09, September 2009, <http://www.of.gov.uk/news-and-updates/press/2009/114-09>

- 3.8 In terms of the types of contracts where bid rigging was prevalent, the evidence from the OFT investigation showed that contract values varied considerably from as little as £2,215 to £8.5 million. There was evidence of bid rigging in both public and private sector contracts (approximately 57 per cent of alleged infringements were related to public sector contracts). Just over 60 per cent of the alleged infringements related to new building works, 34 per cent to repair, maintenance and improvement and the remainder involved an element of each.⁶
- 3.9 The cases highlighted above provide the opportunity to reassess the impact of the OFT's work on awareness of cartel-related issues both amongst suppliers and procurers in the sector. The latest decision has received much wider coverage in the press than earlier ones in the specialised roofing sector and provides a valuable opportunity to conduct an *ex post* evaluation of awareness raised against the baseline research on the impact of OFT enforcement activity in the sector between 2004 and 2006.

Reasons for bid rigging

- 3.10 One of the key reasons cited for the widespread practice of cover pricing is client retention. In the earlier roofing cases and in the most recent investigation, involved parties have claimed that a key motivation for such behaviour was a desire to remain on the Standing Lists of local authorities, since it is often the case that contractors are only selected if on these lists. This was identified as an issue in the first phase of our research.
- 3.11 In the recent investigation, many companies also claimed that they engaged in cover pricing because they did not realise it was illegal. This implies that some may have engaged in these practices unaware of the potential consequences. In this context, we will be interested in

⁶ See page 290, paragraph II. 1610 of Decision of the Office of Fair Trading, No. CA98/02/2009, 'Bid rigging in the construction industry in England', 21 September 2009 (Case CE/4327-04).

whether the recent OFT intervention has had an impact on behaviour in the industry.

Research Methodology

3.12 This evaluation was based primarily on the evidence generated by parallel surveys of construction companies and procurers of construction projects.

Survey approach

- 3.13 We commissioned GfK NOP to conduct the contractor and procurer surveys. In both phases of the research, they adopted a two-stage approach to carrying out the surveys:
- **Stage one** – this involved telephoning construction companies and procurers to invite them to participate in the survey. The EMAP Glenigan specialist construction database was used to provide initial contacts. This database provided a good quality and broadly representative list of contractors and procurers. The database is compiled from countrywide research into planning applications. It therefore includes contacts that are currently active either as procurers or construction companies;
 - **Stage two** – this involved inviting those contractors and procurers which had agreed to participate in the survey to complete an online survey.
- 3.14 In adopting this approach, we aimed to combine the benefits of a telephone and an online process. We were also interested in ensuring consistency with the approach followed in the first phase of our research, mitigating the risk of differences in responses being driven by a change in research methodology rather than a change in the viewpoints of respondents.
- 3.15 For this second phase of research, the OFT set a target of 400 completed responses from construction companies and 250 responses from procurers.

- 3.16 Challenges generally arise in all surveys with respect to collecting representative and accurate information from a well-defined target population. While we have sought to address some of these challenges by, for example, working with a relatively high response target, it is worth bearing in mind that the context of the survey (that is, an OFT-sponsored survey on the subject of competition law compliance) may, to some extent, influence responses, for example, by influencing the willingness to respond and/or the responses given.
- 3.17 The surveys sought to minimise these effects by careful questionnaire design, by emphasising the independence of the research, the confidentiality of the responses given and the fact that responses would not be attributable to any individual or firm.

Survey questions

- 3.18 Although one of the key objectives of this study was to build on the findings of the first phase of the research, ensuring that all of the stated objectives of this evaluation were met required the following approach:
- The removal of some questions that were no longer appropriate for the focus of this study (for example, questions relating to OFT activities in general as opposed to those focused on the construction sector);
 - The updating of some questions to make them more relevant to the focus of the current study (for example, changing the time horizon of interest); and
 - The inclusion of some new questions.

Contractor survey

- 3.19 The contractor survey covered the following:
- Demographic information about respondents (for example, geographic location, size, sub-sector);

- Awareness of bid rigging issues and knowledge of competition law;
- Perceived advantages and disadvantages of complying with competition law;
- Perceived prevalence of and reasons for bid rigging;
- Awareness of OFT activities in the construction sector, particularly in relation to the OFT's recent decision on bid rigging;
- Perceived influence and impact of the OFT's activities in the construction sector, particularly the OFT's recent decision on bid rigging; and
- Perceived effectiveness of various factors in deterring bid rigging.

3.20 In total, we received 416 complete responses to the contractor survey which is approximately 100 more than the number of completed responses we received for the baseline survey.⁷ A large majority of the respondents were senior staff⁸ and over 85 per cent of the firms that responded had been in business for more than 10 years.⁹ Not only should this ensure the quality of responses, it should also ensure that the quality of responses is comparable to those we received in the baseline survey.

3.21 With respect to the size distribution of the firms that responded, approximately half of the firms had 50 or more employees and a majority had annual revenue between £2 million and £50 million. A large majority of the firms were based in England (83 per cent), with the remaining firms based in Wales, Northern Ireland and Scotland.¹⁰

3.22 There was a broadly equal split between contractors for whom the majority of work was in the private sector and those for whom the

⁷ We received 315 responses in our 2008 survey of contractors.

⁸ See Figure B.1 in Annexe B (Q0B in our 2010 contractor survey)

⁹ See Figure B.2 in Annexe B (Q10A in our 2010 contractor survey)

¹⁰ See Figure B.3 in Annexe B (Q0C in our 2010 contractor survey)

majority was in the public sector (40 per cent and 38 per cent respectively). The remaining 20 per cent of firms had an equal split of work between the private and the public sector.¹¹ Further, a majority of work was for new build (61 per cent) rather than repair and maintenance (26 per cent).¹²¹³

3.23 In certain questions, we evaluate responses by a number of characteristics in order to assess whether the perceptions of respondents differ according to, for example:

- Whether most of their work is in the private or public sector;
- Which region the firm is based in;
- The size of firm;
- Whether they are aware of the OFT decisions in the sector; and
- Whether they have had some form of prior involvement with the OFT.

3.24 While there are some slight differences between the profiles of the contractors surveyed in our 2010 and 2008 surveys, these are not so marked that they need to be taken into consideration when interpreting any differences between survey cohorts.

3.25 The main findings from the survey are presented in Chapter 4. Further details and the contractor questionnaire used in the survey are presented in Annexe B.

¹¹ 2 per cent of contractors surveyed provided a 'Don't know' response

¹² See Figure B.4 in Annexe B (Q1D in our 2010 contractor survey)

¹³ 12 per cent of contractors had an equal split between new build work and repair and maintenance work and 2 per cent of contractors provided a 'Don't know' response.

Procurer survey

- 3.26 The procurer survey for the second phase covered the same issues as for the first phase but, as for the contractor survey, with some adjustments to the questions to ensure that the answers reflect procurer rather than contractor perceptions.
- 3.27 In total, we received 252 completed responses to the procurer survey which is 120 more than the number of responses in our earlier survey.¹⁴ A large majority of the procurers that responded had been procuring goods and services for over 10 years.¹⁵ Further, a majority of procurers had 250 or more employees and approximately 20 per cent had between 50 and 249 employees.¹⁶
- 3.28 The split between public and private sector procurers was slightly less balanced than in our baseline survey. Just over half were in the public sector (compared with 44 per cent in the previous sample) and 38 per cent were in the private sector (compared with 45 per cent in the baseline survey).¹⁷
- 3.29 Like the contractor findings, we also evaluate the procurer responses by the same set of characteristics highlighted above in paragraph 3.23
- 3.30 Like the contractors, the slight differences between the profiles of procurers surveyed in our 2010 and 2008 surveys are not marked enough to warrant consideration when interpreting differences between survey cohorts. Thus, the analysis that follows in Chapter 4 broadly compares like with like when reporting changes. Further details, together with the procurer questionnaire used in our study, are provided in Annexe B.

¹⁴ We received 132 responses to our procurer survey in 2008

¹⁵ See Figure B.5 in Annexe B (Q1B in our 2010 procurer survey)

¹⁶ See Figure B.6 in Annexe B (Q12C in our 2010 procurer survey)

¹⁷ See Figure B.7 in Annexe B (Q0C in our 2010 procurer survey)

4 FINDINGS FROM THE SURVEYS

Introduction

4.1 This section presents the main findings from our contractor and procurer surveys and draws comparisons between the results from both phases of the research, in order to gain a better understanding of the impact of the OFT's recent decision on bid rigging in the construction sector. Our surveys also covered other issues (such as codes of conduct and exclusion from tender lists by procurers) which might affect the degree of industry awareness and behaviour.

4.2 The presentation of the findings is structured along four themes:

- Changes in perceptions of the prevalence of bid rigging in the UK construction sector;
- Changes in the awareness of and compliance with competition law by contractors and procurers;
- Changes in procurement methods to address bid rigging; and
- Changes in the impact of OFT activities in the construction sector.

4.3 In the description of the findings that follow, all differences indicated (both between surveys and within survey sub-groups) are significant at the 95 per cent confidence interval level unless otherwise stated. In the corresponding charts, where two or more groups are presented beside each other and compared (for example 2008 and 2010), statistically significant differences between categories are marked by an asterisk.

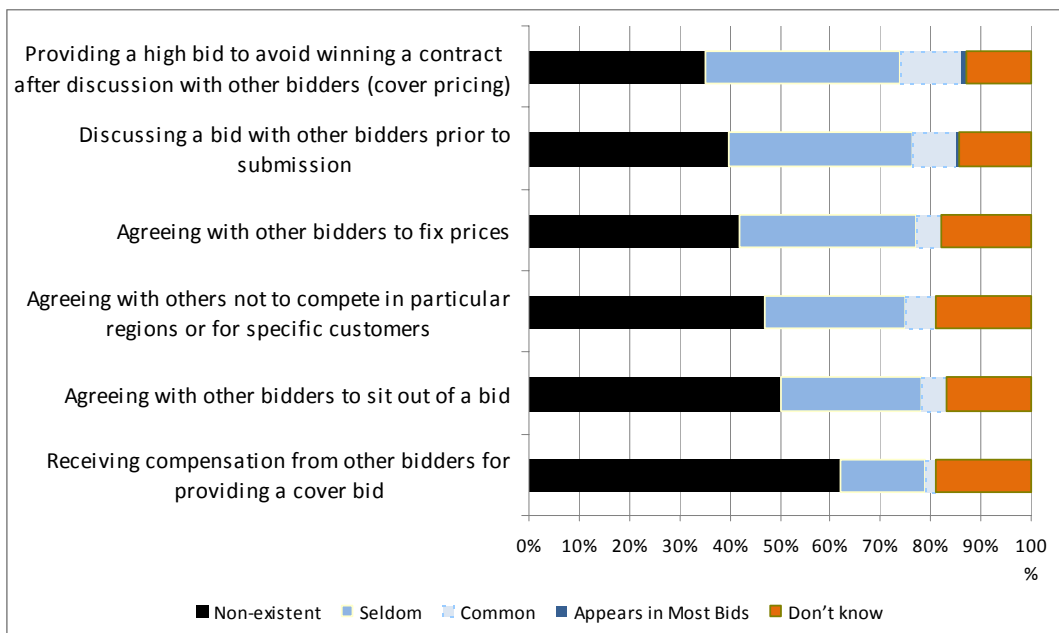
Bid Rigging Practices in the UK Construction Sector

Perceived current existence of bid rigging

Contractors

4.4 As Figure 4.1 indicates, the majority of respondents perceive bid rigging practices to be either non-existent or only seldom occurring in the UK. This finding is in contrast with statements by construction companies and industry bodies that have referred to the endemic nature of cover pricing in the sector and the findings of the recent OFT investigation and decision. This difference may, in part, be driven by the survey context as outlined in Chapter 3.

Figure 4.1: Perceived current existence of bid rigging by contractors



Base number: 416

Source: GfK contractor survey 2010

4.5 Further, where bid rigging is perceived to occur, cover pricing appears to be the most prevalent form with 13 per cent of contractors reporting

that it is either 'common' (12 per cent) or 'appears in most bids' (1 per cent). This finding was identical to that in our previous survey.¹⁸

- 4.6 When weighting responses according to the number of employees in the firm, views do not differ significantly by company size.¹⁹ This is consistent with our first phase findings.
- 4.7 We found no significant difference in the perceived existence of bid rigging across England, Wales, Northern Ireland and Scotland, nor between contractors with most of their work in the private sector and those with a majority in the public sector.

Procurers

- 4.8 We also explored the extent to which procurers' perceptions differed from those of the contractors. As illustrated in Figure 4.2, a larger proportion of procurers consider bid rigging to be either common or appearing in most bids. Further, there is a significantly larger proportion of 'Don't know' responses among procurers than contractors. Both of these findings are in line with our 2008 survey.
- 4.9 While a similar proportion of procurers between surveys report that bid rigging practices are 'common' or 'appear in most bids' there were a couple of exceptions: procurers reporting 'agreeing with other bidders not to compete in particular regions or for specific customers' and 'agreeing with other bidders to fix prices' to be 'common or appearing in most bids' increased by 7 percentage points when compared with our 2008 survey.²⁰
- 4.10 Our survey also indicates that a much higher proportion of procurers report that discussing a bid with the procurement agency prior to

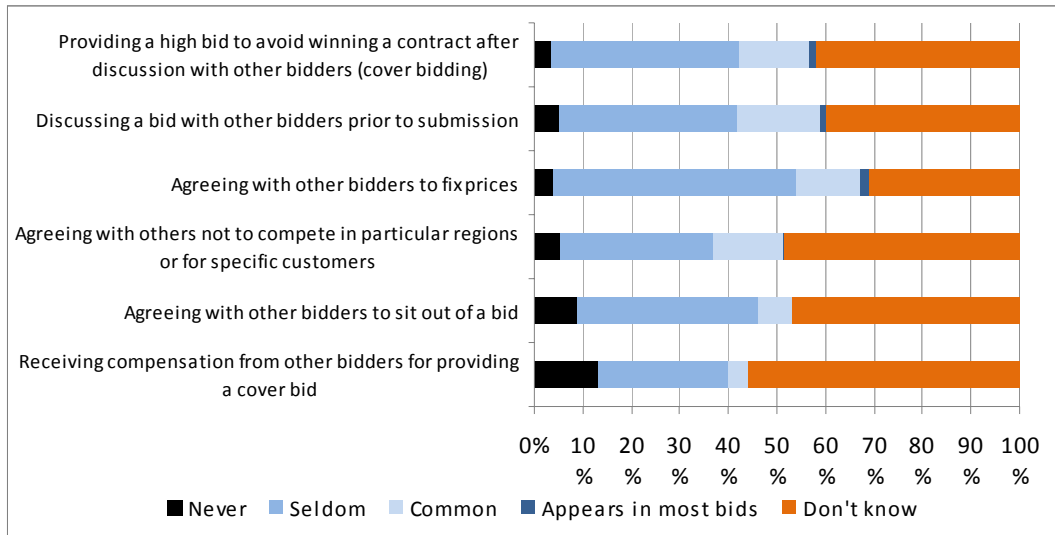
¹⁸ See Annexe A: 'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)', CHART 4.1, (Q1A in our 2008 contractor survey)

¹⁹ See Figure B.8 in Annexe B (Q2A in the 2010 contractor survey)

²⁰ See Annexe A 'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)', CHART 4.4, (Q3A in the 2008 procurer survey)

submission is a common practice in the sector.²¹ Approximately 72 per cent of procurers believed that it is either 'common' or 'appears in most bids' compared with 35 per cent in our 2008 survey.²² This might suggest that contractors have become better informed since our last survey about the legality of this practice and have become less reluctant to discuss bids with procuring agencies prior to submission.²³

Figure 4.2: Perceived current existence of bid rigging by procurers



Base number: 252

Source: GfK procurer survey 2010

4.11 There are no significant differences between the perceptions of bid rigging by procurers in the public sector and their counterparts in the private sector.

²¹ As this practice is not considered a form of bid rigging it has not been mapped in Figure 4.2.

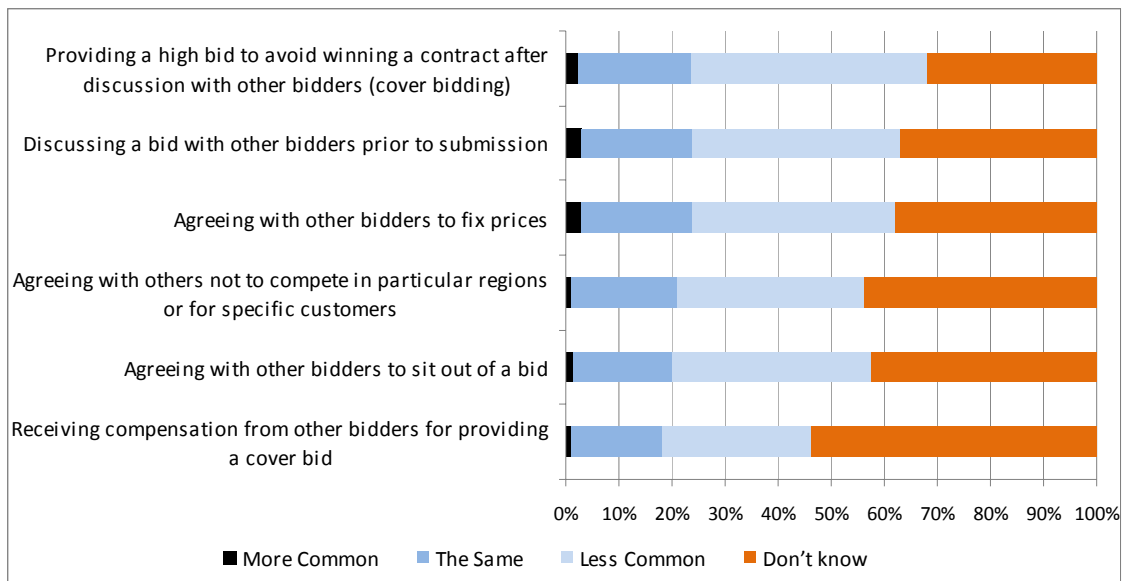
²² See Annexe A 'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)', CHART 4.4, (Q3A in the 2008 procurer survey)

²³ Although discussions between a bidder and the procuring agency prior to the submission of a bid are not illegal under UK competition law, some forms of discussion may be illegal if, for example, they involve collusion to create a particular outcome.

Perceived existence of bid rigging compared with two years ago

4.12 We also explored the degree to which respondents believed that the prevalence of these practices had changed over the last two years for the 2010 survey and the last three years for the 2008 survey. In general, the comparison of the surveys points to a sustained decrease in the perceived prevalence of cover pricing as the vast majority of contractors surveyed report that the prevalence of bid rigging activity has either become less common or has remained the same (see Figure 4.3). In particular, 44 per cent of contractors in our 2010 survey believe cover pricing to be less common than in 2008, compared with 28 per cent of contractors in our earlier survey who thought that it had become less common over the three years preceding that survey.²⁴

Figure 4.3: Perceived existence of bid rigging compared with 2 years ago by contractors¹

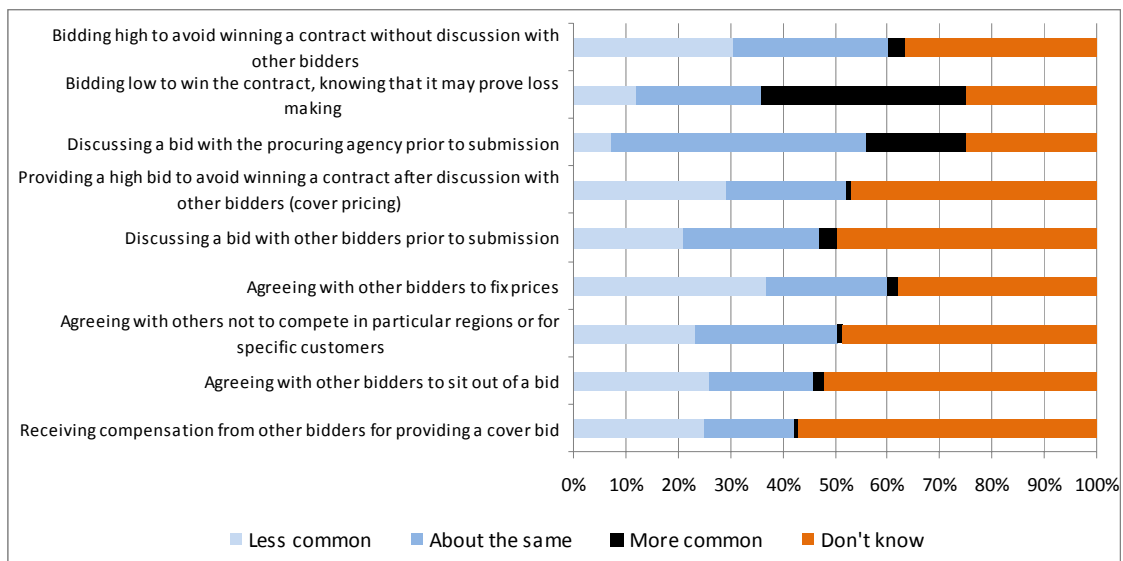


Notes: ¹ in our 2008 survey, respondents were given a reference period of 3 years
 Base number: 416. Source: GfK contractor survey 2010

²⁴ See Q1b in the previous contractor survey (chart not presented in the previous report)

4.13 We found a similar finding in the case of procurers. When compared with the findings from our 2008 survey, a higher proportion of procurers consider bid rigging activity to be less common. For example, 29 per cent of procurers in our 2010 survey report that cover pricing has become a less common practice over the last two years (see Figure 4.4), compared with 17 per cent of procurers who thought that cover pricing had become less common over the three years preceding the 2008 survey.²⁵ Similarly, 37 per cent of procurers thought that agreeing to fix prices had become 'less common' in the sector compared with only 22 per cent of procurers in our 2008 survey.

Figure 4.4: Perceived existence of bid rigging compared with 2 years ago by procurers¹



Notes: ¹ in our 2008 survey, respondents were given a reference period of 3 years

Base number: 252

Source: GfK procurer survey 2010

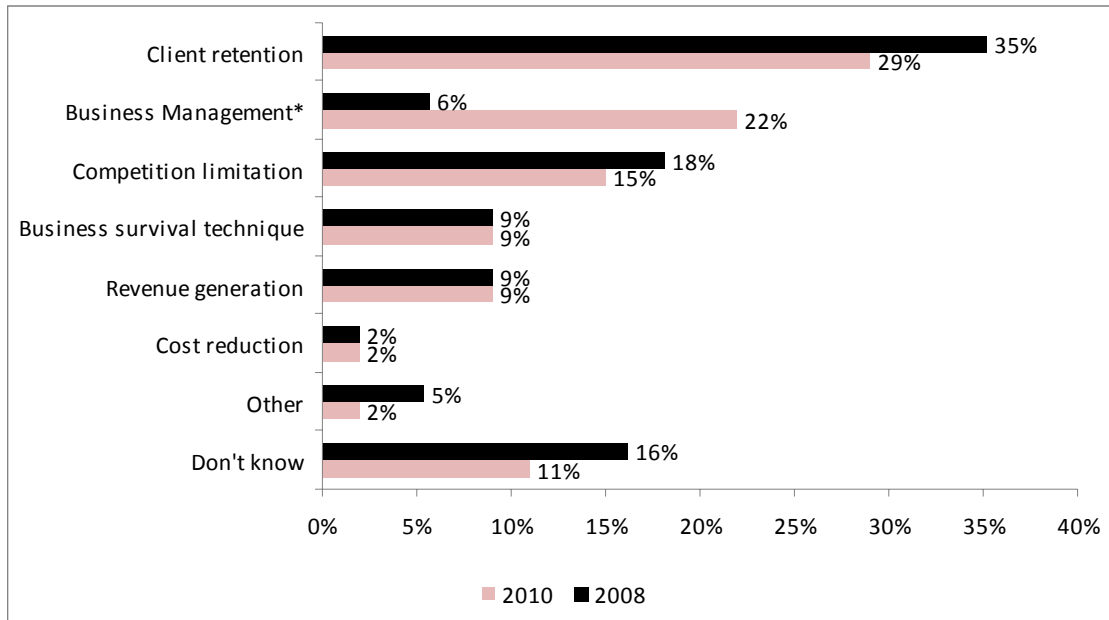
²⁵ See Q3B in the 2008 procurer survey (chart not presented in the previous survey)

Reasons for bid rigging

- 4.14 We also explored whether there have been any changes in the views on the reasons for bid rigging in general and cover pricing in particular. With respect to cover pricing, two important features stand out. First, as illustrated in Figure 4.5, client retention still ranks highest among the reasons for cover pricing.
- 4.15 Second, an increased proportion of contractors highlight 'business management' as a reason for engaging in cover pricing, with 22 per cent of contractors citing this as the main reason compared with only 6 per cent of contractors surveyed in 2008.²⁶
- 4.16 In addition to client retention and business management, competition limitation, business survival and revenue generation are also cited as reasons for cover pricing and the views of contractors on these latter factors have remained relatively similar to those surveyed in 2008.

²⁶ This difference may, however, be accounted for, at least in part, by the modified wording used in our 2010 survey which defined business management as 'managing the flow of work etc'. Our previous survey did not define 'Business Management' and thus contractors may have either interpreted this differently than those recently surveyed or may have opted for a 'Don't know' response instead.

Figure 4.5: Main reasons for cover pricing by contractors



Base number: 416 (2010 survey), 315 (2008 survey)

Source: GfK contractor survey 2010 and 2008

4.17 We explored whether these views differed according to whether responding firms won most of their work in the public or private sector. We found that a higher proportion of ‘public sector’ contractors (35 per cent) compared with ‘private sector’ contractors (22 per cent), consider ‘client retention’ to be the main reason underlying cover pricing.²⁷

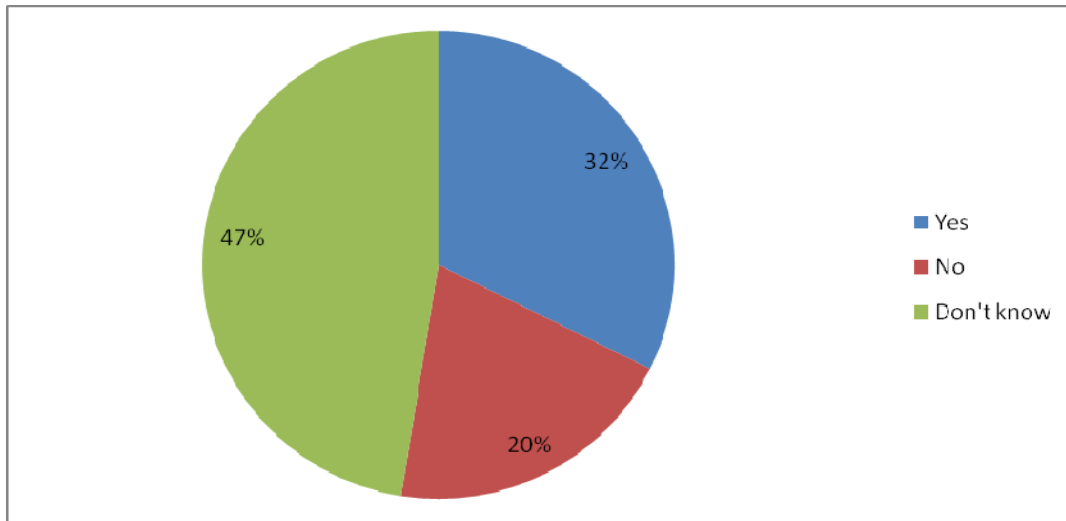
4.18 We also found a significant divergence in the views of ‘private sector’ contractors between our 2010 and 2008 surveys. The proportion of ‘private sector’ contractors citing ‘client retention’ is 10 percentage points lower than in our 2008 survey. This might suggest that that for ‘private sector’ contractors at least, this has become a less pressing issue.

²⁷ See Figure B.9 in Annexe B (Q3A in the 2010 contractor survey)

Perceived impacts of bid rigging

4.19 We sought views on whether contractors believed they had ever been disadvantaged by the activities of their competitors who had engaged in bid rigging, including cover pricing. As can be seen from Figure 4.6, approximately one third of contractors report that they have been disadvantaged in some way where their competitors had engaged in some form of bid rigging. Almost half of the respondents, however, gave a 'Don't know' response. This particular question was not included in our 2008 survey so we have been unable to make any comparisons over time.

Figure 4.6: Percentage of contractors perceiving that they have been disadvantaged by bid rigging and cover pricing by their competitors



Base number: 416

Source: GfK contractor survey 2010

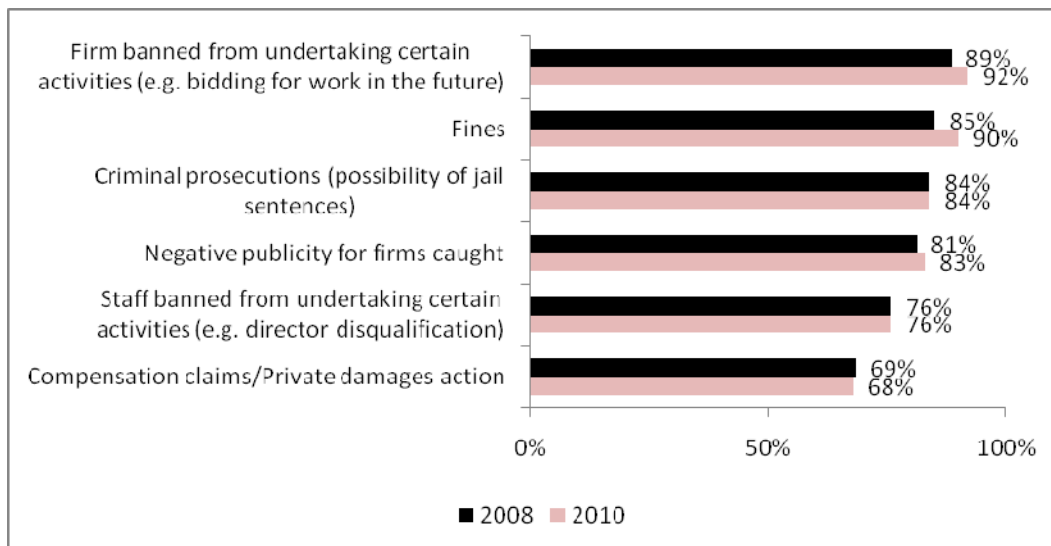
4.20 Although this finding may appear to contradict our finding on the perceived occurrence of bid rigging practices in the sector by contractors (that it was non-existent or seldom occurring), it should be noted that respondents were not given a specific reference period to consider when asked whether they have ever been disadvantaged. Thus, the period referred to by respondents may differ considerably compared with our

question on current perceived occurrence of bid rigging activities in the sector.

Perceived effectiveness of penalties

4.21 We explored contractors' views on the role of penalties in deterring bid rigging. Figure 4.7 compares the percentage of contractors in our 2010 and 2008 surveys who believed that various penalties for bid rigging were either very important or important in deterring bid rigging. Not only did respondents in both our surveys perceive all of the penalties listed as important, we also found no significant differences between the views held in 2008 and 2010. Banning firms from undertaking certain activities in the future and fines were viewed as the two most effective forms of penalty, while penalties such as director disqualification and compensation claims/private damages, although still recognised as important by over two-thirds of respondents, were ranked last in terms of their deterrent effect.

Figure 4.7: Perceived importance in deterring bid rigging by contractors

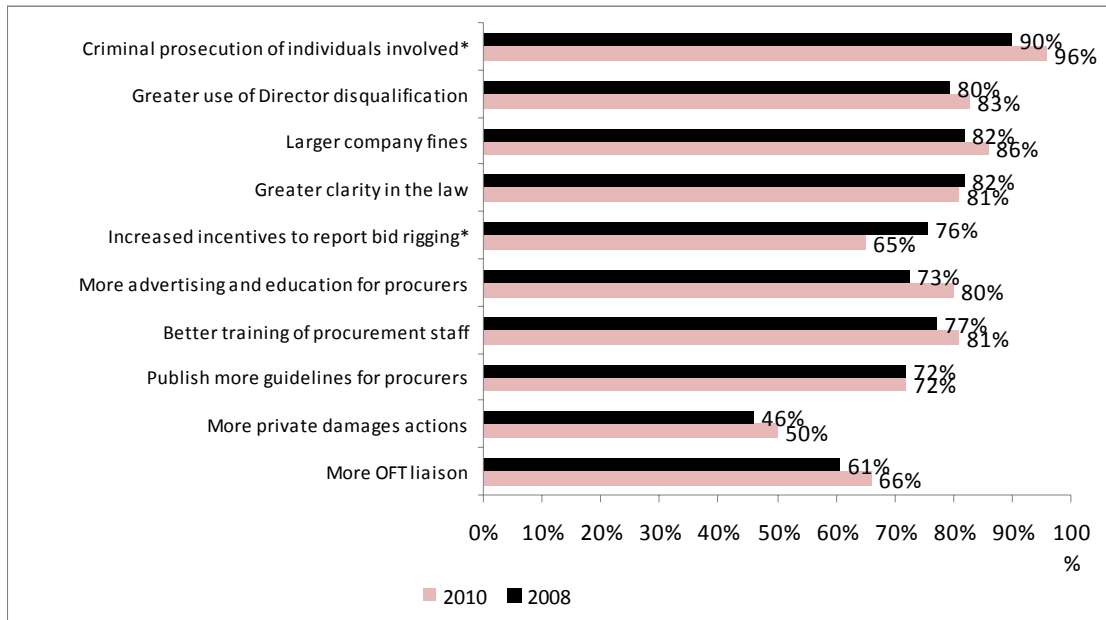


Base number: 416 (2010 survey), 315 (2008 survey)

Source: GfK contractor survey 2010 and 2008

- 4.22 We also explored the views of procurers on the effectiveness of various approaches (including various penalties) in deterring illegal activities and whether these views have changed since our baseline survey.
- 4.23 Figure 4.8 illustrates the proportion of procurers who believed that the various approaches listed were either highly effective or effective in preventing bid rigging in the construction sector. All the approaches listed were considered to be effective in deterring bid rigging. In general, the proportion of procurers citing these approaches as important was slightly higher than in our 2008 survey, although only two differences were statistically significant.
- 4.24 The perceived importance of increasing incentives to report bid rigging saw 11 percentage points fewer procurers in our 2010 survey citing this as either highly effective or effective. This finding might reflect the fact that there may now be a higher level of awareness of the good reasons to report bid rigging compared with 2008, implying that higher incentives are perhaps not as necessary as they might previously have been. Criminal prosecution of individuals involved increased in importance as an effective deterrent.

Figure 4.8: Perceived effectiveness of deterring bid rigging by procurers



Base number: 252 (2010 survey), 132 (2008 survey)

Source: GfK procurer survey 2008 and 2010

4.25 We also asked both contractors and procurers whether they believed there were any other potential remedies/approaches that might be effective in deterring bid rigging in the sector. Both procurers and contractors believe that the ability of an approved contractor to decline a tender for isolated projects without fear of being struck off short-lists or framework contracts needs to be improved.^{28 29} The suggestion of imposing heavier penalties such as firm liquidation and closure was also put forward by contractors, while procurers suggested ‘naming and shaming’ as an effective approach.^{30 31}

²⁸ This was a qualitative response provided by 12 per cent of the 16 per cent of contractors that responded to Q4C in our 2010 contractor survey.

²⁹ This was a qualitative response provided by 11 per cent of the 14 per cent of procurers that responded to Q9A in our 2010 procurer survey.

³⁰ This was the view of 16 per cent of contractors who responded to Q4C in our contractor survey.

Summary of changes in perceptions of bid rigging in the construction sector

- 4.26 In summary, the majority of respondents in both phases of our research perceive bid rigging practices to be either non-existent or only seldom occurring in the UK. This finding is in contrast with statements by construction companies and industry bodies that have referred to the endemic nature of cover pricing in the sector and the findings of the recent OFT investigation and decision. This difference may, in part, be driven by the survey context.
- 4.27 There appears to be little change between our 2010 and 2008 surveys in the perceptions of contractors surveyed concerning the prevalence of bid rigging. Where bid rigging does occur, cover pricing is perceived to be the most prevalent form (being cited by 13 per cent of contractors and 17 per cent of procurers as a common practice), a finding that is consistent with our baseline survey.
- 4.28 Nevertheless, the comparison of both surveys points to a sustained decrease in the perceived prevalence of cover pricing. In our 2010 survey, 44 per cent of contractors report cover pricing to be less common than in 2008. This compares with 28 per cent of contractors in our baseline survey who believed it had become less common since 2005.
- 4.29 With respect to the reasons underlying the practices, client retention still appears to be the main reason given by contractors for cover pricing and bid rigging more generally in the sector. 'Business management' is cited as a main reason by a substantially higher proportion than in our baseline survey.

³⁰ This was the view of 29 per cent of procurers that responded to Q9A in our procurer survey.

- 4.30 Approximately one third of contractors report that they consider they have been disadvantaged in some way where their competitors have engaged in bid rigging activities.
- 4.31 Our findings on the perceived effectiveness of various penalties in deterring bid rigging are broadly consistent with our baseline survey findings. Strong penalties, including company fines, exclusion from bidding for further work, and criminal prosecution are still perceived as the most important deterrents, while the proportion of procurers in our 2010 survey believing that increasing incentives to report bid rigging are an important deterrent has fallen by 11 percentage points.

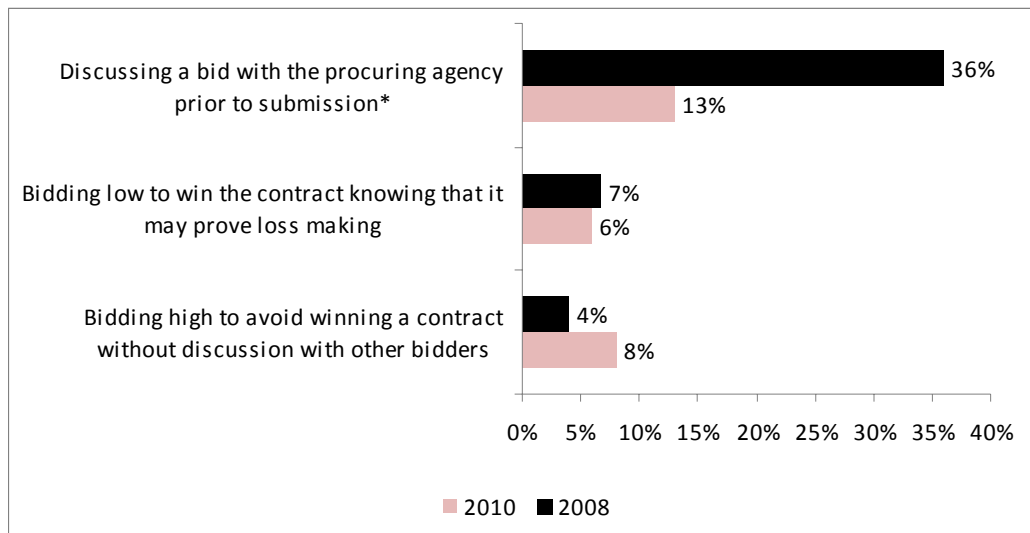
Awareness of Competition Law

Knowledge of the illegality of bid rigging

Contractors

- 4.32 As part of our research, we explored whether respondents' knowledge of competition law had changed significantly since our 2008 survey. Figure 4.9 illustrates the proportion of contractors believing that certain legal practices, such as bidding low to win contracts despite the fact that this may prove loss making, were illegal.

Figure 4.9: Percentage of contractors believing that legal practices listed in the chart are illegal



Base number: 416 (2010 survey), 315 (2008 survey)

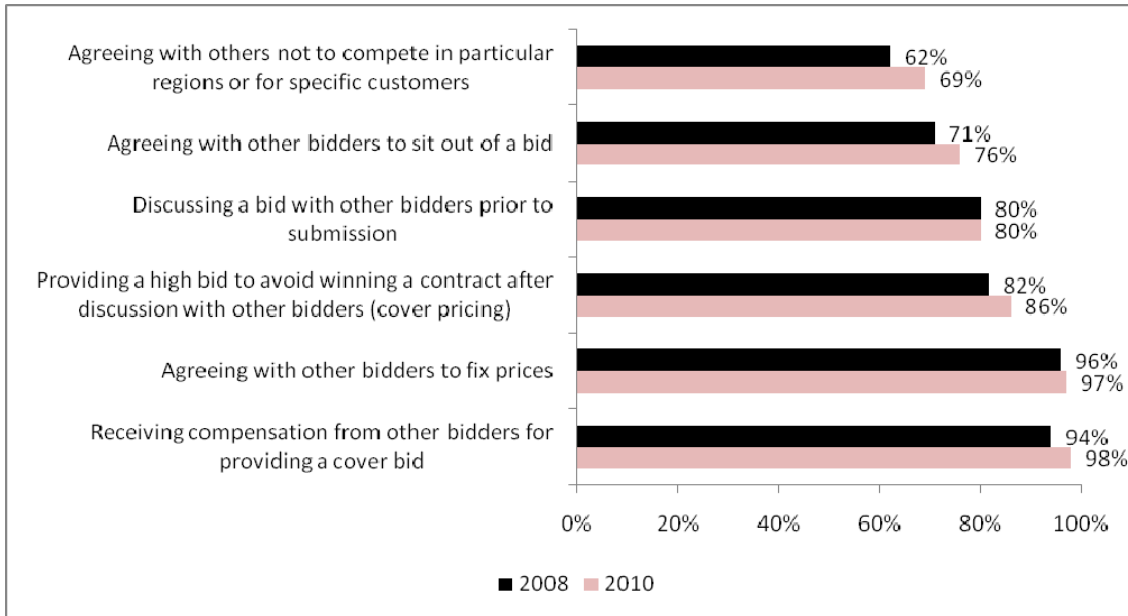
Source: GfK contractor survey 2008 and 2010

- 4.33 A smaller proportion of contractors in our 2010 survey compared with our 2008 survey wrongly believed that any discussion of a bid with the procuring agency prior to the submission of a bid is illegal. The proportion was higher for those contractors that were unaware of any of the OFT decisions in the construction sector than for those that were aware of OFT actions.³²
- 4.34 Our findings also suggest that the knowledge of illegal practices has not changed significantly since our 2008 survey (see Figure 4.10 below). There remains a notable proportion of contractors who appear not to be well informed about the illegality of bid suppression and market sharing and 14 per cent of contractors are still not aware that cover pricing is illegal (compared with 18 per cent in 2008).^{33 34}

³² See Figure B.10 in Annexe B (Q2C in the 2008 contractor survey)

³³ This difference between our 2010 and 2008 surveys was not significant at the 95 per cent confidence interval level.

Figure 4.10: Percentage of contractors believing the illegal practices listed in the chart are illegal



Base number: 416 (2010 survey), 315 (2008 survey)

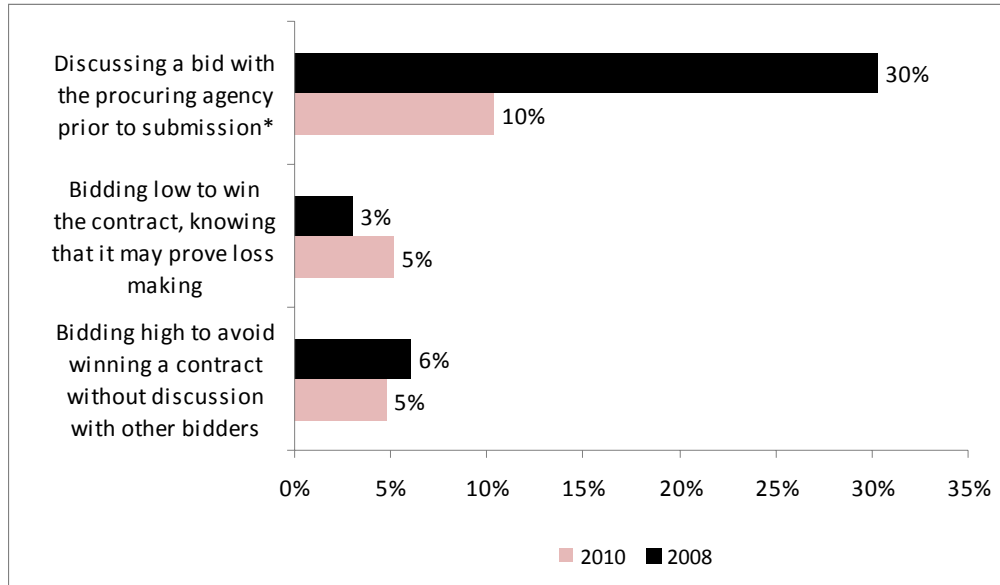
Source: GfK contractor survey 2008 and 2010

Procurers

4.35 We also conducted a similar exercise with procurers, exploring the knowledge with respect to legal and illegal practices under UK competition law. As Figure 4.11 and Figure 4.12 illustrate, there has been some improvement in the knowledge of procurers with regards to the illegality and legality of various practices.³⁵ Further, in line with our findings for contractors, a significantly smaller proportion of procurers in our 2010 survey wrongly consider that any discussion about a bid with the procuring agency prior to submission is illegal.

³⁴ See Q1c 2008 contractor survey (note a comparable chart was not presented in the previous 2008 findings in Annexe A).

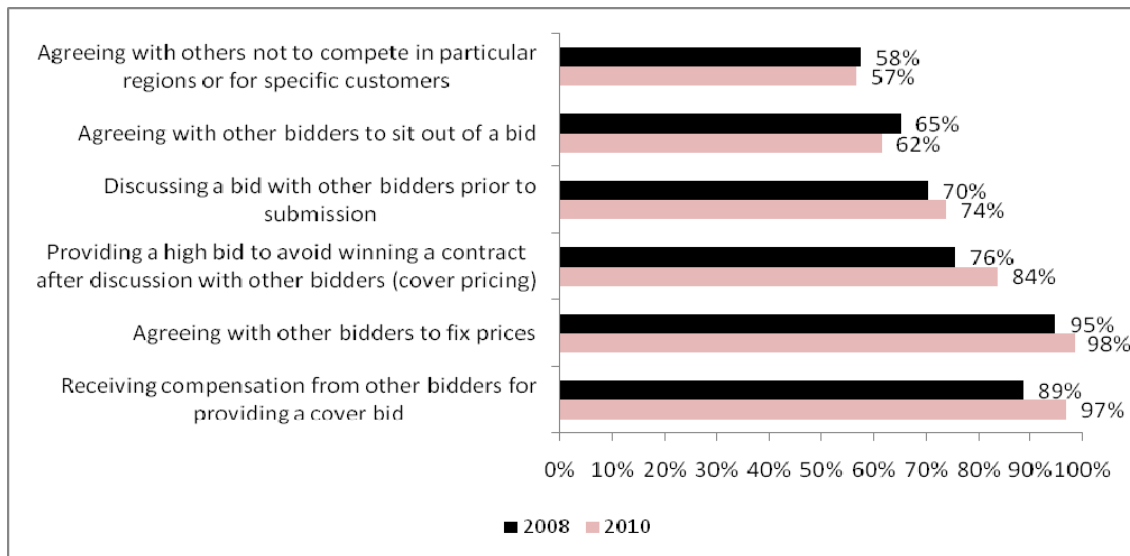
Figure 4.11: Percentage of procurers believing that legal practices listed in the chart are illegal



Base number: 252 (2010 survey), 132 (2008 survey)

Source: GfK procurer survey 2008 and 2010

Figure 4.12: Percentage of procurers believing that illegal practices listed in the chart are illegal



Base number: 252 (2010 survey), 132 (2008 survey)

Source: GfK procurer survey 2008 and 2010

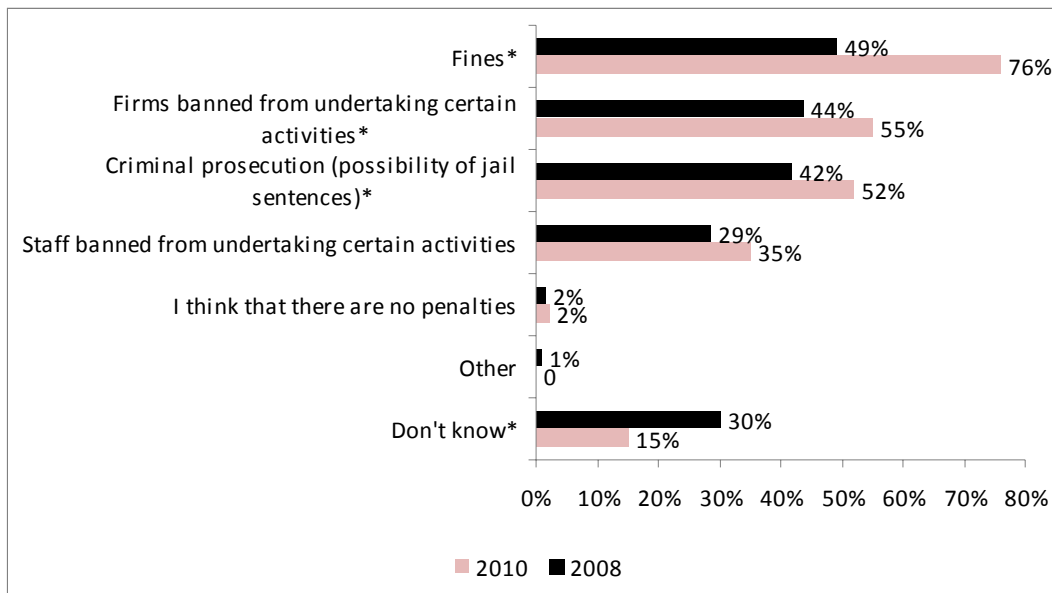
Knowledge of penalties applicable to bid rigging

- 4.36 While our survey indicates a relatively good knowledge of legal and illegal practices by contractors, they appeared less knowledgeable about the penalties applicable if found guilty of bid rigging or, more specifically, cover pricing. This discrepancy between knowledge of illegality and of the penalties applicable for breaching UK competition law is largely consistent with our 2008 survey findings.
- 4.37 As highlighted in Figure 4.13, the knowledge of penalties applicable for cover pricing has increased markedly from our 2008 survey, with awareness of fines experiencing the largest increase. Over 75 per cent of contractors surveyed in 2010 are aware of fines as a penalty for cover pricing compared with only 49 per cent in our 2008 survey.
- 4.38 More generally, like cover pricing, the knowledge of penalties applicable for bid rigging has improved markedly since our 2008 survey. The changes are, however, less marked than for cover pricing.³⁶ Again, the awareness of fines as a penalty for bid rigging has improved the most, with 76 per cent of contractors indicating their awareness of fines as a penalty compared with only 57 per cent of contractors surveyed in 2008.³⁷

³⁶ Only those improvements between 2008 and 2010 relating to 'Fines', 'Firms banned from undertaking certain activities', 'Criminal prosecution' and 'Don't know' were statistically significant at the 95 per cent level.

³⁷ See Annexe A *'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)*, CHART 4.10, (Q2E in the 2008 contractor survey)

Figure 4.13: Knowledge of applicable penalties for cover pricing by contractors



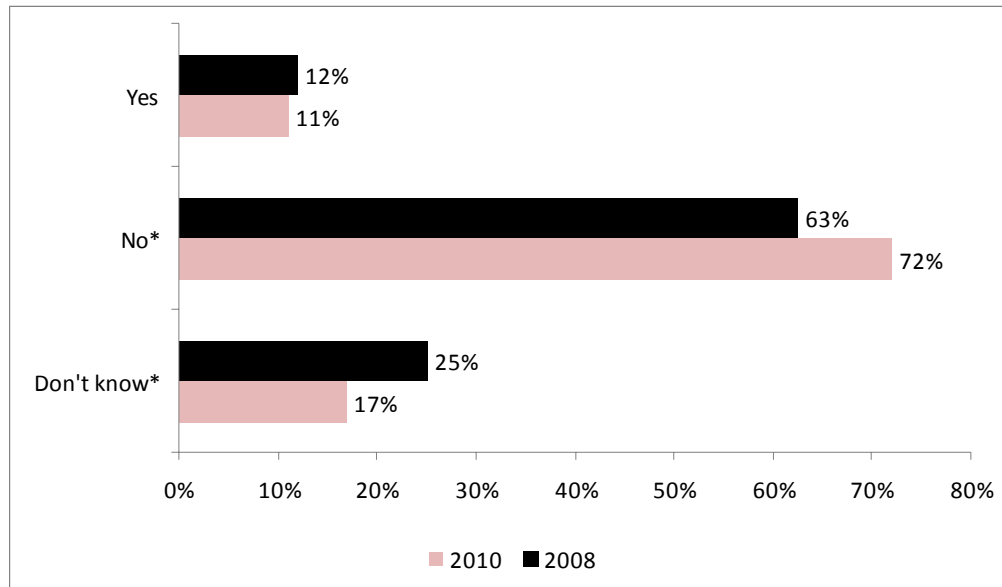
Base: 416 (2010 survey), 315 (2008 survey)
 Source: GfK contractor survey 2008 and 2010

Importance of competition compliance issues to contractors and procurers

Contractors

4.39 Our research also explored whether or not contractors had been involved in or had organised any training programmes related to competition law over the last two years. Figure 4.14 shows the proportion of contractors that have been involved in some form of training in relation to competition law over the 2 years preceding the 2010 survey and the three years preceding the 2008 survey. A majority of respondents (72 per cent) have not been involved in any training programme. Further, this figure is larger than the proportion of contractors surveyed in our 2008 survey who had not been involved in any competition law training between 2005 and 2008.

Figure 4.14: Percentage of contractors recently involved in competition law training¹



Notes: ¹ Our 2008 survey respondents were given a reference period of 3 years, and the 2010 respondents a period of 2 years.

Base: 416 (2010 survey), 315 (2008 survey), Source: GfK contractor survey 2008 and 2010

4.40 An analysis of the results indicates that a much higher proportion of contractors with some previous involvement with the OFT have engaged in competition law related training over the last two years compared with those that had no previous involvement.³⁸ Indeed, only 7 per cent of those with no previous involvement have undergone some competition law training in the last two years compared with 51 per cent that did have some prior involvement.

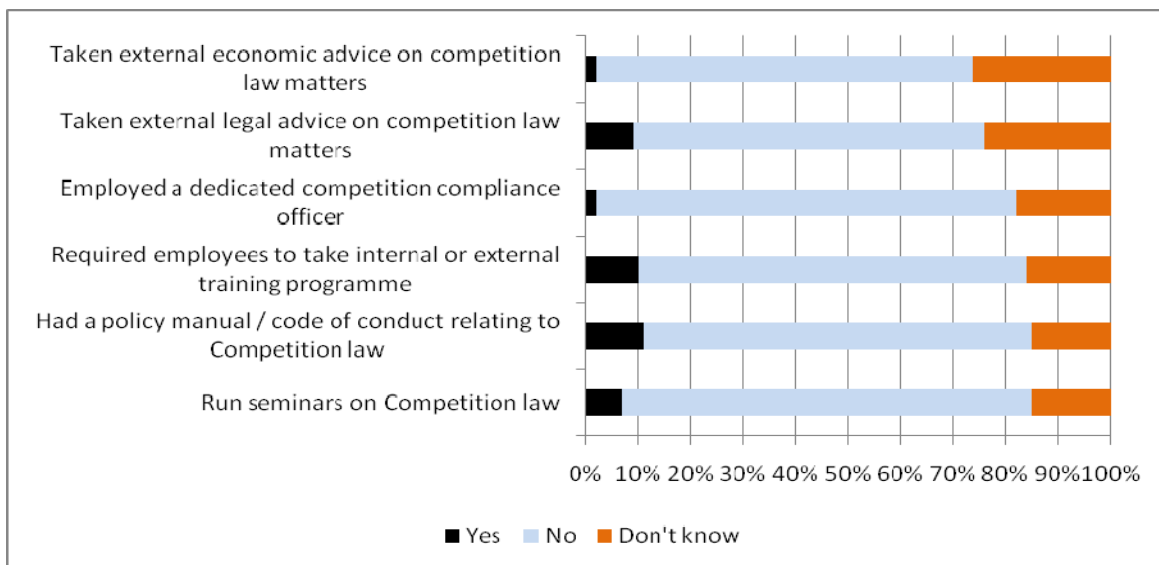
4.41 Where some competition law training has been taken over the last two years, 'requiring employees to undertake an internal or external training programme' and 'making use of/introducing a policy manual/code of conduct relating to competition law' are the two most common forms (see Figure 4.15). A higher proportion of public sector contractors have

³⁸ See Figure B.11 in Annexe B (Q7D in the 2010 contractor survey)

undertaken one or more of the actions listed in Figure 4.15 compared with private sector contractors.^{39 40}

4.42 Amongst contractors, those who are aware of the OFT’s recent actions in the sector are more likely to have taken at least one of the actions listed in Figure 4.15 below. For example, only 3 per cent of contractors that were unaware of the OFT actions on bid rigging in the sector introduced a policy manual/code of conduct in relation to competition law over the last two years. This figure is 14 per cent amongst those contractors who were aware of the OFT’s recent decision.⁴¹

Figure 4.15: Percentage of contractors that have undertaken the actions listed in the chart over the last 2 years



Base: 416, Source: GfK contractor survey 2010

4.43 In addition to examining the types of competition law training activities undertaken by contractors over the last two years, we also explored the level of financial resources allocated to these activities. Almost three-

³⁹ See Figure B.12 and Figure B.13 in Annexe B (Q8A in the 2010 contractor survey)

⁴⁰ Of the actions listed, the difference was not significant at the 95 per cent level for two of the six actions: 'Employed a dedicated compliance officer' and 'Taken external economic advice on competition matters'.

⁴¹ See Figure B.14 and Figure B.15 in Annexe B (Q8A in the 2010 contractor survey)

quarters of respondents are unable to indicate (either precisely or by approximation) their budget for the last financial year on internal and external measures for ensuring compliance with competition law.

- 4.44 One fifth of firms spent no more than £5,000 over the last financial year either on staff dedicated to ensuring compliance with competition law or on other activities dedicated to this end, leaving very few who spend more than £5,000.^{42 43 44}

Procurers

- 4.45 We were interested in exploring the skills of procurers with specialised procurement departments and their awareness of key guidance material on reducing anti-competitive behaviour.
- 4.46 We found that about one third of procurers indicate that their specialised procurement sections have legal training relating to competition law. This finding did not differ significantly from our 2008 survey.⁴⁵
- 4.47 For those procurers aware of guidance material on reducing anti-competitive behaviour, OFT/OGC reports such as 'Making competition work for you' and European Union guidelines are the most known, with 27 per cent of procurers aware of the former and 25 per cent aware of the latter (see Figure 4.16 below). However, over half the respondents (55 per cent), are unaware of any guidance material.

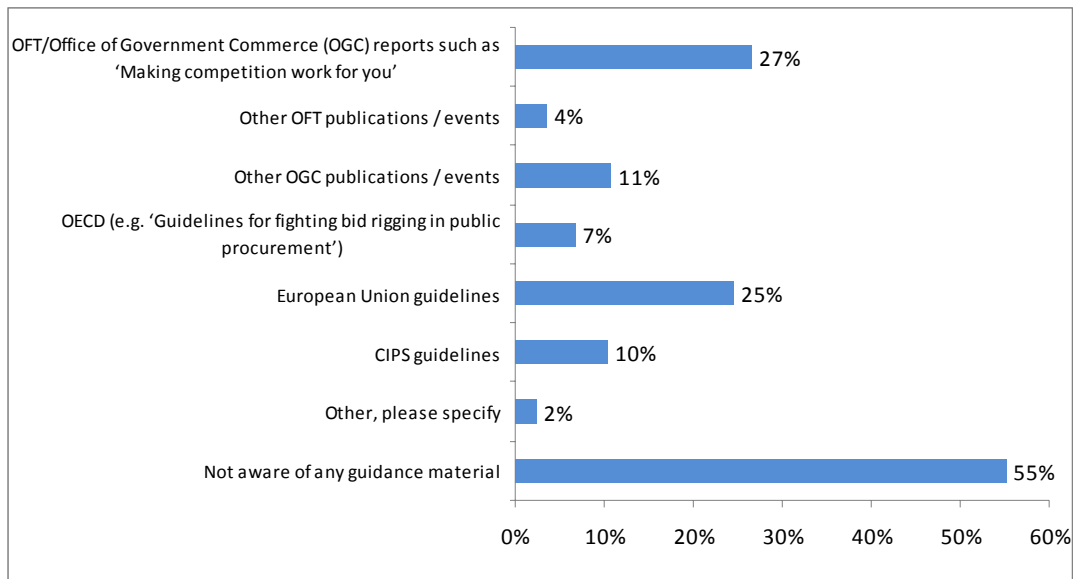
⁴² See Figure B.16 in Annexe B (Q8C(a) in our 2010 survey)

⁴³ No comparison between this survey and our 2008 survey has been made in relation to this issue as there is no comparable question.

⁴⁴ It is also possible the spending on competition law compliance could fall under broader compliance budget lines and thus these findings may, to some extent, understate the actual budget amounts that are allocated to these activities.

⁴⁵ See Figure B.17 in Annexe B (Q2A in the 2010 procurer survey)

Figure 4.16: Percentage of procurers aware of guidance materials on reducing anti-competitive behaviour¹



Notes: ¹ With respect to the 'Other' sources of guidance used by procurers to help reduce anti-competitive behaviour, these included CIOB publications and external consultancy support. Only 2 per cent, however, opted for the 'Other' option.

Base: 252, Source: GfK procurer survey 2010

4.48 Awareness of guidance materials is also significantly higher amongst procurers in the public sector, with 57 per cent aware of at least one piece of guidance compared with only 28 per cent of private sector procurers.⁴⁶

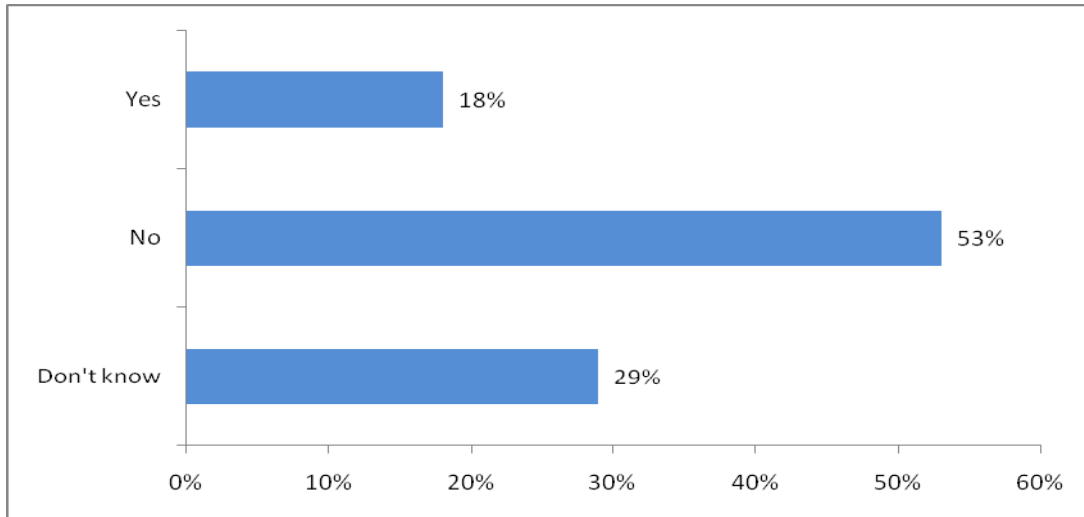
Awareness and adherence to competition codes of conduct

4.49 Figure 4.17 indicates the extent to which contractors are aware of the competition law code of conduct within the construction industry jointly created by the UK Contractors Group and the National Federation of Builders. Only 18 per cent of the contractors are aware of this new code of conduct, just over half are not aware of it and 29 per cent of respondents gave a 'Don't know' answer.

⁴⁶ See Figure B.18 in Annexe B (Q8A in the 2010 procurer survey)

4.50 Our survey also suggests that the awareness of newly created competition law codes of conduct in the industry is greater among 'public sector' contractors.⁴⁷

Figure 4.17: Percentage of contractors aware of the recently created competition law code of conduct within the construction industry



Base: 416

Source: GfK contractor survey 2010

4.51 Interestingly, while only 18 per cent of contractors are aware of the new competition law code of conduct created by the National Federation of Builders and the UK Contractors Group, 30 per cent indicated that they are members of these same trade bodies. This may be due to the fact that these codes have only recently been developed.⁴⁸

⁴⁷ See Figure B.19 in Annexe B (Q7A in the 2010 contractor survey)

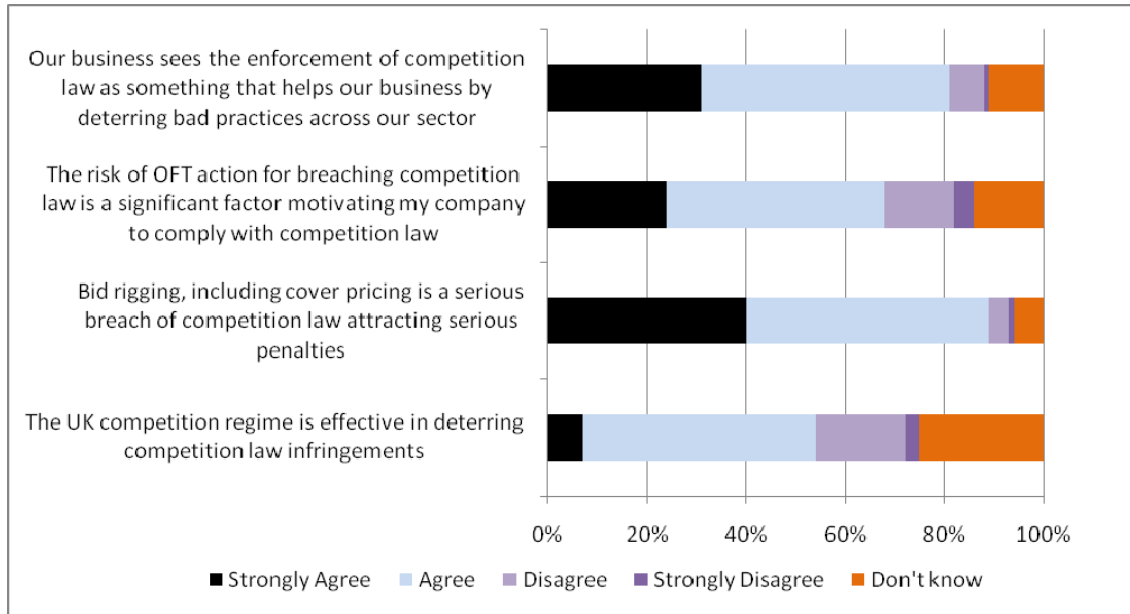
⁴⁸ See Figure B.20 in Annexe B (Q5D in the 2010 contractor survey)

Perceived impacts of competition law and enforcement in the UK

- 4.52 We explored whether contractors perceived there to be any benefits as a result of the enforcement of competition law.⁴⁹ An overwhelming majority of respondents (91 per cent) perceive there to be some benefit, with a more level playing field and greater confidence in the sector as the most mentioned benefit (76 per cent indicated 'levelling the playing field' and 70 per cent indicated 'confidence in the sector'). Just over half of the contractors surveyed also report that the enforcement of competition law results in benefits to customers. Only 5 per cent of respondents provided a 'Don't know' answer.
- 4.53 We also asked contractors about their views on a number of statements (see Figure 4.18 below). While there may still be some room for improvement with regard to the general knowledge of specific types of penalties applicable for bid rigging, 90 per cent of contractors either agreed or strongly agreed that bid rigging, including cover pricing, is a serious breach of competition law which attracts serious penalties.
- 4.54 Indeed, almost 70 per cent of contractors indicate that the risk of OFT action for breaching competition law is a key factor in motivating their compliance with competition law. Further, over 80 per cent perceive competition law enforcement as something that assists their business by helping to deter the incidence of bad practices across the sector.

⁴⁹ See Figure B.21 in Annexe B (Q5D in the 2010 contractor survey)

Figure 4.18: Perceptions of contractors on the statements listed in the chart



Base: 416

Source: GfK contractor survey 2010

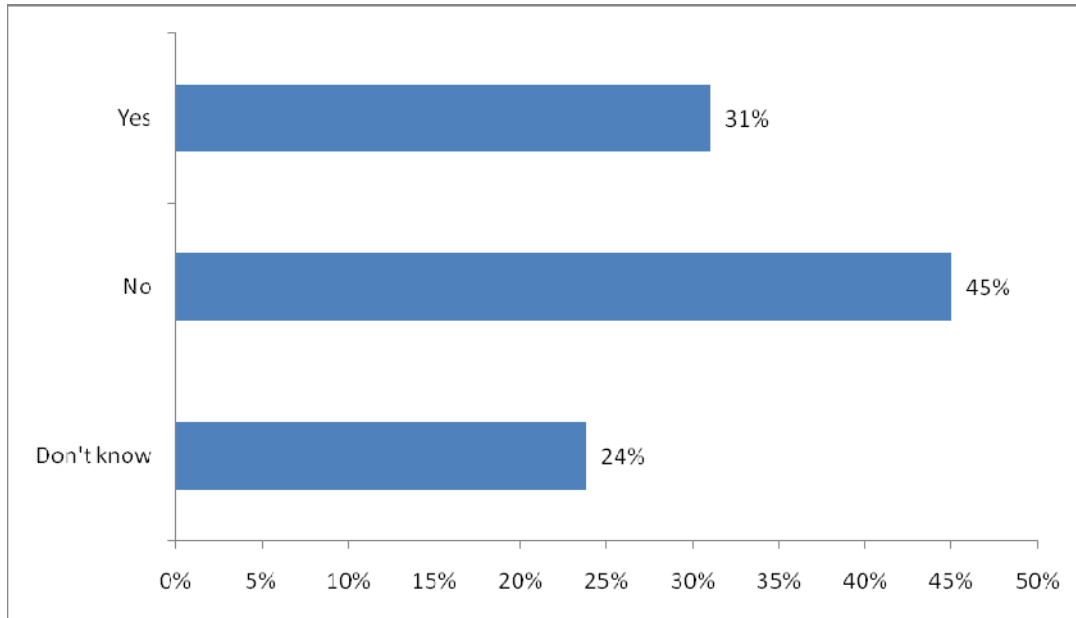
Detecting and preventing bid rigging

Contractors

4.55 Having sought to identify the perceived benefits of competition law enforcement, we also explored the extent to which contractors had in place any mechanisms to avoid breaches of competition law. Figure 4.19 highlights that approximately one third of contractors have in place some type of internal mechanism aimed at ensuring their organisation complies with competition law, with around a quarter of respondents providing a 'Don't know' answer. There is a significant difference in responses according to whether contractors work mainly in the private or the public sector (38 per cent of 'public sector' contractors have

some form of internal mechanism in place compared with only 23 per cent of 'private sector' contractors).⁵⁰

Figure 4.19: Percentage of contractors with internal mechanisms in place aimed at ensuring compliance with Competition law across supply chains and with sub-contractors



Base: 416, Source: GfK contractor survey 2010

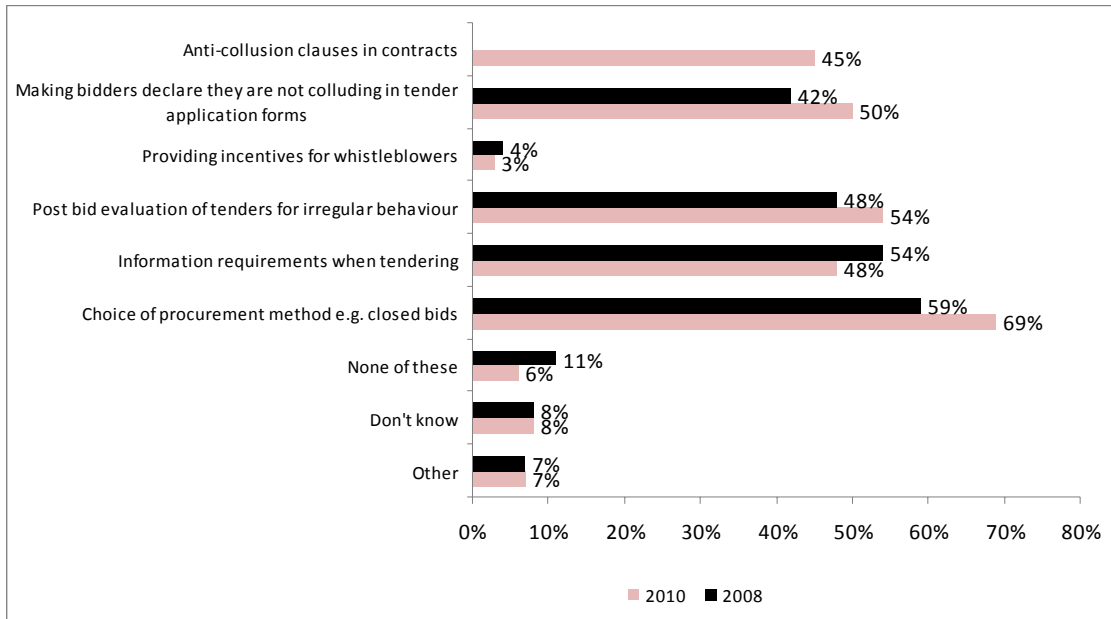
Procurers

- 4.56 We also sought to identify what types of mechanisms procurers have in place to detect and prevent bid rigging activities and whether or not these have changed since our baseline survey.
- 4.57 Similar to our baseline survey, the most common mechanisms employed are the choice of procurement method (for example closed bids), post-bid tender evaluations, and making bidders declare they are not colluding in tender application forms (Figure 4.20). Almost half of the procurers

⁵⁰ See Figure B.22 in Annexe B (Q8B in our 2010 contractor survey).

surveyed include anti-collusion clauses in contracts as a means of detecting and preventing bid rigging activities.⁵¹

Figure 4.20: Percentage of procurers with mechanisms in place aimed at detecting and preventing bid rigging activities



Base: 252 (2010 survey), 132 (2008 survey)

Source: GfK procurer survey 2008 and 2010

Note: Anti-collusion contracts were not presented as an option in the 2008 survey.

4.58 Of the mechanisms listed in Figure 4.20 above, 65 per cent of the procurers have introduced at least one of these mechanisms over the last two years.⁵² The most popular mechanisms introduced over the last two years are the choice of procurement method, including information requirements in the tendering process, making bidders declare that they

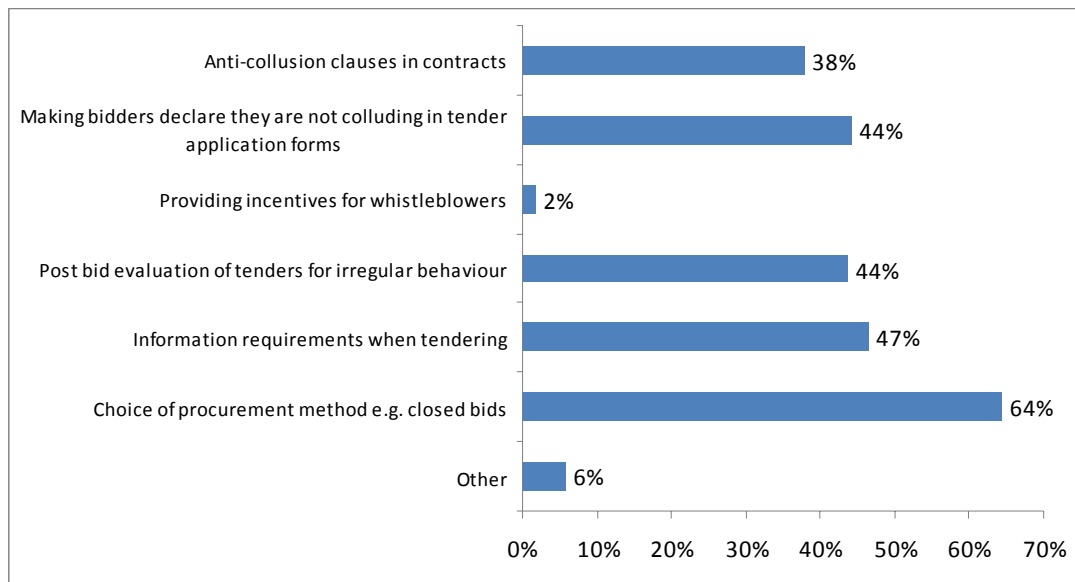
⁵¹ This particular mechanism was not included in our previous survey so we do not have 2008 figures to compare this with. There was not a statistically significant increase in any of the other categories between the two surveys.

⁵² 65 per cent of procurers had put in place at least one of the mechanisms listed in Figure 4.20 with 20 per cent stating 'None of these', 11 per cent stating 'Don't know' and 4 per cent stating 'Other'.

are not colluding, post evaluation of tenders and anti-collusion clauses in contracts (see Figure 4.21 below).

4.59 The 'Other' types of mechanisms employed (an option chosen by 6 per cent of the procurers surveyed) to detect and prevent bid rigging practices include, for example, using trusted contractors, using a 'random construction line' where tender lists are not disclosed to the tenderers and using external consultancies/agencies to manage the tender process.

Figure 4.21: Percentage of procurers that have implemented the mechanisms listed in the chart over the last 2 years ('Don't know' and 'None of these' responses removed)



Base: 174

Source: GfK procurer survey 2010

4.60 Of the mechanisms implemented over the last two years to detect and prevent bid rigging, providing whistle blowing incentives was the least common with only 2 per cent indicating this as one of the mechanisms implemented.

4.61 We also asked procurers what they would do in the event a firm had been found guilty of bid rigging (see Figure 4.22). A significantly lower

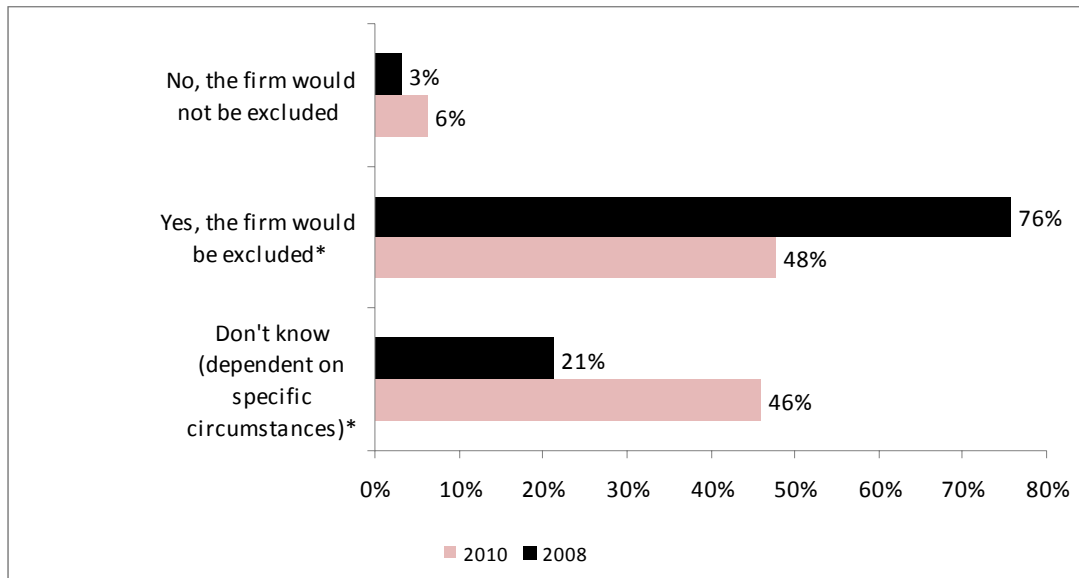
proportion of procurers surveyed in 2010 compared with our baseline indicated that they would automatically exclude a firm if it were found guilty of bid rigging. In our baseline survey 76 per cent of procurers said that they would automatically exclude a firm compared with 48 per cent of procurers in our 2010 survey.

- 4.62 Further, a markedly higher proportion (25 percentage points higher) of procurers in our 2010 survey compared with our 2008 survey provided a 'Don't know (dependent on specific circumstances)' response.⁵³
- 4.63 For those procurers that would exclude a firm, just under a third would exclude them for between one and three years, approximately one third would exclude them for between three and five years and just over one third would exclude them for more than five years, including permanently.⁵⁴

⁵³ This difference may, however, be due to the slight change in wording employed in this particular question compared with our earlier survey. In our earlier survey, the 'Don't know' option was not expanded to include additional wording ('dependent on specific circumstances'). Thus, it is not entirely clear whether this difference between the responses given in our 2008 and our 2010 is due primarily to the fact that procurers are taking a more case by case approach to exclusions than they did at the time of our 2008 survey.

⁵⁴ See Figure B.23 in Annexe B (Q5Ab in the 2010 procurer survey). 5 per cent of procurers would exclude a firm for up to one year. The figures quoted are calculated after having removed those that provide a 'Don't know' response.

Figure 4.22: Percentage of procurers that would/would not exclude firms from participating in future procurement projects (blacklisting) if found guilty of bid rigging activities



Base: 252 (2010 survey), 132 (2008 survey)

Source: GfK procurer survey 2008 and 2010

4.64 For those who indicate that they would exclude a firm if found guilty of bid rigging (48 per cent of the total procurers surveyed), we asked whether this decision would be based on the specific circumstances of the case. We found that while 37 per cent of procurers indicate that their decision to exclude a firm from future procurement projects would be based on the specific circumstances of the case, 63 per cent indicate that they would exclude the firm automatically irrespective of the individual circumstances.⁵⁵

4.65 However, the proportion of respondents that indicated 'Yes, the firm would be excluded' (see Figure 4.22 above) is perhaps deceptively high as over one third of these same respondents went on to indicate that any exclusion would not necessarily be automatic. This finding also suggests that the difference between the proportion of procurers in our

⁵⁵ See Figure B.24 in Annexe B (Q5A(a) in the 2008 procurer survey).

2008 and 2010 survey that would automatically exclude a firm from future procurement opportunities may be even greater than that indicated in Figure 4.22. This is further confirmed by the fact that over the last two years only 17 per cent of procurers surveyed claimed to have actually excluded a firm from their procurement projects.⁵⁶

- 4.66 75 per cent of procurers that are unaware of the OFT's recent activities indicate that they would exclude a firm found guilty of bid rigging compared with only 36 per cent of procurers that are aware of the OFT's activities in the sector. Indeed, almost twice the proportion of 'aware' procurers say they did not know whether or not a firm would be excluded as it would depend on the specific circumstances of the case.⁵⁷

Summary of changes in the awareness of and compliance with competition law

- 4.67 There has been a marginal increase in awareness of the legality and illegality of various practices between surveys. Whilst knowledge levels appear good overall, some 14 per cent of contractors still appear not to be aware that cover pricing is illegal.
- 4.68 However, our survey found that the awareness of penalties applicable if found guilty of cover pricing has improved markedly. The awareness of fines as a penalty has improved the most, rising from 49 per cent in 2008 to 76 per cent in 2010.
- 4.69 Compliance-focused activities and measures aimed at detecting and preventing bid rigging activities are relatively common in the sector. About one third of contractors surveyed have some form of internal mechanism in place to ensure that competition law is complied with across supply-chains. 65 per cent of procurers have introduced a new mechanism over the last two years to detect and/or prevent anti-competitive practices.

⁵⁶ See Figure B.25 in Annexe B (Q5B in the 2010 procurer survey)

⁵⁷ See Figure B.26 in Annexe B (Q5A in the 2010 procurer survey)

- 4.70 Only 7 per cent of contractors with no prior involvement with the OFT have participated in competition law training programmes compared with 51 per cent of contractors with some prior involvement with the OFT. Competition law training appears to be a higher priority for public sector procurers than for private sector procurers as they are more likely to have undertaken competition training over the last two years.
- 4.71 Only 18 per cent of contractors claim to be aware of any recently created competition codes of conduct in the sector, despite 30 per cent of the contractors surveyed reportedly being a member of one of the trade bodies that have recently introduced a code of conduct of this type in the sector. This may be due to the fact that these codes have only recently been developed.

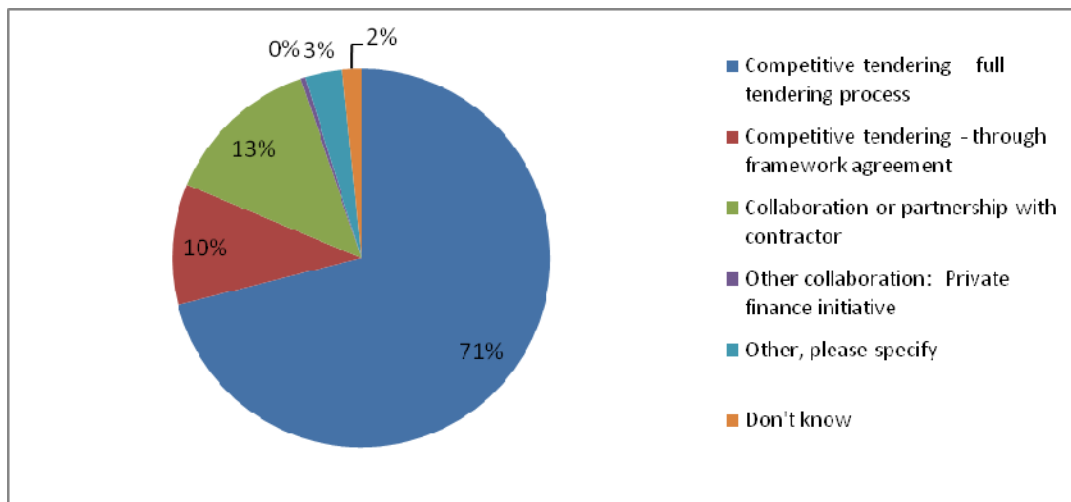
Procurement Method and Bid Rigging

- 4.72 This section examines whether the procurement methods used in the construction sector and the rationale underlying these choices have changed since our baseline survey.

Procuring method

- 4.73 Competitive tendering remains the most dominant method through which procurers tender projects and through which contractors win most of their work. 81 per cent of procurers use competitive tendering as their most common procurement method (see Figure 4.23 below) which is similar to our baseline findings. Likewise, 79 per cent of contractors report that the majority of their work is won through competitive tendering.

Figure 4.23: Most commonly used method of procuring construction work by procurers over the last 12 months



Base: 252

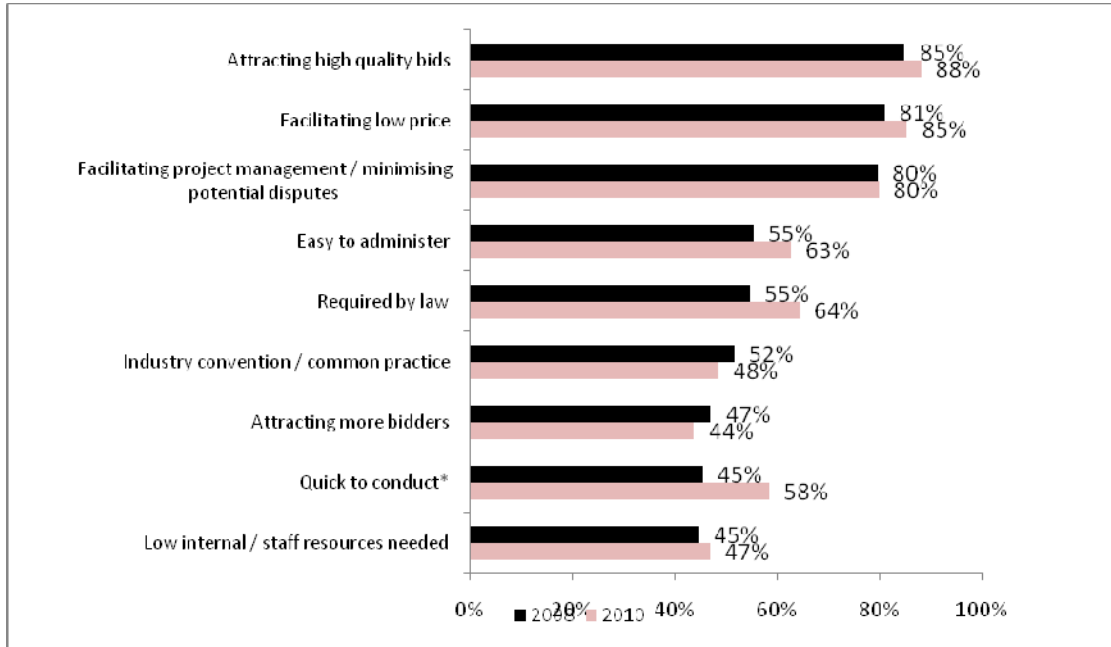
Source: GfK procurer survey 2010

Rationale for using procuring method

- 4.74 We also asked procurers to indicate the most important reasons underlying their specific choice of procurement method. The three main reasons cited are: attracting high quality bids; facilitating low price; and facilitating project management/minimising potential disputes. This ranking is consistent with the ranking from our 2008 survey (see Figure 4.24 below).
- 4.75 There has, however, been a significant increase in the proportion of procurers that base their choice of procurement method on the speed at which the process can be conducted. 58 per cent base their choice of procurement method on whether it was quick to conduct, while only 45 per cent indicated this as an important factor in our baseline survey.
- 4.76 We also found that the choice of procurement method for public sector procurers appears to be driven much more by legal requirements compared with their private counterparts, with 64 per cent of public

sector procurers indicating that this is an important factor compared with only 29 per cent of private sector procurers.⁵⁸

Figure 4.24: Perceived importance by procurers of the factors listed in the chart in choosing their most frequently used method of procuring construction work



Base: 252 (2010 survey), 132 (2008 survey)
 Source: GfK procurer survey 2008 and 2010

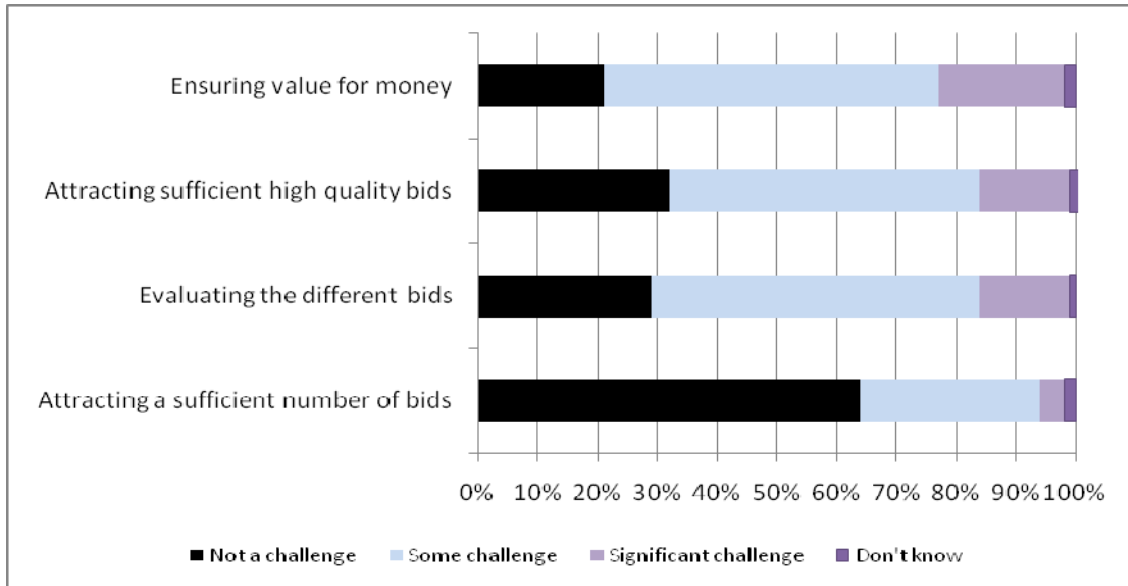
Challenges for procurers

4.77 Attracting a sufficient number of bids and bids of a sufficiently high quality appear to be less challenging than in our 2008 survey. 34 per cent of procurers report that 'attracting a sufficient number of bids' and 67 per cent 'attracting sufficiently high quality bids' pose either some or significant challenges when procuring construction goods and services

⁵⁸ See Figure B.27 in Annexe B (Q3C in the 2010 survey)

(see Figure 4.25 below) compared with 61 per cent and 79 per cent of procurers respectively in our 2008 survey.⁵⁹

Figure 4.25: Perceived challenge by procurers of the factors listed in the chart when procuring construction goods and services



Base: 252

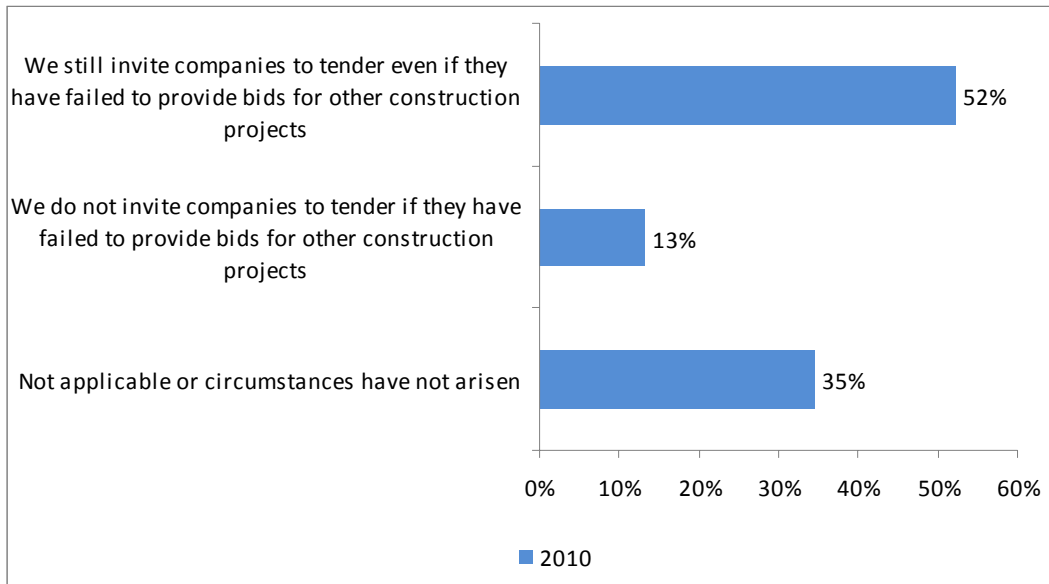
Source: GfK procurer survey 2010

4.78 When asked whether they would still invite firms which had failed to provide bids to respond to invitations to tender for other construction projects, 52 per cent of procurers state that they would still do so, while 13 per cent say that they would not. However 35 per cent report that they are unable to provide a clear answer to this question (see Figure 4.26 below).⁶⁰

⁵⁹ See Q2G in our 2008 procurer survey (chart not included in the previous report)

⁶⁰ There was a similar question in our baseline survey which is not directly comparable to this question.

Figure 4.26: Treatment by procurers of construction firms which have failed to provide bids for other construction projects



Base: 252 (2010 survey), 132 (survey)
 Source: GfK procurer survey 2008 and 2010

Summary of changes in procurement methods to address bid rigging

- 4.79 Competitive tendering remains the most commonly used method of procurement. Attracting high quality bids and facilitating a low price are still considered as the most important factors underpinning this choice of procurement method.
- 4.80 When asked whether they would still invite firms which had failed to provide bids to respond to invitations to tender for other construction projects, 52 per cent of procurers state that they would still do so, while 13 per cent say that they would not. However 35 per cent report that they are unable to provide a clear answer to this question.

Awareness and Impact of OFT activities on Bid Rigging Practices

- 4.81 This section assesses the extent to which both contractors and procurers are aware of the following:

- The OFT's Statement of Objections alleging that 112 construction companies had engaged in bid rigging activities (April 2008);
- The OFT's decision to fine 103 of those construction firms for bid rigging activities (September 2009); and
- Earlier OFT decisions on bid rigging in the construction sector (2004-2006).

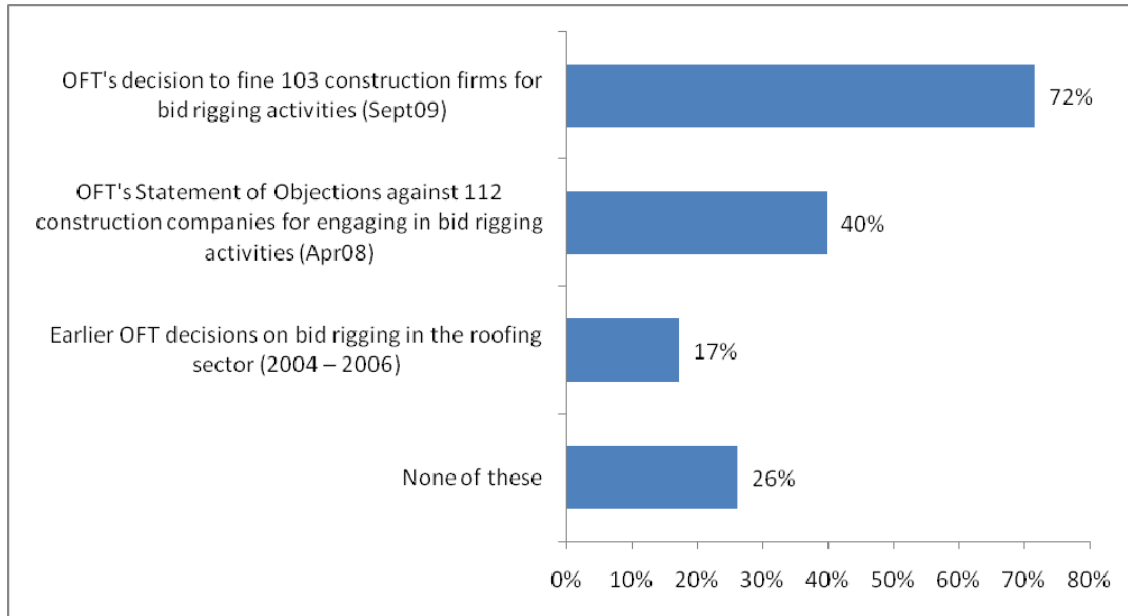
4.82 We also compare, where appropriate, our recent findings on awareness of the above actions with our baseline survey on the awareness of the six OFT cases in the construction sector completed between 2004 and 2006.

Awareness of the OFT's recent decision on bid rigging and of earlier decisions on bid rigging

Contractors

4.83 Figure 4.27 highlights that almost three quarters of all contractors are aware of the OFT's decision in September 2009 to fine 103 construction firms for bid rigging activities. Further, 40 per cent are aware of the OFT's Statement of Objections issued in April 2008.

Figure 4.27: Percentage of contractors aware of the recent OFT activities in the sector



Base: 416

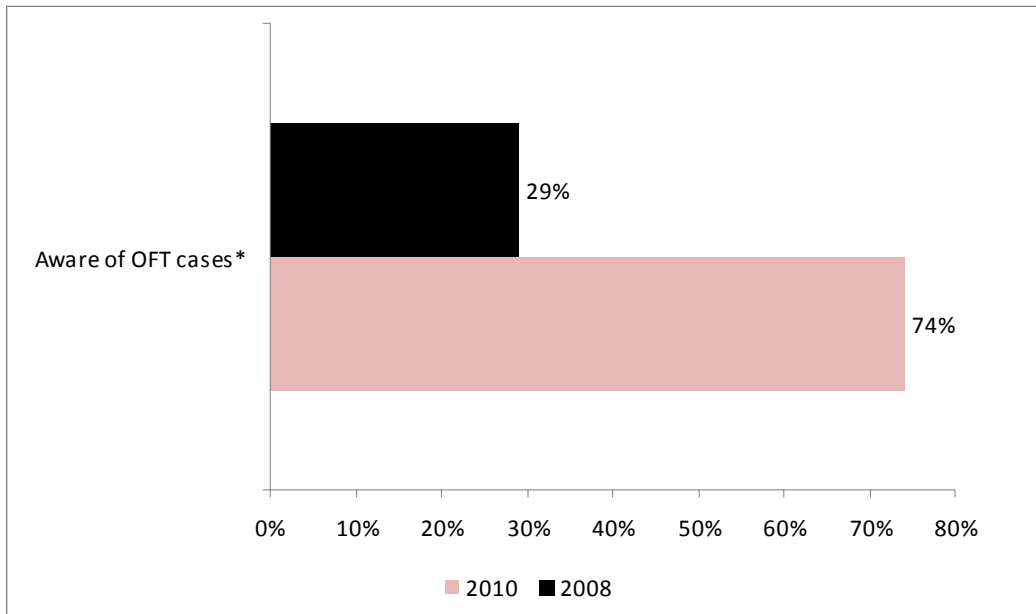
Source: GfK contractor survey 2010

4.84 The responses to our 2010 survey indicate a high degree of awareness among construction companies for recent OFT’s activities in the construction sector (see Figure 4.28). In our 2008 survey, a majority of contractors were not aware of any of the six OFT cases in the construction sector (between 2004 and 2006) with only 29 per cent of respondents indicating that they were aware of at least one of the six OFT cases.⁶¹ In contrast, 74 per cent of contractors in our 2010 survey are aware of at least one of the OFT actions listed in Figure 4.27, with a higher awareness for public sector contractors (10 percentage points higher than for private sector contractors).⁶²

⁶¹ See Annexe A ‘*Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)*’, CHART 4.16, (Q4A in the 2008 contractor survey)

⁶² See Figure B.28 in Annexe B (Q6A in the 2010 contractor survey)

Figure 4.28: Percentage of contractors aware of OFT activities in the sector



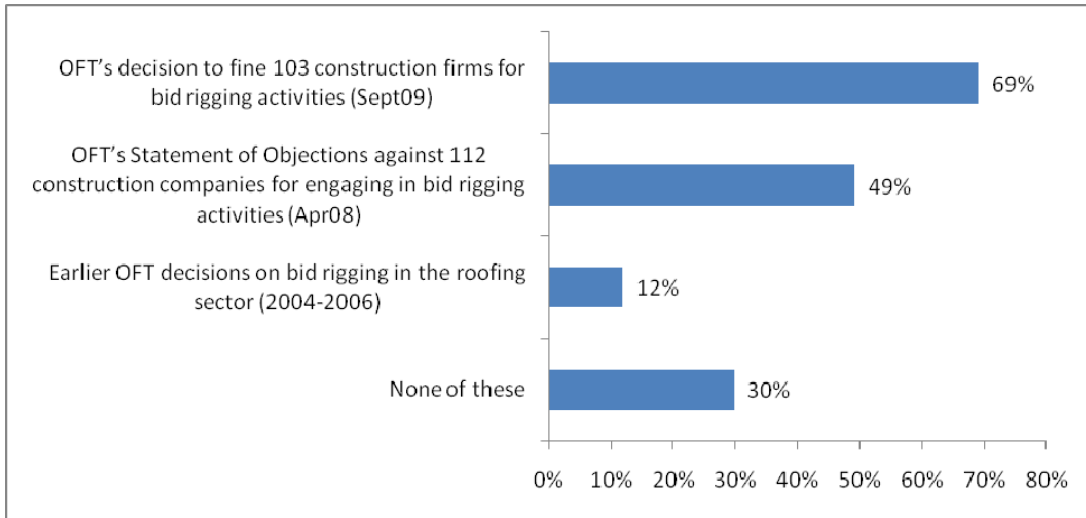
Base: 416 (2010 survey), 315 (2008 survey)

Source: GfK procurer survey 2008 and 2010

Procurers

- 4.85 In general, our survey indicates that the awareness of the OFT's recent actions in the sector is high among procurers in our 2010 survey (with 70 per cent aware of at least one of the OFT's recent actions in the sector) but is slightly lower than among contractors. 69 per cent of procurers are aware of the OFT's decision to fine 103 firms and just under half are aware of the OFT's statement of objections (see Figure 4.29).
- 4.86 In our baseline survey, the awareness of procurers was relatively low with only 26 per cent having indicated awareness of at least one of the OFT's actions in the sector between 2004 and 2006 (see Figure 4.30).

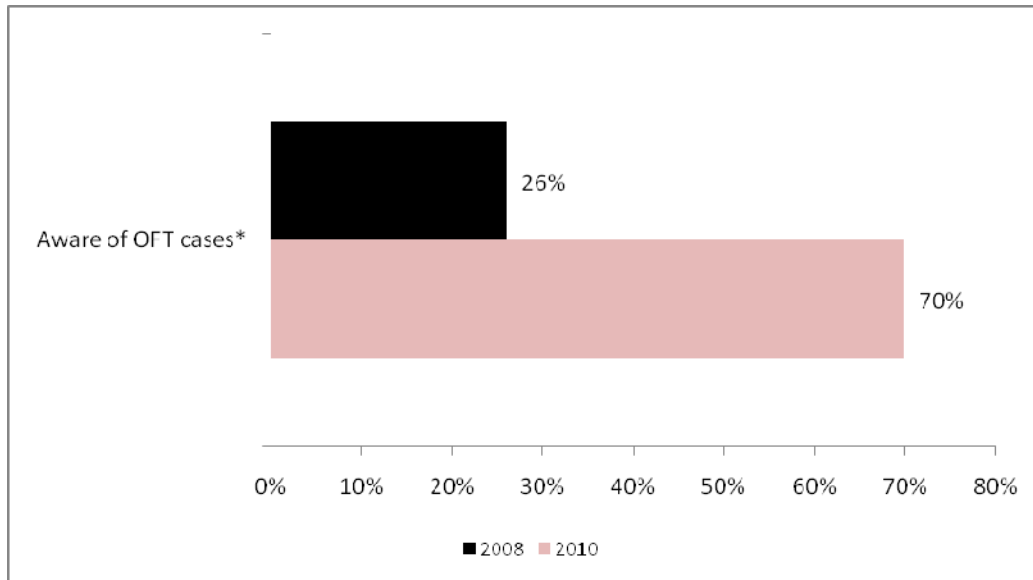
Figure 4.29: Percentage of procurers aware of the recent OFT activities in the sector



Base: 252

Source: GfK procurer survey 2010

Figure 4.30: Percentage of procurers aware of OFT activities in the sector compared with 2008



Base: 252 (2010 survey), 132 (2008 survey)

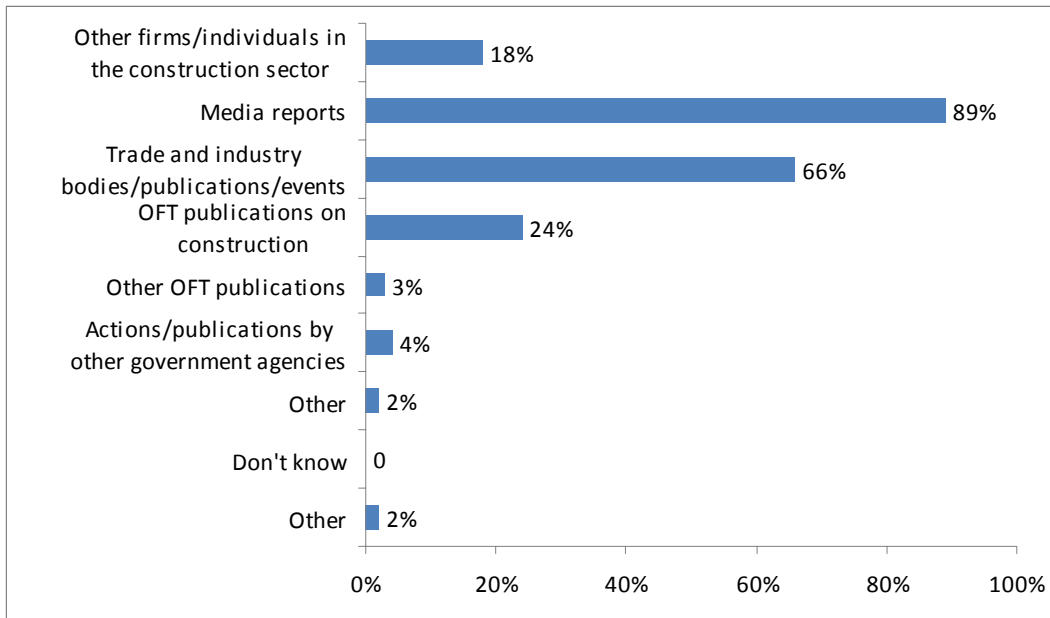
Source: GfK procurer survey 2008 and 2010

Information sources on the OFT's recent and earlier decisions on bid rigging investigations

- 4.87 Our analysis also explores the sources of information about OFT actions in the sector. For contractors, media reports are by far the most important source of information on the OFT's recent actions in the sector, with 89 per cent of respondents mentioning them as an information source (see Figure 4.31 below). The second most important source of information cited is publications or events organised by trade industry bodies, with a statistically significant increase since the first phase of our research (66 per cent of contractors indicating them as a source compared with 42 per cent in our 2008 survey).⁶³
- 4.88 About one quarter of contractors cite OFT publications as a source through which they learnt about the recent OFT decision (Figure 4.31 below). OFT publications specific to the investigation and decision are the most common form of OFT publication mentioned.

⁶³ See Q4b in our 2008 contractor survey (chart not included in our previous report)

Figure 4.31: Information sources on recent OFT activities in the sector by contractors



Base: 307

Source: GfK contractor survey 2010

4.89 For procurers aware of recent OFT actions in the sector, media reports are also cited as the most important source of information followed by publications and events organised by trade bodies and OFT publications on the construction sector investigation and decision (see Figure 4.32 below). Compared with our 2008 survey findings, actions or publications from other government agencies stood out in that 13 per cent more procurers in our recent survey have relied on this as an information source.⁶⁴

⁶⁴ See Annexe A 'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)', CHART 4.25 (Q6C in the 2009 procurer survey)

Figure 4.32: Information sources on recent OFT activities in the sector by procurers



Base: 226

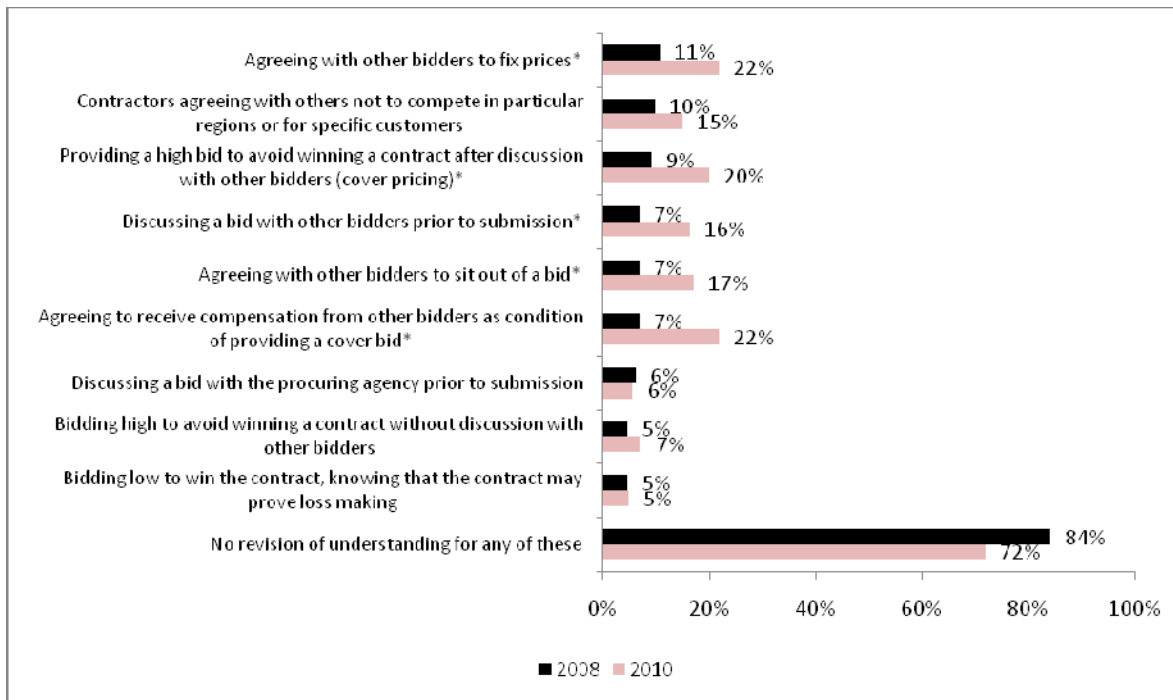
Source: GfK procurer survey 2010

4.90 Where media is identified as a source of information on OFT actions in the sector, over 80 per cent cite trade press and 70 per cent cite national television and radio coverage. Local television, radio coverage and online bulletins are mentioned less frequently.

Impact of the OFT’s recent decision on bid rigging on knowledge of the law

4.91 The recent OFT decision on bid rigging in the construction sector appears to have had a much greater impact on improving the knowledge of procurers in relation to the legality and illegality of various practices in the sector. 28 per cent of procurers have, as a result of the recent OFT activities, revised their understanding of the illegality of at least one of the practices listed in Figure 4.33 (including cover pricing, price fixing and discussing bids with other bidders prior to submission), compared with 16 per cent that had done so in 2008 as a result of previous actions.

Figure 4.33: Percentage of procurers that regard the recent OFT activities as having caused them to revise their understanding of whether the activities listed in the chart are illegal



Base: 252 (2010 survey), 132 (2008 survey)

Source: GfK procurer survey 2008 AND 2010

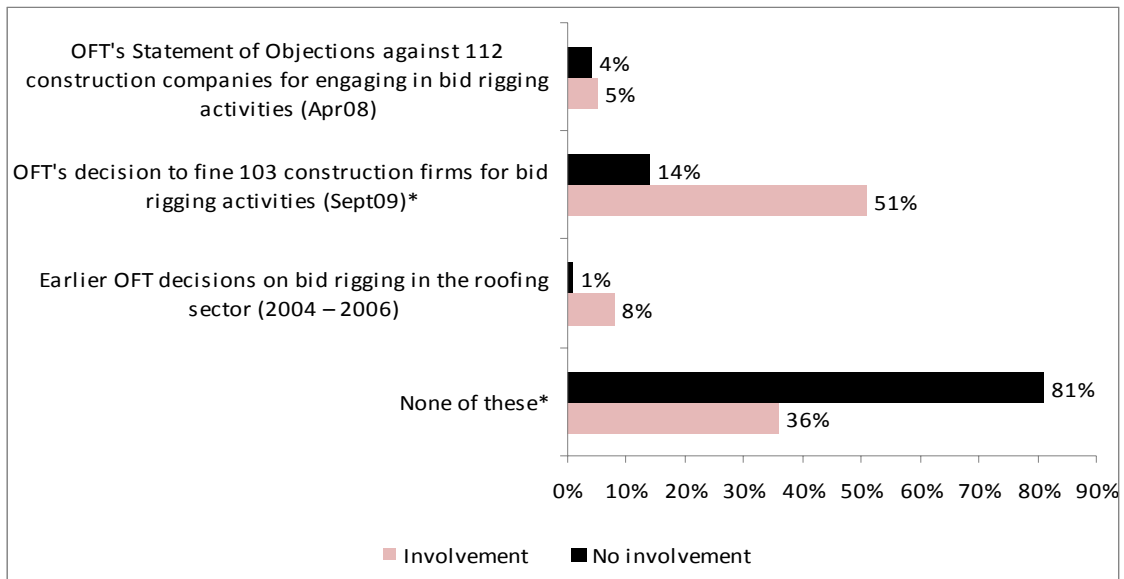
Impact of the OFT’s recent decision on bid rigging on business behaviour

- 4.92 Our analysis suggests that the recent OFT decision has had a much larger impact on business behaviour, and, more importantly, the business practices of contractors, compared with the impact of the OFT’s six roofing decisions covered in our baseline survey.
- 4.93 For those contractors aware of the recent OFT actions on bid rigging in the sector, the fines imposed by the OFT on 103 construction firms for bid rigging activities appear to have had the most impact, with 19 per cent citing the imposition of fines as having had the largest impact on

their firm's behaviour.⁶⁵ The OFT's earlier roofing cases had the least impact on firm behaviour, having had an impact on only 2 per cent of contractors responding to the 2010 survey.

4.94 The impact of the OFT's recent actions in the sector on business behaviour was far greater among those contractors who indicated they had some prior involvement with the OFT (see Figure 4.34). The OFT's recent actions have impacted on the business behaviour of 64 per cent of contractors with some prior involvement with the OFT compared with only 19 per cent of those with no previous involvement. Moreover, the decision to fine 103 firms for engaging in bid rigging has had an impact on the business behaviour of just over half of those with some prior involvement compared with only 14 per cent of those without.

Figure 4.34: Percentage of contractors who regard the recent OFT activities as having the most impact on their business behaviour (contractors split according to whether they have had any previous involvement with the OFT)

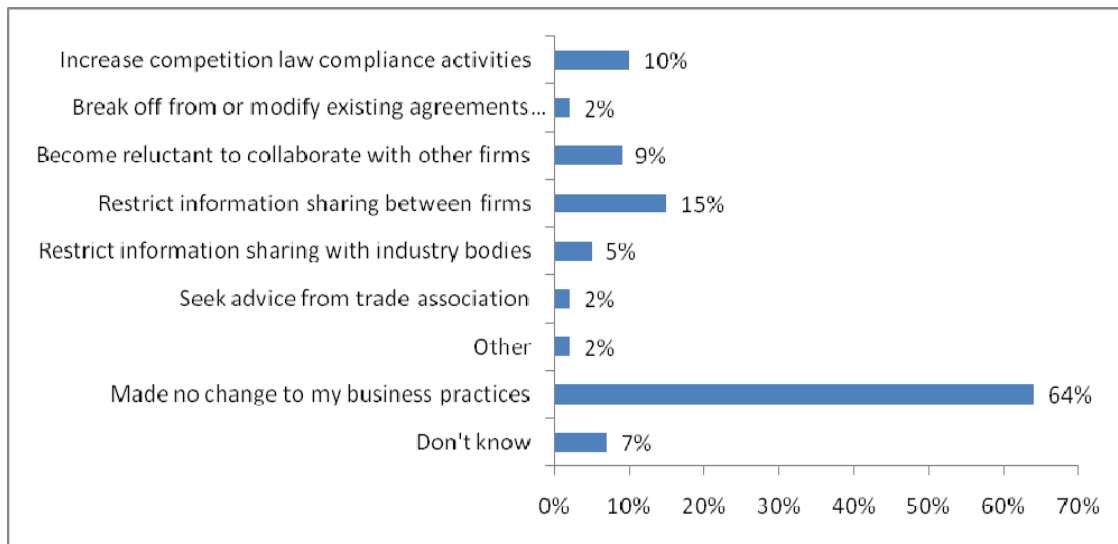


Base: 307. Source: GfK contractor survey 2010

⁶⁵ See Figure B30 in Annexe B.

4.95 Figure 4.35 indicates the types of actions that contractors report taking directly in response to the OFT activities in the sector. Of contractors aware of the OFT's recent activities in the sector, 36 per cent have made some specific change to their business practices in the previous two years, compared with only 23 per cent of respondents to the baseline survey.⁶⁶ Restricting information sharing between firms is the most common change made by contractors in the last two years (cited by 15 per cent) followed by increasing competition law compliance activities (10 per cent) and restricting collaborations with other firms (9 per cent). These findings are consistent with those in the first phase of our research.

Figure 4.35: Percentage of contractors that regard the OFT's activities as leading them to undertake the actions listed in the chart over the last 2 years



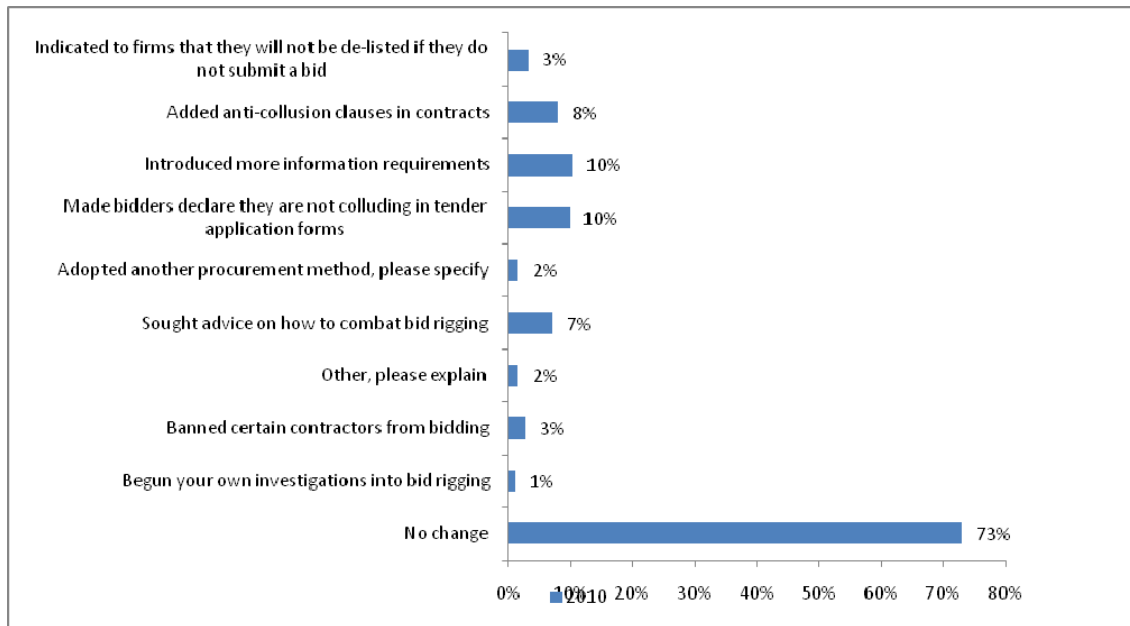
Base: 307

Source: GfK contractor survey 2010

⁶⁶ See Annexe A 'Evaluation of the impact of OFT cartel cases in the construction sector (2004-2006)', CHART 4.43, (Q4CF in the 2008 contractor survey)

- 4.96 Only 5 per cent of contractors have, over the last two years, abandoned, decided not to engage in, or significantly modified arrangements with other firms because of the risk of infringing competition law.⁶⁷ 20 per cent provided a ‘Don’t know’ response.
- 4.97 About a quarter of procurers have changed their procurement procedures in some way as a result of the OFT’s activities in the sector (see Figure 4.36). 10 per cent of procurers have made bidders declare that they are not bidding and/or have introduced more information requirements in their tendering process. Almost three quarters, however, have made no change to their procurement procedures as a result of OFT activity in the sector.

Figure 4.36: Percentage of procurers that regard the recent OFT decision as having caused them to change their procurement procedures over the last 2 years in the ways listed in the chart



Base: 252 (2010 survey), 132 (2008 survey). Source: GfK procurer survey 2008 and 2010

⁶⁷ See Figure B.29 in Annexe B (Q7C in the 2010 contractor survey)

Summary of changes in the impact of the OFT's activities in the construction sector

- 4.98 Our work indicates that there is a high degree of awareness among contractors and procurers with regards to recent OFT actions in the construction sector.
- 4.99 Around three quarters of respondents are aware of the OFT's decision to fine 103 construction firms for bid rigging activities in September 2009. This contrasts with the position in our earlier survey, when only 29 per cent of contractors and 26 per cent of procurers indicated awareness of any of the six earlier OFT cases in the construction sector.
- 4.100 Media reports are by far the most important source of information on the OFT's recent actions in the sector. These are cited as an information source by over 80 per cent of contractors and procurers. Trade and industry bodies are also important channels of communication, particularly for contractors, and have increased in importance since our baseline survey. OFT publications were also cited as an information source by 27 per cent of contractors.
- 4.101 Our analysis also suggested that the recent OFT decision in the sector has had a greater impact on improving the knowledge of procurers about the illegality of a range of bid rigging practices than the earlier OFT infringement decisions in the sector between 2004 and 2006. In 2010 28 per cent of procurers have in the last two years and following OFT actions, revised their understanding of the illegality of these practices compared with 16 per cent in 2008.
- 4.102 The recent OFT decision in relation to bid rigging activities in the construction sector has had a much larger impact on business behaviour and, more importantly, business practices of contractors compared with the OFT's six earlier decisions in the sector.
- 4.103 Of the contractors aware of the recent OFT decision, the fines imposed by the OFT on 103 construction firms for bid rigging activities appear to

have had most impact on business behaviour in the past two years, with 19 per cent citing the imposition of fines as having had the largest impact on their firm's behaviour. Our 2010 survey shows that the OFT's earlier roofing cases had a lower impact on firms' recent behaviour, having had an impact on only 2 per cent of this group of contractors.

- 4.104 Further, we also found that the impact of the OFT's actions in the sector on business behaviour was far greater among those contractors that had had some prior involvement with the OFT; the OFT's actions had impacted on the business behaviour of 64 per cent of contractors surveyed with some prior involvement with the OFT compared with only 19 per cent of those with no previous involvement with the OFT.

5 CONCLUSIONS

- 5.1 The findings in this report are based on industry views collected in 2010 after the OFT issued its Statement of Objections in April 2008 against 112 construction firms and after its decision in September 2009 to fine 103 construction firms for bid rigging activities. These views have been compared with those gathered in our baseline survey, conducted in 2008 (prior to the April SO), examining the impact of six earlier OFT decisions on bid rigging in the construction sector between 2004 and 2006. Summaries of the main findings have been set out in earlier sections and these are drawn together here to provide an overview.

Perceived prevalence of bid rigging in the construction sector

- 5.2 The majority of contractors in both phases of our research perceive bid rigging practices to be either non-existent or only seldom occurring in the UK. This finding is in contrast with statements by construction companies and industry bodies that have referred to the endemic nature of cover pricing in the sector and the findings of the recent OFT investigation and decision. This difference may, in part, be driven by the survey context.
- 5.3 There appears to be little change between our 2010 and 2008 surveys in the perceptions of contractors surveyed concerning the prevalence of bid rigging. Where bid rigging does occur, cover pricing is perceived to be the most prevalent form (being cited by 13 per cent of contractors and 17 per cent of procurers as a common practice), a finding that is consistent with our baseline survey.
- 5.4 Nevertheless, the comparison of both surveys points to a sustained decrease in the perceived prevalence of cover pricing. In our 2010 survey, 44 per cent of contractors report cover pricing to be less common than in 2008. This compares with 28 per cent of contractors in our baseline survey who believed it had become less common since 2005.

- 5.5 With respect to the reasons underlying the practices, client retention still appears to be the main reason given by contractors for cover pricing and bid rigging more generally in the sector. 'Business management' is cited as a main reason by a significantly higher proportion than in our baseline survey.
- 5.6 Approximately one third of contractors report that they consider themselves to have been disadvantaged in some way where their competitors have engaged in bid rigging activities.
- 5.7 Our findings on the perceived effectiveness of various penalties in deterring bid rigging are broadly consistent with our baseline survey findings. Strong penalties, including company fines, exclusion from bidding for further work, and criminal prosecution are still perceived as the most important deterrents, while the proportion of procurers in our 2010 survey believing that increasing incentives to report bid rigging are an important deterrent has fallen by 11 percentage points.

Knowledge of and compliance with competition law

- 5.8 There has been a marginal increase in awareness of the legality and illegality of various practices between surveys. Whilst knowledge levels appear good overall some 14 per cent of contractors still appear not to be aware that cover pricing is illegal.
- 5.9 However, our survey found that the awareness of penalties applicable if found guilty of cover pricing has improved markedly. The awareness of fines as a penalty has improved the most, rising from 49 per cent in 2008 to 76 per cent in 2010.
- 5.10 Our survey found that compliance-focused activities and measures aimed at detecting and preventing bid rigging activities are relatively common in the sector. About one third of contractors surveyed have some form of internal mechanism in place to ensure that competition law is complied with across supply-chains. 65 per cent of procurers have introduced a new mechanism over the last two years to detect and/or prevent anti-competitive practices.

- 5.11 Only 7 per cent of contractors with no prior involvement with the OFT have participated in competition law training programmes compared with 51 per cent of contractors with some prior involvement with the OFT. Competition law training appears to be a higher priority for public sector procurers than for private sector procurers as they are more likely to have undertaken competition training over the last two years.
- 5.12 Only 18 per cent of contractors claim to be aware of any recently created competition codes of conduct in the sector, despite 30 per cent of the contractors surveyed reportedly being a member of one of the trade bodies that have recently introduced a code of conduct of this type in the sector. This may be due to the fact that these codes have only recently been developed.

Procurement method and bid rigging

- 5.13 Competitive tendering remains the most commonly used method of procurement. Attracting high quality bids and facilitating a low price are still considered as the most important factors underpinning this choice of procurement method.
- 5.14 When asked whether they would still invite firms which had failed to provide bids to respond to invitations to tender for other construction projects, 52 per cent of procurers state that they would still do so, while 13 per cent say that they would not. However 35 per cent report that they are unable to provide a clear answer to this question.

Impact of the OFT's recent investigation and decision on bid rigging in the UK construction sector.

- 5.15 Our work indicates that there is a high degree of awareness among contractors and procurers with regards to OFT actions in the construction sector.
- 5.16 Around three quarters of respondents are aware of the OFT's decision to fine 103 construction firms for bid rigging activities in September 2009. This contrasts with the position in our earlier survey, when only 29 per

cent of contractors and 26 per cent of procurers indicated awareness of any of the six earlier OFT cases in the construction sector.

- 5.17 Media reports are by far the most important source of information on the OFT's recent actions in the sector. These are cited as an information source by over 80 per cent of contractors and procurers. Trade and industry bodies are also important channels of communication, particularly for contractors, and have increased in importance since our baseline survey. OFT publications were also cited as an information source by 27 per cent of contractors.
- 5.18 Our analysis also suggests that the recent OFT decision in the sector has had a greater impact on improving the knowledge of procurers about the illegality of a range of bid rigging practices than the earlier OFT infringement decisions in the sector between 2004 and 2006. In 2010, 28 per cent of procurers have in the last two years and following OFT actions, revised their understanding of the illegality of these practices.
- 5.19 Our findings suggest that the recent OFT decision in relation to bid rigging activities in the construction sector has had a much larger impact on business behaviour and, more importantly, business practices of contractors compared with the OFT's six earlier decisions in the sector.
- 5.20 For contractors aware of the recent OFT decision, the fines imposed by the OFT on 103 construction firms for bid rigging activities appear to have had most impact on business behaviour in the past two years, with 19 per cent citing the imposition of fines as having had the largest impact on their firm's behaviour. Our 2010 survey shows that the OFT's earlier roofing cases had a lower impact on firms' recent behaviour, having had an impact on only 2 per cent of this group of contractors.
- 5.21 Further, we also found that the impact of the OFT's actions in the sector on business behaviour was far greater among those contractors that had had some prior involvement with the OFT; the OFT's actions had impacted on the business behaviour of 64 per cent of contractors

surveyed with some prior involvement with the OFT compared with only 19 per cent of those with no previous involvement with the OFT.

Annexe A

Evaluation of the impact of OFT cartel cases in the construction sector (2004- 2006)

**A report for the OFT by Europe
Economics**

October 2008

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CORRIGENDUM

In paragraph 5.18 of the report the statement "... the OFT currently does not give anonymity to whistle blowers ..." should read "... the OFT currently does not give anonymity to leniency applicants ..."

Executive Summary

Background

- 1.1 Since the prohibition on cartel activity, including bid rigging, in Chapter 1 of the Competition Act 1998 entered into force in 2000 the OFT has completed six cases into bid rigging in the construction sector between 2004 and 2006. Five of these involved the roofing sector in local markets.
- 1.2 These cases were principally concerned with the practice of cover pricing under which a firm would submit a high bid designed not to win the contract after discussion with another bidder. This practice constitutes one form of illegal bid rigging. Fines were imposed in all the cases and averaged from 0.3 to 1.3 per cent of turnover.
- 1.3 This report presents findings from an evaluation, based principally on survey responses and in-depth interviews, of the impact of the OFT's work in these six cases completed between 2004 and 2006. The fieldwork on which this report is based was carried out before the OFT issued its Statement of Objections (SO) against 112 construction companies on 17 April 2008 and before the first successful UK prosecution of individuals for cartel offences in June 2008. The industry views which are reported here do not reflect any impact from these recent developments.

Research

- 1.4 The main research for this evaluation was carried out through on-line surveys of construction industry contractors and procurers of construction services. Questionnaires were designed to explore perceptions of the prevalence of bid rigging, knowledge of and compliance with competition law and awareness of the OFT's activities in the sector. Questions were also asked about any changes in bidding practices in recent years and about deterrents to bid rigging. 315 contractors and 132 procurers responded to the surveys.

- 1.5 In addition we carried out in-depth interviews with 19 contractors and 4 contractor representatives and 11 procurers in order to explore the nature of bid rigging and industry awareness in more detail. These interviews were carried out on the basis of confidentiality of individual views and anonymity in our report.
- 1.6 Although the surveys and in-depth interviews were based on relatively small samples, the respondents covered a wide range of businesses in terms of size, location and type of construction work.
- 1.7 As noted above, this fieldwork was carried out before the announcement of the OFT's Statement of Objections (SO) in respect of its current round of investigations into cartel activity in the construction sector. The survey and interview responses were not influenced by the significant publicity which that announcement received. We have not seen the SO which remains confidential and have not taken this into account in our findings.
- 1.8 We also carried out a literature review which we have drawn on for our understanding of the nature of cartel activity in the construction sector and for experience in other countries.

Main findings

Where does bid rigging occur?

- 1.9 Some but not all of the features of a market in which cartel activity might be expected are present in the UK construction sector. The construction sector as a whole is not a highly concentrated market and has only a small number of big firms. Nor is it a sector producing standard products offered at list prices. Projects are often complex and custom built with neither the customer nor the contractor having certainty about what is being delivered until completion of the work. At this level the sector does not exhibit the features of a cartel prone industry.

- 1.10 Nonetheless, within this diversity there are many contracts which are for standard products. The supply may in some cases be in the hands of a relatively small number of firms either because it is a specialist product or because the market is limited geographically. The general conditions under which cartel activity can be sustained may well be present in these situations.
- 1.11 Firms bidding for specialist work all offer very similar products with limited scope for differentiating their bids. There is a high degree of awareness of the identity of the other bidders and the level of their costs. Bidders often draw on the same pool of sub-contractors. Regular tender rounds with choice focused primarily on price may also facilitate collusion. There was a widespread view from those we interviewed that cover pricing was more likely to occur amongst specialist contractors.

Experience in other countries

- 1.12 International evidence suggests that the construction sector has been prone to cartel activity in other countries. Bid rigging in the construction sector has been the subject of investigation in many other countries. Detailed arrangements have been uncovered through which companies colluded to share out contracts and to maintain agreed market shares. Many of these cases involved a higher level of collusion going beyond bid rigging, involving price fixing and market sharing, than had been uncovered in the construction sector in the UK in the cases completed prior to the recent SO.
- 1.13 Leniency programmes and whistle blowing have been an important component in uncovering these activities in other countries. This facilitates investigation and also encourages compliance since it increases the offenders' perceived risk of being caught.
- 1.14 Substantial fines of up to 5 per cent of turnover have been imposed in many of the cases reviewed. These are seen as a major deterrent but there is also recognition in a number of countries, notably Hungary and Australia, of the need to engage with a range of different participants,

not just identified offenders, in order to bring about a change in the culture under which cartels have developed in the past. Enforcement and education activities have sometimes been combined to address different participants and circumstances.

Awareness

- 1.15 Responses both from our questionnaire surveys and from in-depth interviews with contractors and procurers indicate that there is reasonably high awareness that collusive activity, including forms of bid rigging such as cover pricing, are prohibited under competition law. Nonetheless, a fairly significant proportion (between 30 and 40 per cent) of contractor survey respondents are not well informed about the illegality of bid suppression and market sharing and 18 per cent of respondents did not know that cover pricing was illegal. Fines for breach of the law were seen as a deterrent but the survey showed a low level of awareness of the level of fines that could be imposed.
- 1.16 From both survey responses and in-depth interviews there appears to be a high level of awareness of the OFT's general role in promoting competition and enforcing competition law. However, there was very low awareness of any of OFT's activities directed specifically at the construction sector, particularly the six cases completed between 2004 and 2006. Respondents did not consider that there was any clear message about bid rigging coming out from the OFT over this period. We note again that our fieldwork was undertaken before the recent SO.
- 1.17 The main sources of information on bid rigging being relied on by the industry and procurers are media reports, trade association bulletins and stories in the specialised trade press. OFT's own publications featured very low down on the list of sources, even for public sector procurers. Indeed, only 14 per cent of procurers were aware of the OFT/OGC *Making competition work for you* guidance.

Perceptions on the prevalence of bid rigging in the UK construction sector

- 1.18 For the most part, respondents to our surveys considered that bid rigging in the form of cover pricing was non-existent or seldom occurred but around 12 per cent of those responding to this question considered it a common practice. Other forms of bid rigging were perceived as much less common.
- 1.19 The more detailed discussions carried out in the in-depth interviews showed similar perceptions. Those we interviewed acknowledged that cover pricing had been widespread in the past, but the occurrence was thought to have decreased significantly over the past twenty to thirty years. There was recognition that there had been a further reduction in cover pricing in the past few years. This was attributed by interviewees both to OFT actions and changes in procurement procedures. While interviewees felt the practice may have declined, they also recognised that it did still occur and represented the main form of bid rigging that was still in operation on any scale.

Knowledge of and compliance with competition law

- 1.20 For both contractors and procurers, compliance with competition legislation has not been a major matter for concern and few had taken any steps in recent years to improve compliance or improve procurement practices in order to detect or eliminate bid rigging. For contractors, competition law compliance training ranks last when compared to other laws and regulations such as health and safety. Only 12 per cent of those surveyed had been involved in any competition law compliance training in the last three years.
- 1.21 We sought the views of contractors about their understanding of bid rigging and the circumstances in which it takes place. Many of the 19 contractors we interviewed in-depth drew a distinction between cover pricing and other (in their view more serious) forms of bid rigging. Some claimed cover pricing was 'benign' in that the firms submitting the cover

bids had no intention of being active competitors in that particular tender. Some interviewees suggested that cover bids were submitted in order not to upset the client and to avoid being excluded from future invitations to tender.

- 1.22 A number of our in-depth interviewees told us that, in their view, the effect of a firm submitting a cover bid after discussion with perhaps just one other competitor was no different from that firm submitting a high bid without consultation in order not to win the bid. In either case, they considered the number of 'real' competitors for the work was the same and firms were not aware of any harm being caused whether through time wasted by procurers in assessing bids or possible effects on competition and final tender prices. Such views highlight the need to further communicate the illegal and harmful nature of bid rigging and cover pricing in particular. Some interviewees also pointed to the increased use of collaborative procurement procedures under which the number of competitors for a contract might be reduced by pre-tender discussions between procurer and contractors. This was perceived by some as having a similar effect to cover bidding in terms of reducing the number of firms competing in each tender.

Factors that create deterrence

- 1.23 The possibility of whistle blowing was seen as an important deterrent to bid rigging but knowledge about the OFT's leniency programme was low (just 6 per cent of contractors surveyed had heard of the programme).
- 1.24 Strong penalties, including fines, criminal prosecution and exclusion from bidding for future work, were seen as the most important deterrents. Direct consequences for individuals through criminal prosecutions and/or director disqualification were favoured both in our survey and by interviewees. Additional penalties on companies through blacklisting by procurers and other forms of 'naming and shaming' were also cited by interviewees as possible options.

Conclusions

1.25 It is clear that while there are different views in the industry about the extent of such activity, bid rigging in the form of cover pricing continues to take place. OFT actions over the period 2004-2006 may have contributed to a reduction but not to the elimination of cover pricing. In our survey of contractors most respondents believed that cover pricing seldom occurred or was non-existent but 12 per cent of respondents considered that it was still a common practice and a fairly significant proportion of survey respondents (18 per cent) were not aware that cover pricing was illegal. Our research suggests that actions to increase compliance in this industry may be tailored to take account of the different motivation of participants in the market if they are to have a wider impact on firm behaviour.

1 INTRODUCTION

1.1 In October 2007, Europe Economics,¹ an independent economics consultancy, was commissioned by the Office of Fair Trading (the OFT) to evaluate the impact of the OFT's cartel work in the construction sector. Professor Will Hughes, Professor of Construction Management and Economics and Head of the School of Construction Management and Engineering at the University of Reading acted as external adviser on the project.

1.2 The research objectives set out for this evaluation were to:

- identify any evidence of impact of OFT past cartel investigations completed between 2004 and 2006 on decisions in the construction industry;
- understand the context in which bid rigging takes place in the construction industry and what might limit the impact of OFT enforcement, in particular:
 - the key characteristics of bid rigging in the construction industry in order to understand why construction companies engage in forms of bid rigging such as cover-pricing; and
 - which factors might influence compliance with Chapter I prohibitions.

Structure of the report

1.3 The structure of the report is as follows:

¹ For more information, please visit our website: www.europe-economics.com

- Section 2 sets out background information on the construction sector in the UK, the economic and legal context and the OFT's investigations in the sector;
- Section 3 outlines the research we have undertaken;
- Section 4 presents the main findings from our surveys and interviews;
- Section 5 summarises the conclusions from the main findings;
- Annexe A lists the literature we have reviewed during this study;
- Annexe B sets out our findings on construction cartel investigations in other countries
- Annexe C is the contractor survey questionnaire; and
- Annexe D is the procurer survey questionnaire.

2 BACKGROUND

The construction industry

- 2.1 The construction industry is a significant component of the economy. In 2006, the output of the construction industry in Great Britain was worth £114 billion, more than double the level of output in 1996 of £55 billion, an increase of 22 per cent in real terms.² This was a period of sustained growth in what has traditionally been regarded as a cyclical industry.
- 2.2 There are various ways to categorise the construction sector. For instance, the sector could be divided:
- by the nature of work into new work and repair and maintenance, with new work accounting for the larger share of output;
 - by the type of work into housing and non-housing work, with non-housing work accounting for the larger share of output; and
 - by the type of customer into private and public work, with private work accounting for the larger share of output.
- 2.3 The construction sector is identified by the Kelly report³ as one of the four areas in which public sector procurement was considered to account for a major proportion of total demand.⁴ Contractors' output of both new work and repair and maintenance for the public sector was £31 billion in 2006, or nearly 30 per cent of total output in the construction sector.

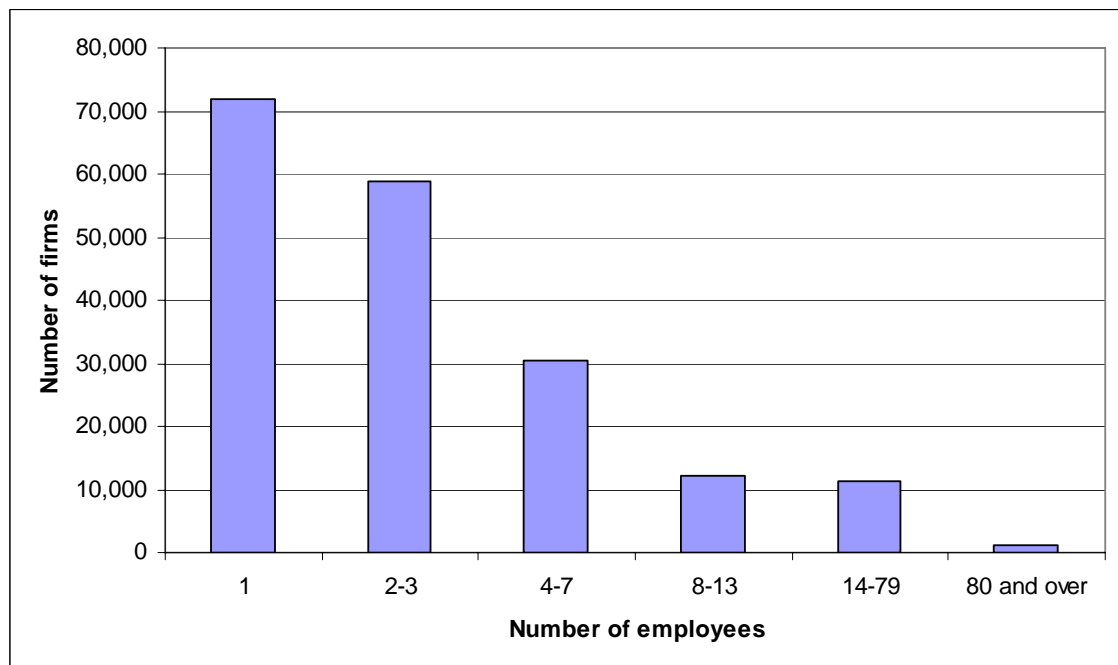
² Department of Trade and Industry (2007) "Construction statistics annual report 2007".

³ http://www.ogc.gov.uk/construction_the_kelly_report.asp

⁴ OGC (2003) "Increasing Competition and Improving Long-Term Capacity Planning in the Government Market Place", OGC Report to the Chancellor of the Exchequer

- 2.4 Annual public sector construction output is likely to continue to expand over the next few years in key sectors such as social housing, schools, hospitals, roads, and the Olympic Games 2012, as total public sector capital investment is set to expand in those areas, as announced by HM Treasury.⁵
- 2.5 There were about 186,000 firms in the construction sector in 2006 an increase of 14 per cent since 1996. Over 85 per cent of these firms have less than eight employees. The size distribution in 2006 is shown in Chart 2.1.

CHART 2.1 – NUMBER OF FIRMS BY NUMBER OF EMPLOYEES

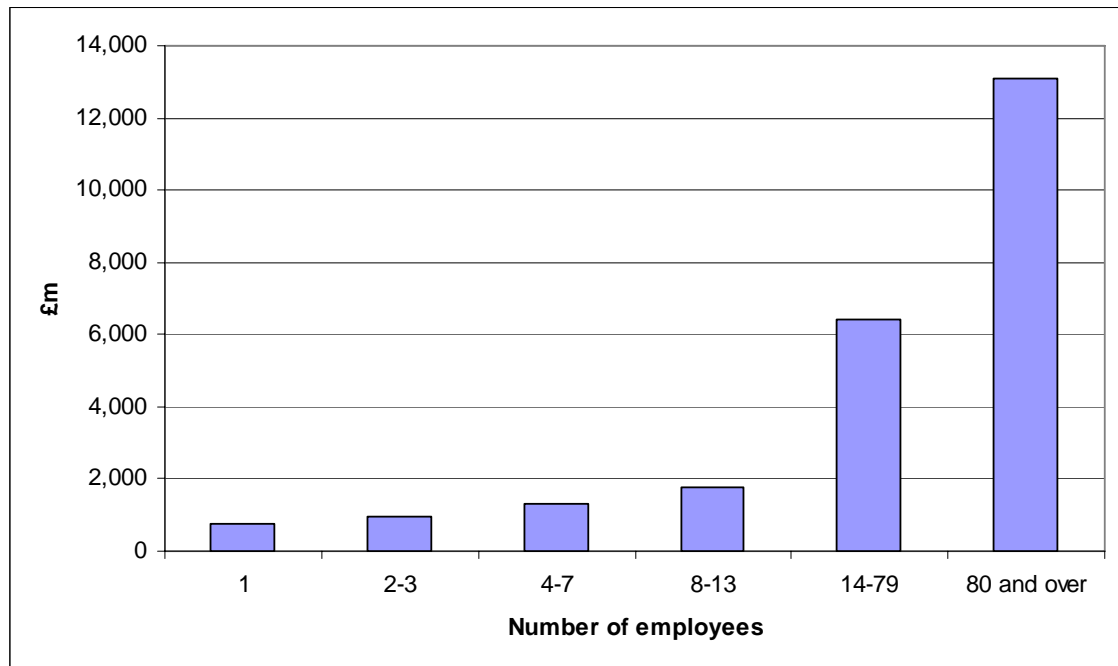


Source: Department of Trade and Industry (2006) "Construction statistics annual report 2006"

⁵ HM Treasury (2007) "2007 Comprehensive Spending Review"

2.6 However, the smallest firms (less than eight employees) account for only about 13 per cent of the value of output with firms with more than 80 employees accounting for over 50 per cent of output. Chart 2.2 shows the distribution of output by size of firm in 2005 (based on sales in the third quarter of the year).

CHART 2.2 — AGGREGATE OUTPUT OF FIRMS (£M) BY NUMBER OF EMPLOYEES



Source: Department of Trade and Industry (2006) "Construction statistics annual report 2006"

2.7 About 55 per cent of all construction firms are involved in house building, around 30 per cent in non-residential building and about 15 per cent in civil engineering.

Economic theory and bid rigging

Market conditions facilitating cartels

- 2.8 Although collusion can occur in almost any industry, there are certain conditions where it is more likely. These include:
- Restricted number of contractors: with a small number of contractors it is easier for them to meet to reach agreements. Collusion can also occur where there are a large number of firms but there is a small group of major sellers with the rest of the sellers controlling only a small percentage of the market.
 - Low product substitution: the probability of collusion increases if other products cannot easily be substituted for the product being procured.
 - The more standardised a product the easier it is for competing firms to reach agreement on a common price structure.
 - Repetitive purchases, as sellers may become familiar with other bidders and future contracts provide opportunities to share work.
 - Competitors know each other through social connections, trade associations, business contacts or shifting employment.
 - Bidders meeting each other when they come to submit their bids.
- 2.9 As well as the conditions stated above, there is also some evidence that cartels form when conditions are more competitive.⁶ The formation of cartels is often preceded by a decline in prices which in some cases is due to weakening demand, entry or capacity expansion.

⁶ Joseph E Harrington (2006) "How do cartels operate?"

UK legislation on bid rigging

The Competition Act

- 2.10 The Competition Act 1998 (which came into effect in 2000) introduced a prohibition on agreements which have as their object or effect the prevention, restriction or distortion of competition in the UK. This, known as the Chapter 1 prohibition, applies in particular to agreements which directly or indirectly fix prices, which limit or control markets or which share markets.
- 2.11 The OFT has powers to investigate potential infringements of the Chapter 1 prohibition and can impose fines of up to 10 per cent of a company's worldwide turnover if it establishes a breach of the law.

The cartel offence

- 2.12 The Enterprise Act 2002 introduced the cartel offence – which is a criminal offence for individuals who dishonestly engage in cartel agreements. The cartel offence operates alongside the Competition Act 1998 regime.
- 2.13 Broadly under the Enterprise Act 2002 an individual is guilty of a criminal offence if they dishonestly make, or cause to be made, agreements with competitors to engage in:
- price fixing;
 - limitation of supply or production;
 - market sharing; and
 - bid rigging.

Bid rigging

2.14 There are a number of forms that bid rigging can take, all of which involve an agreement amongst some or all bidders that distorts or eliminates competition. Common bid rigging practices are:⁷

- **Bid suppression:** where one or more competitors agree not to bid so that another competitor can win the contract.
- **Cover bidding:** where a firm submits a high bid after discussion with a competitor. Such bids are not intended to win but to give the appearance of genuinely competitive bidding. This is the most frequently occurring form of bid rigging.
- **Bid rotation:** where bidders take turns being the successful bidder with each conspirator designated to win certain contracts and thereby share out the market. Competitors may take turns according to the size of the contract, allocating equal amounts to each conspirator or volumes corresponding to the size of each conspirator company. This is a form of market allocation.
- **Subcontracting:** subcontracting arrangements are often part of bid rigging schemes, where competitors agree not to bid or to submit cover bids on the condition that some of the successful bidder's contract will be subcontracted to them.

The OFT activities

OFT cases

2.15 This review has focused on six OFT decisions involving price-fixing or cartel activity in the construction sector between 2004 and 2006:

⁷ These practices are not mutually exclusive of one another, and more than one can occur at the same time.

- Aluminium spacer bars (June 06) (Case 1);
- Flat roof and car park surfacing contracts in England and Scotland (Feb 06) (Case 2);
- Felt and single ply roofing contracts in Western-Central Scotland (Jul 05) (Case 3);
- Mastic asphalt flat-roofing contracts in Scotland (Apr 05) (Case 4);
- Felt and single ply flat-roofing contracts in the North East of England (Apr 05) (Case 5); and
- Flat-roofing contracts in the West Midlands (Apr 04) (Case 6).

2.16 In addition to the completed cases summarised above, the OFT is carrying out a further investigation into bid rigging in the construction sector in the East Midlands, Yorkshire and Humberside and elsewhere in the UK. On 17 April 2008 the OFT issued a Statement of Objections against 112 construction companies. That announcement, which attracted considerable press attention, was made after the completion of our fieldwork.

2.17 All but one of the six completed cases involved the flat-roofing segment of the market. Since 2002 there has been a growth of 15 per cent in the number of firms in the roofing sector while the value of output has remained broadly constant over the same period.⁸

2.18 The relevant geographical market in each case considered was largely dependent on the roofing contractor's decision to travel to any given project. English regions and Scotland were typically considered separate geographic markets. This decision is influenced by several factors, which include:

⁸ Department of Trade and Industry (2007) "Construction statistics annual report 2007"

- The amount of work a contractor has in its immediate locality at any one time and the level of future or prospective work there;
- The nature, monetary value, duration or prestige of a prospective contract, which may encourage the contractor to travel a longer distance;
- Long standing business relationships as a sub-contractor to certain firms of main contractors;
- Work in large geographic or rural areas (such as Scotland) with relatively few concentrated centres of population, which may necessitate lengthier travel.

2.19 The relevant product market in each case covered specified products. The OFT found that, while substitutes existed in some cases they took up a negligible part of the market or were not sufficiently substitutable in function to warrant a wider market definition.

2.20 The remaining case involved aluminium spacer bars, where the geographical and product market was the UK as a whole and aluminium spacer bars, respectively. The total UK market for aluminium spacer bars is about £15 million.

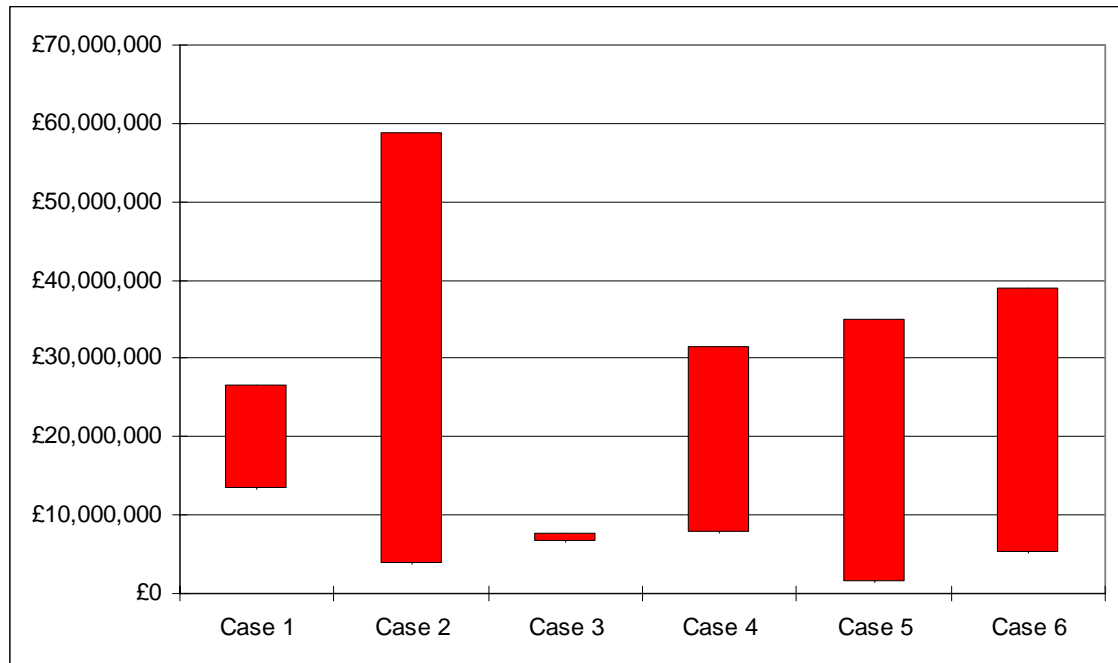
2.21 The combined market share of participants in the relevant product and geographic markets varies greatly across the cases. In the aluminium spacer bar case the combined market share of the participants was in the region of 60 per cent.⁹ In contrast the UK roofing market was fragmented and none of the participants in the various roofing cartel cases had major market shares in the relevant market.¹⁰ This may

⁹ Office of Fair Trading (2006) "Agreement to fix prices and share the market for aluminium double glazing spacer bars" No. CA98/04/2006

¹⁰ Office of Fair Trading (2006) "Collusive tendering for flat roof and car park surfacing contracts in England and Scotland" No. CA98/01/2006

suggest that the degree of fragmentation is not a good indicator in predicting cartel activities.

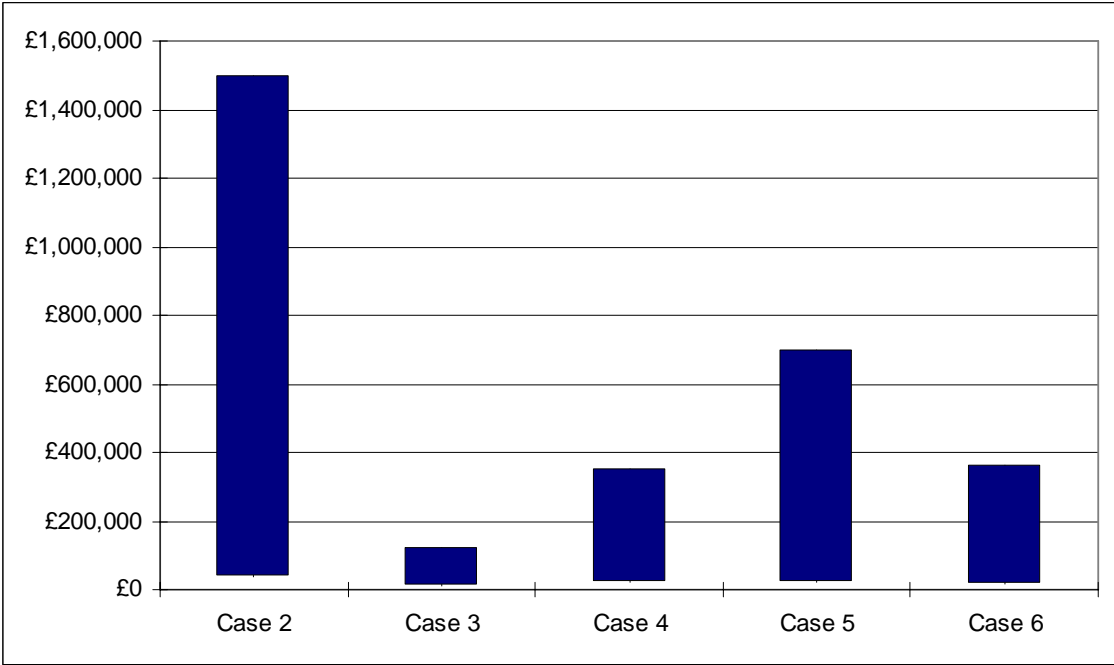
CHART 2.3 — RANGE OF TURNOVER OF FIRMS INVOLVED



Source: CA98 Public Register decisions

2.22 Chart 2.3 above shows the typical range of the size of firms involved in each case. It seems there had been great variance in the size of the firms involved both in each case and across cases. It does not support the conventional economics argument that symmetry of size among firms will make it easier to collude.

CHART 2.4 – RANGE OF CONTRACT VALUES

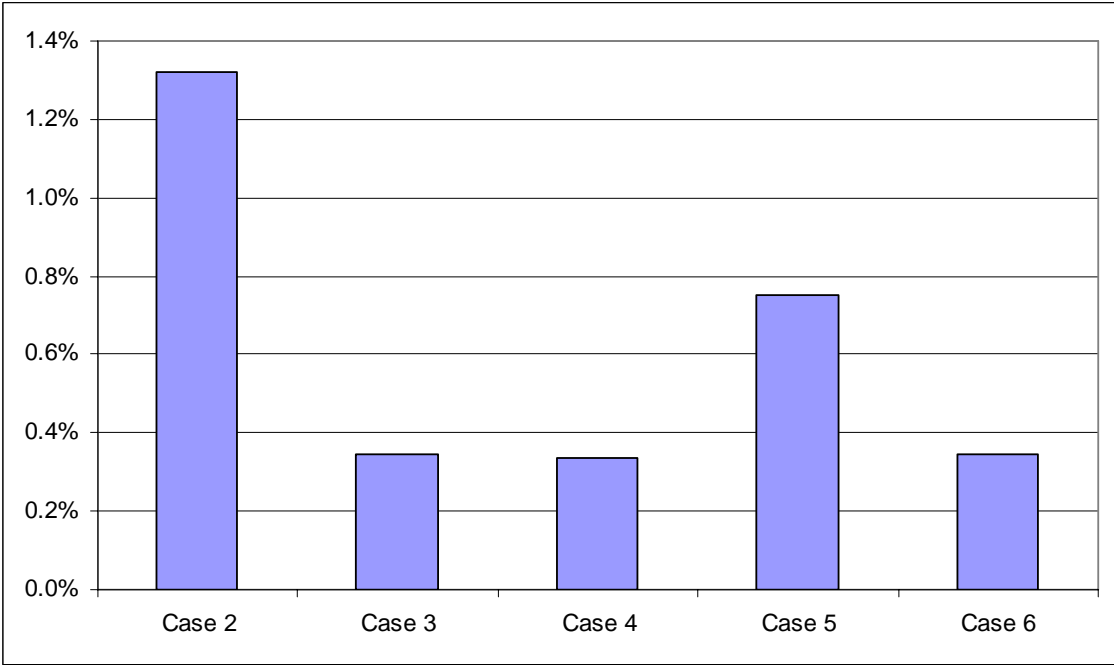


Data on Case 1 not available

Source: CA98 Public Register decisions

- 2.23 It is also interesting to compare the range of the size of firms involved with the range of size of contracts. Chart 2.4 above shows the typical range of the size of contracts in each case. It seems there had also been great variance in the size of the contract both in each case and across cases. Moreover, the degree of variance in the size of contracts seems to correlate with the range of the size of firms in each case.
- 2.24 Fines act as a deterrent to future cartel activities. As shown in Chart 2.5 below, on average the fines levied on the firms involved amounted to between 0.3 to 1.3 per cent of their turnover. The deterrent effect of fines at this level is an issue which we followed up in our fieldwork.

CHART 2.5 – AVERAGE FINES AS A PERCENTAGE OF TURNOVER



Data on Case 1 not available

Source: CA98 Public Register decisions

2.25 The main focus of the OFT’s activities in the construction sector has been on investigations into bid rigging. It has also carried out some limited educational activities. These included ‘Come clean on cartels’ month in 2005 and the production of guidance for public sector procurers, prepared jointly with the Office of Government Commerce, on effective tendering and how to combat anti-competitive practices like bid rigging.

3 RESEARCH

Literature review

- 3.1 To get a better understanding of the sector and seek empirical evidence, we conducted a desk-based literature review. The literature review involved a three-step process.
- 3.2 First, we identified a preliminary list of literature to be reviewed. The process involved searches of books, economic journals, and construction journals for materials related to our study. On first iteration, this yielded 32 papers/books.
- 3.3 Second, we examined each of these papers and selected 20 of them for detailed review, based on the characteristics of each paper including topic relevance, geographic coverage, novelty, and data reliability.
- 3.4 Finally we reviewed each selected paper in detail and summarised findings. The list of literature that we have reviewed is included in Annexe A. We have drawn on this review for our understanding of the nature of cartels in the construction sector and also for experience in other countries.

Experience in other jurisdictions

- 3.5 In addition to the literature review, we also reviewed the experiences of tackling bid rigging in seven other jurisdictions. In general, bid rigging is illegal in all the jurisdictions we have reviewed. The full review is set out in Annexe B. The most common penalty is fines on organisations and individuals, while prison terms could also be imposed on individuals in many jurisdictions.
- 3.6 There are explicit leniency programmes in most of the jurisdictions analysed, and this has proved to be very critical in bid rigging investigations in some jurisdictions, such as Japan and the Netherlands, by giving offenders strong incentive to co-operate and provide information.

- 3.7 Experience in other countries suggests that when bid rigging is suspected to be endemic in a sector, it might be effective to introduce temporary measures (e.g. increased fines after a specific deadline, reduced fines for refraining from appeal, etc.) to give offenders an incentive to report voluntarily. The Dutch competition authority adopted this approach in order to speed up the process and reduce legal costs.
- 3.8 Moreover, the experience in other countries may shed light on what sectors competition authorities should focus on when conducting investigations. Many of the cases we reviewed involved either cement or concrete which seem to satisfy classic conditions for cartel activities, namely high barriers to entry, homogeneous products, limited number of players, and relatively constant demand.
- 3.9 Apart from penalties and other traditional enforcement activities, some competition regulators have also emphasised the importance of non-enforcement activities in reducing bid rigging.
- 3.10 For instance, one of the central messages from the Australian project in evaluating the effectiveness of the compliance and enforcement activity of ACCC, the Australian competition authority, is that compliance behaviour is found to be dependent on contextual factors and, for compliance-ensuring action to be effective, it is necessary to build a web of controls (moral and deterrent) all working against anti-competitive behaviour.¹¹
- 3.11 The Canadian and Hungarian authorities have followed similar approaches. The Canadian authority tackled the procurer side and launched a new online anti-bid rigging presentation on its website to help public and private organisations engaged in procurement detect, prevent, and report suspected incidences of bid rigging.

¹¹ <http://cccp.anu.edu.au/projects/project1.html>

- 3.12 GVH, the Hungarian competition authority, tackled the contractor side and sought to establish a competition culture, raising public awareness of the benefits of competition, providing information about competition policy, and creating a competitive regulatory environment. A Centre for Competition Culture was established within GVH, which receives 5 per cent of the fines imposed by the GVH.
- 3.13 The experience from France is also of relevance and reinforces the message that penalties alone are not enough. Despite the seemingly high penalty (up to 10 per cent of turnover for firms and imprisonment for individuals) in France, there continued to be widespread bid rigging cases. This may suggest that penalties alone are not serving as enough of a deterrent and other activities, such as education and forging competition culture are needed.

Questionnaire surveys

Contractor survey

- 3.14 To get key information on the awareness of contractors on bid rigging issues, the perceived existence of bid rigging in the construction sector, and the extent to which the OFT activities influenced business awareness and behaviour, we commissioned GfK NOP to conduct a survey of contractors in the UK. The survey covered the following issues:
- Demographic information about respondents (e.g. geographic location, size, sub-sector, etc.);
 - Awareness of bid rigging issues and knowledge of competition law;
 - Perceived existence and reasons for bid rigging;
 - Awareness of OFT activities, especially the bid rigging cases in the construction sector and the leniency programme;
 - Perceived influence and impact of the OFT activities; and

- Perceived effectiveness of various factors in deterring bid rigging.
- 3.15 GfK NOP adopted a two-stage process. First, they called firms in the construction sector to get them to agree to participate in the survey. Second, the firms which agreed to participate and which satisfied the basic selection criteria then were invited to complete the survey online. In total, 2,116 firms were contacted, and 1,003 firms were invited to complete the survey questionnaire.
- 3.16 In total, we received 315 complete responses. Most of the respondents were senior staff and most responding firms had been in business for more than 10 years, which should contribute to the quality of their responses.
- 3.17 About two thirds of responding firms had more than 50 employees and the majority had annual revenue between £2 million and £50 million. 16 per cent of firms responding were in Scotland, Wales and Northern Ireland. The remainder were based in England.
- 3.18 Half of the firms surveyed carried out the majority of their work in the private sector. About one quarter worked primarily in the public sector with the remainder having an equal mix of public and private sector work. The majority of work was new build rather than repair and maintenance.
- 3.19 Although the survey was based on a relatively small sample, the respondents covered a wide range of businesses in terms of size, location and type of construction work. Weighting responses in line with the size distribution of the construction industry as a whole is considered in the presentation of results and weighted results are presented for certain questions.
- 3.20 The main findings from the survey are presented in Section 4. Further details are given in Annexe C along with the contractor questionnaire and further details on the respondents.

Procurer survey

- 3.21 To get key information on the awareness of procurers on bid rigging issues, the perceived existence of bid rigging in the construction sector, the extent to which the OFT activities influenced procurer awareness and behaviour, and how procurers deal with bid rigging, the OFT carried out a survey of procurers in the UK. The online survey sought to cover the following issues:
- Demographic information about respondents (e.g. geographic location, size, sub-sector, etc.);
 - Awareness of bid rigging issues and knowledge of competition law;
 - Perceived existence of bid rigging;
 - Procedures and practices to deter and prevent bid rigging, and likely reactions to offending firms;
 - Awareness of OFT activities, especially the bid rigging cases in the construction sector and the leniency programme;
 - Perceived influence and impact of the OFT activities; and
 - Perceived effectiveness of various factors in deterring bid rigging.
- 3.22 In total, we received 132 complete responses. Most responding organisations had been procuring construction goods and services for more than 10 years, which should contribute to the quality of their response.
- 3.23 Nearly three quarters of respondents worked for organisations employing more than 100 employees and half had annual budgets for construction goods and services above £5 million. Most (80 per cent) of respondents were based in England. There were roughly equal numbers of respondents from the public and private sectors and two thirds of the procurement covered was for new build work.

3.24 The main findings from the survey are set out in Section 4 with further details in Annexe D along with the procurer questionnaire.

Stakeholder interviews

3.25 In addition to the questionnaire survey we also carried out in-depth interviews with a number of construction companies, procurers and trade associations to get a better understanding about their awareness of bid rigging and the associated legal issues, the reasons for and circumstances in which bid rigging might occur and any actions that could be taken to deter such practices.

3.26 These interviews were carried out on the basis of individual confidentiality and anonymity of responses. Findings from these interviews are incorporated into Section 4 and our conclusions.

3.27 We carried out 34 interviews in total broken down as shown in Table 3.1 below.

TABLE 3.1 – INTERVIEWEES

Type of interviewee	Number
Construction industry trade associations	4
Specialist contractors	12
General contractors	7
Public sector procurers	8
Private sector procurers	3
Total	34

Source: Stakeholder interview

3.28 It became clear during the course of these interviews that a number of the contractors, particularly the general contractors, were themselves procurers and responsible for receiving tenders for work from sub-contractors.

3.29 Although the interviewees were not selected in order to provide a representative sample, we are satisfied that they cover a good range of

sizes and types of business. There is a high level of consistency in the responses we received both within the interview group and between this group and the wider survey.

- 3.30 We are grateful for the cooperation of all those who took part in the surveys and interviews.

4 FINDINGS FROM SURVEYS AND INTERVIEWS

4.1 This section summarises the main findings from the contractor and procurer surveys and the in-depth interviews we have conducted. The findings fall into the following areas:

- Perceptions on the prevalence of bid rigging in the UK construction sector;
- Awareness of and compliance with competition law by contractors and procurers;
- Procurement methods and bid rigging; and
- Impact of the OFT activities.

4.2 The surveys and interviews were carried out before the OFT issued its Statement of Objections (SO) against 112 construction companies on 17 April 2008 and before the first successful UK prosecution of individuals for cartel offences in June 2008. The industry views which are reported here do not reflect any impact from these recent developments.

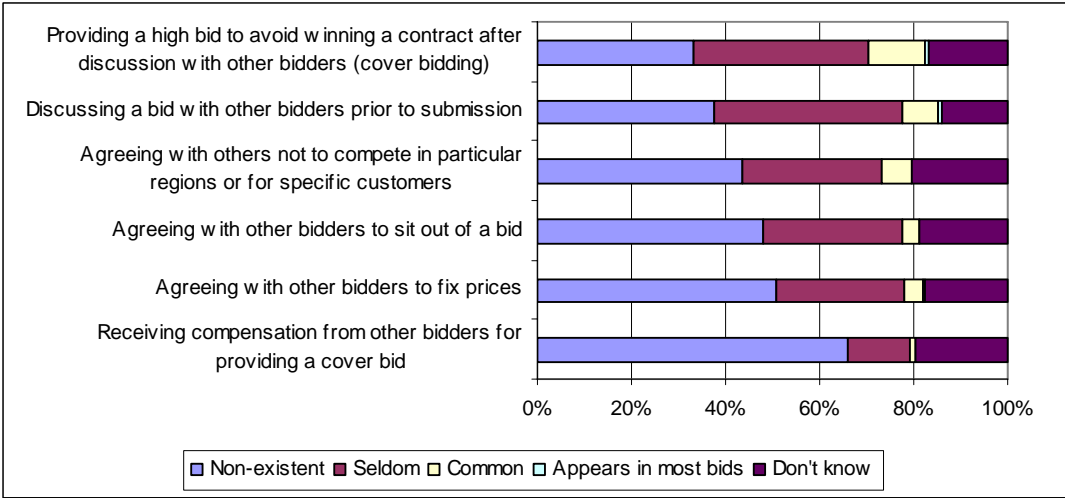
Bid rigging in the UK construction sector

Perceived existence of bid rigging

Perceived current existence of bid rigging

4.3 The vast majority of construction businesses surveyed believe bid rigging is either non-existent or seldom occurs in the UK construction sector. However, where bid rigging does occur cover pricing is regarded as the most frequent form, with 13 per cent of respondents thinking it is either common or appears in most bids (and a further 17 per cent stating they did not know).

CHART 4.1 — PERCEIVED CURRENT EXISTENCE OF BID RIGGING BY CONTRACTORS

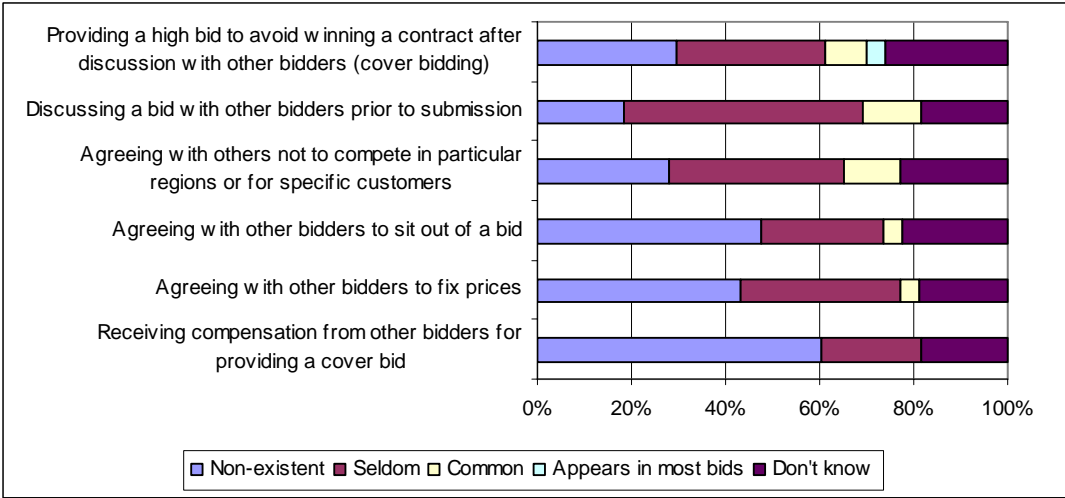


Base number: 315

Source: GfK contractor survey

4.4 If these responses are weighted according to the size (defined as the number of employees) of the contractor (using weights derived from the national size distribution shown in Chart 2.1) then, as shown in Chart 4.2 below, the result is largely the same, although the proportion of respondents believing that cover pricing “appears in most bids” increased from 1 to 4 per cent. This suggests there is no significant difference in the perceived existence of bid rigging between large and small firms, except that the practice of “discussing a bid with other bidders prior to submission” seems to be more common among small contractors.

CHART 4.2 — PERCEIVED CURRENT EXISTENCE OF BID RIGGING BY CONTRACTORS (WEIGHTED BY SIZE OF CONTRACTOR)

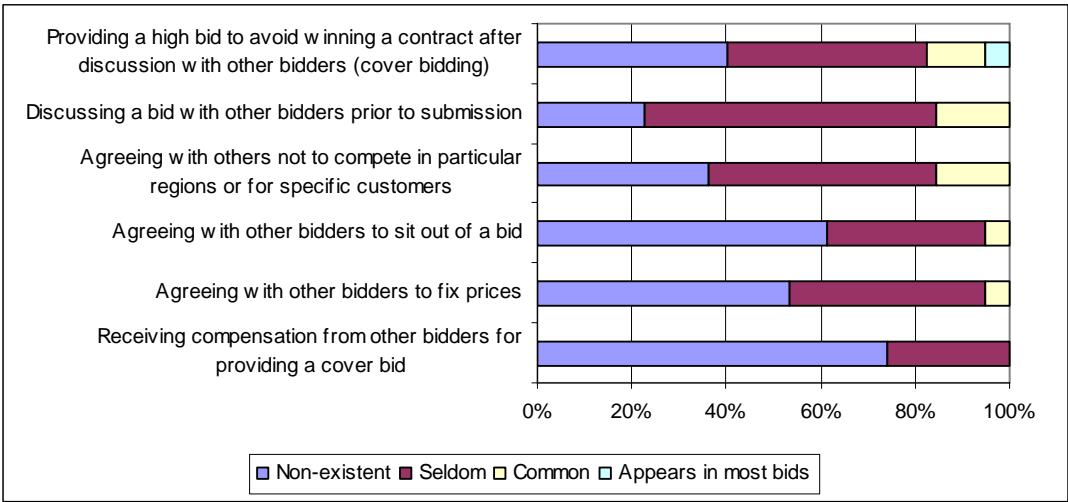


Base number: 315

Source: GfK contractor survey

4.5 However, when the contractors that answered “don’t know” are removed from the sample (as in Chart 4.3), the relative prevalence of bid rigging is clearer. Again, cover bidding is perceived as relatively the most widespread form of bid rigging, although still more than 80 per cent of contractors in our sample believed it was either non-existent or seldom occurred, while the remainder believe cover bidding is either “common” (12 per cent) or “appears in most bids” (5 per cent).

CHART 4.3 – PERCEIVED CURRENT EXISTENCE OF BID RIGGING BY CONTRACTORS (WEIGHTED BY SIZE OF CONTRACTOR AND “DON’T KNOW” ANSWER REMOVED)



Base number: from 251 to 271

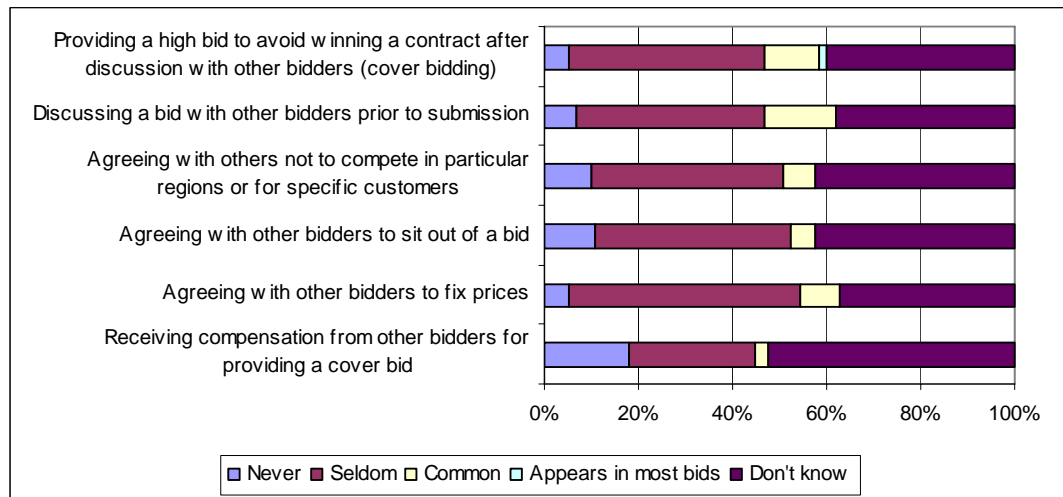
Source: GfK contractor survey

- 4.6 There are no significant differences in the perceived existence of bid rigging by contractors between the four regions that have been subject to either the previous six OFT cases or the current OFT investigation and the remaining regions of the UK.¹² While there are some differences between the four regions themselves, on the whole most respondents in these areas perceive such bid rigging practices to be either “non-existent” or “seldom” occurring. The regional differences are not significant although Scotland does have a much higher proportion of “don’t know” responses.
- 4.7 We also explored whether procurers perceive things differently from contractors. As shown in Chart 4.4 below, there is a similar proportion

¹² North East, Yorkshire and Humberside, West Midlands, and Scotland.

of procurers who perceive bid rigging as either “common” (11 per cent) or “appears in most bids” (2 per cent), although a higher proportion of procurers than contractors chose “don’t know”. Private sector procurers perceive a slightly higher level of existence of bid rigging than public sector procurers.

CHART 4.4 — PERCEIVED CURRENT EXISTENCE OF BID RIGGING BY PROCURERS



Base number: 132

Source: OFT procurer survey

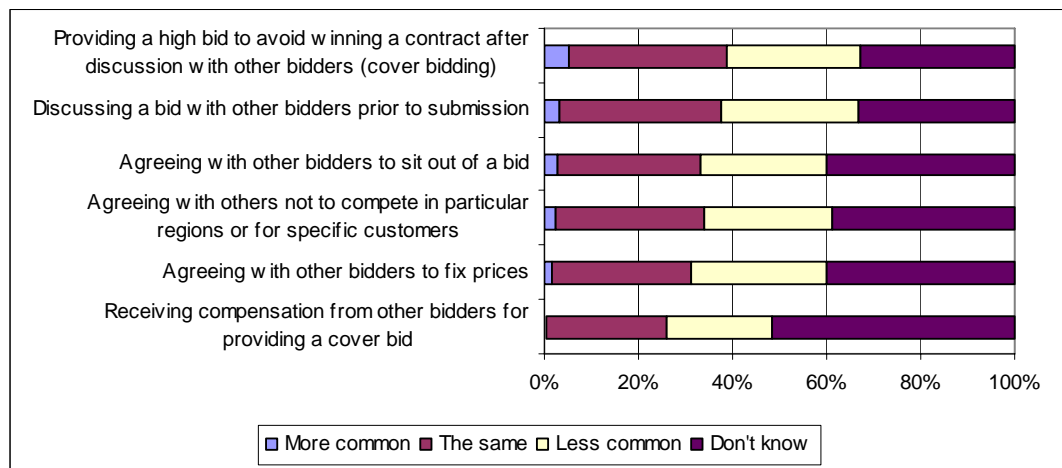
4.8 Our findings from in-depth interviews with businesses and procurers, revealed differing opinions on the extent of bid rigging. On the whole, interviewees believed that bid rigging was very rare and cover pricing, thought to be the main form of bid rigging, was not perceived to be widespread.

Perceived existence of bid rigging compared with three years ago

4.9 Having assessed the current extent of bid rigging in the construction sector, we investigated whether the prevalence of the activity had changed in the past three years. As shown in Chart 4.5 below, over one

quarter of respondents believe that the existence of the different bid rigging activities is less common than three years ago, compared with 5 per cent or less believing that the practice has increased. Compared to other bid rigging activities, cover pricing is thought by the highest proportion of respondents (5 per cent) to be “more common” than three years ago. Many respondents were also unsure, with a significant proportion of respondents answering ‘don’t know’ to this question.

CHART 4.5 – PERCEIVED EXISTENCE OF BID RIGGING COMPARED WITH THREE YEARS AGO BY CONTRACTORS



Base number: 315

Source: GfK contractor survey

- 4.10 There are no significant differences in contractors’ perceived existence of bid rigging compared with three years ago between the four regions that have been subject to either one of the previous six OFT cases or the current OFT investigation and the remaining regions of the UK. While there are some differences between the four regions themselves, these differences are not in general significant except in the West Midlands and Scotland where it is perceived by contractors that things have not improved in the last three years.
- 4.11 When we rank the current perceived existence of various bid rigging activities and their perceived change in existence compared with three

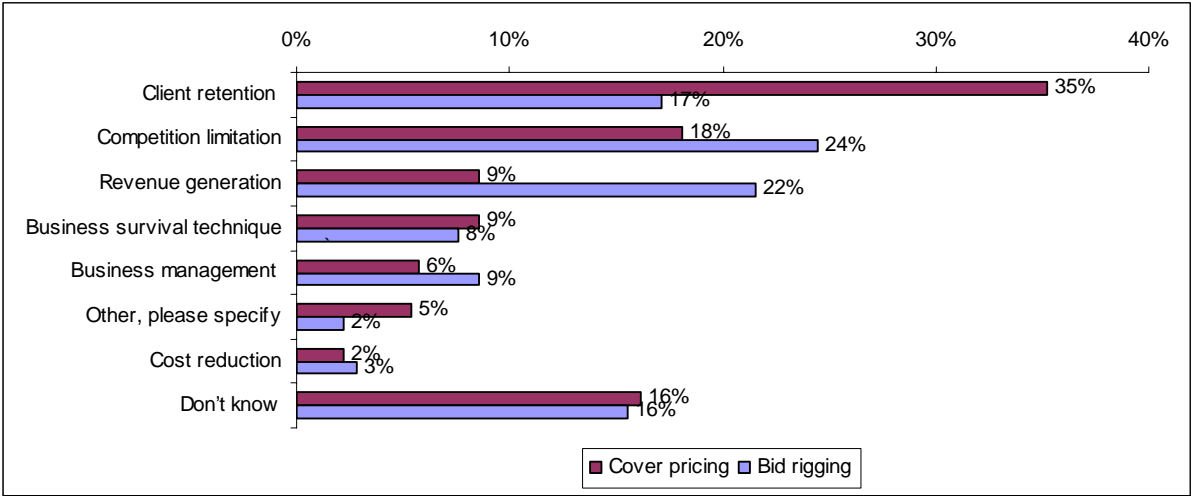
years ago (as is done in Chart 4.1 and Chart 4.5) it appears that cover pricing is the most frequent form while receiving compensation from competitors is the rarest form.

- 4.12 Moreover, the ranking of each practice is largely the same in these two charts. Such consistency might further demonstrate the robustness of the findings.
- 4.13 We also explored this issue in our in-depth interviews which were conducted before the SO was issued. Most interviewees noted that historically cover pricing had been widespread but considered that these practices were much less frequent and wide-spread than 20 or 30 years ago. These respondents generally believed that such a significant drop in the incidence of bid rigging in the past couple of decades might be due to the more liberalised labour market and more competitive business culture. Some interviewees considered that there had been a reduction in cover pricing over the past few years and considered that this was a response both to the change in the law and the OFT's enforcement action but also to changes in procurement practice with a move away from awarding projects on the basis of the lowest price bid (single price tendering).

Reasons for bid rigging

- 4.14 We explored industry views on the reasons for bid rigging. As shown in Chart 4.6 below, competition limitation, revenue generation, and client retention are cited as the most important reasons for why firms might engage in bid rigging. However, client retention is cited by 35 per cent of respondents as the single most important reason for cover pricing.

CHART 4.6 — REASONS FOR BID RIGGING AND COVER PRICING BY CONTRACTORS



Base number: 315

Source: GfK contractor survey

- 4.15 Amongst the 19 contractors interviewed in-depth there was a nearly unanimous view that cover pricing occurs when firms do not have the capacity to do the work in question but want to remain on tender lists (which could be difficult and costly to get on according to those interviewed) and are afraid of upsetting the client by not bidding.¹³
- 4.16 One fifth of procurers responding to our survey indicated that they would not invite companies to tender if they had failed to provide bids for other construction projects.
- 4.17 Stakeholders interviewed also gave other explanations, which may apply to certain cases. For instance, one stakeholder suggested that “there

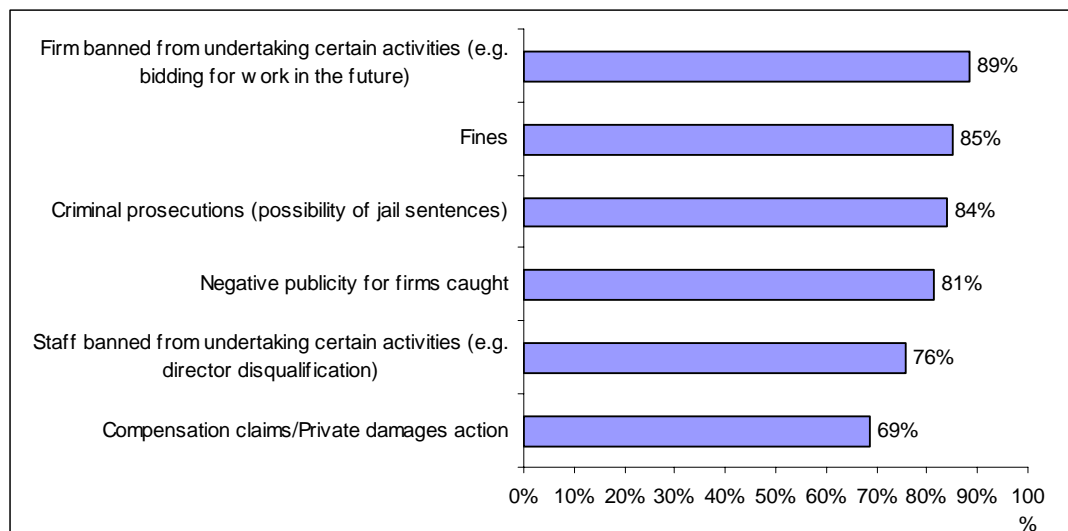
¹³ Note it was not the purpose of this study to probe whether such views could be substantiated with specific examples.

are too many unknowns about each job for it to be possible to price without speaking to competitors”.

Perceived effectiveness of penalties

4.18 Having explored the reasons behind big rigging, we now turn to how effective penalties are in deterring bid rigging. Chart 4.7 below shows the percentage of respondents that perceive the various penalties as either very important or important in deterring bid rigging. In general, all penalties are perceived as important, while banning firms from certain commercial activities, fines, and criminal prosecutions are perceived to be the most important, although not by a wide margin.

CHART 4.7 — PERCEIVED IMPORTANCE IN DETERRING BID RIGGING BY CONTRACTORS



Base number: 315

Source: GfK contractor survey

4.19 Interviewees in our in-depth interviews in general believed that penalties imposed on individuals (e.g. criminal prosecution) are more effective than those applying to companies (e.g. fines), because they raise the perceived risks for individuals considerably. Moreover, it partly

addresses the agent-principal problem, where individuals may not act in the best interest of the firms they work for, as “people are always looking to get their next job”, especially in small firms.

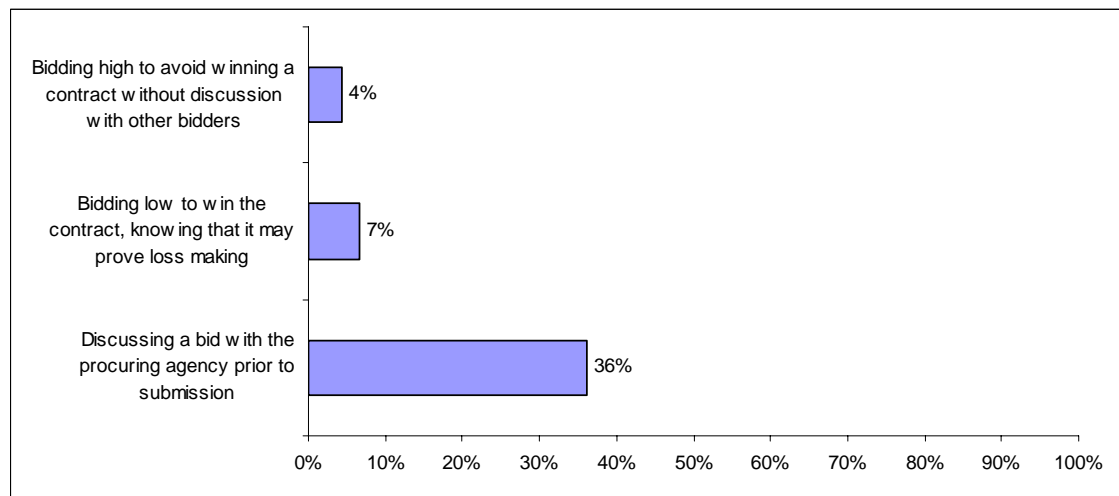
Awareness of and compliance with competition law

Knowledge of the law

Knowledge on the legality of bid rigging

4.20 We were interested in testing survey respondents’ knowledge of legal and illegal bidding practices. As shown in Chart 4.8 and Chart 4.9 below, in general respondents have a reasonably good knowledge of legal and illegal practices under UK competition law.

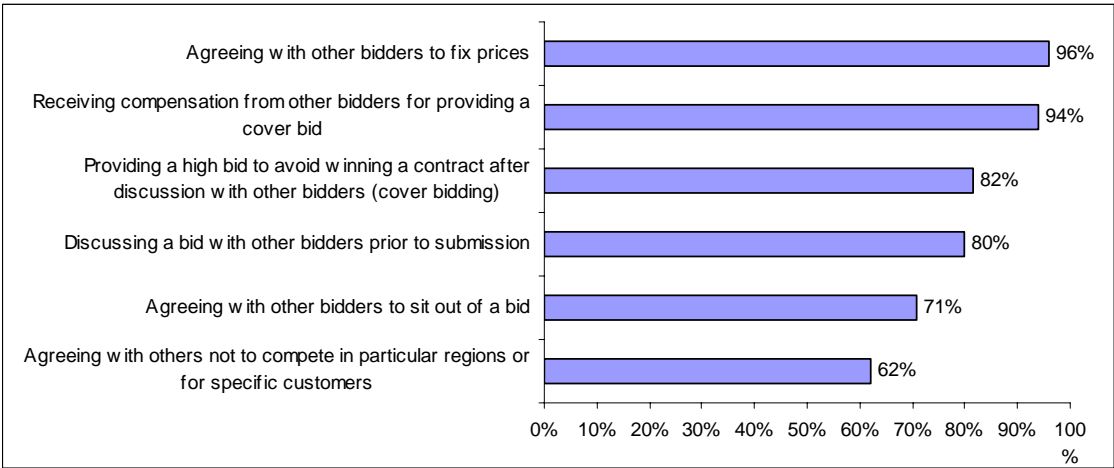
CHART 4.8 — PERCENTAGE OF RESPONDENTS (CONTRACTORS) BELIEVING THAT THE LEGAL PRACTICES LISTED IN THE CHART ARE ILLEGAL



Base number: 315

Source: GfK contractor survey

CHART 4.9 — PERCENTAGE OF RESPONDENTS (CONTRACTORS) BELIEVING THAT THE ILLEGAL PRACTICES LISTED IN THE CHART ARE ILLEGAL



Base number: 315

Source: GfK contractor survey

- 4.21 However, the charts also show that a significant portion (between 30 and 40 per cent) of the respondents are not well informed about the illegality of bid suppression and market sharing and 18 per cent of respondents did not know that cover pricing is illegal. There was also confusion about the legality of discussing a bid with procurers prior to submission. This does not violate competition law, but might violate procurement procedures.

- 4.22 There are no significant differences in the knowledge of the illegality of bid rigging between the four regions that have been subject to either the previous six OFT cases or the current investigation and the remaining regions of the UK. On the whole it appears that respondents’ knowledge on the illegality of bid rigging is relatively good. There are some regional differences in the knowledge among the four areas that have been subject to either the previous six OFT cases or the current OFT investigation. These differences are not significant, although contractors in Yorkshire and Humberside appear to have slightly weaker knowledge, which might be partly due to the fact that Yorkshire and Humberside is

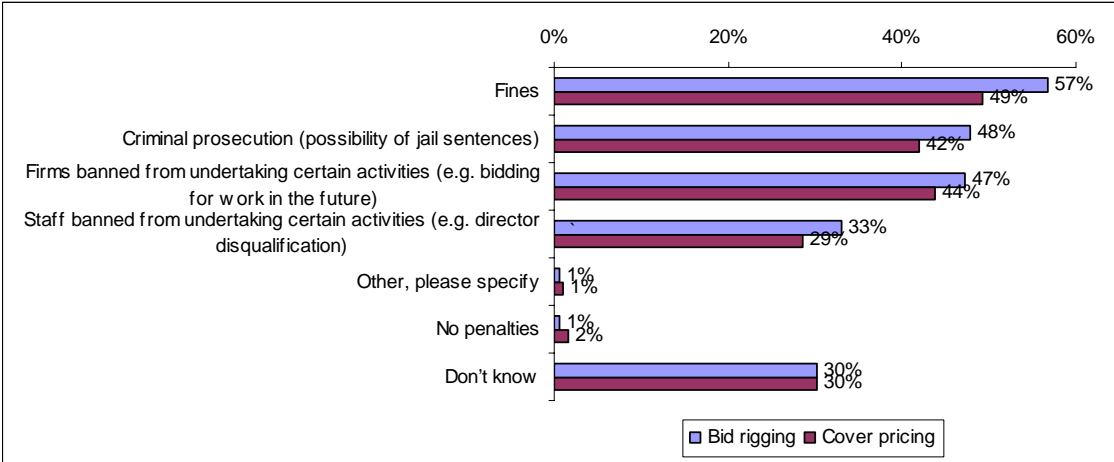
the only region among the four that was not involved in any of the previous six OFT cases.

- 4.23 Opinions from in-depth interviews show much more divergence in the perceived awareness and knowledge among respondents, where some interviewees believe many people do not have good knowledge while others claim “everybody knows it”. Some stakeholders feel that advisors such as consultants and quantity surveyors should have better knowledge than contractors, while others suspect that contractors may have better knowledge given they are directly involved.
- 4.24 It is also interesting to note that procurers in general have similar levels of knowledge as contractors in our survey.

Knowledge of penalties applicable to bid rigging

- 4.25 Although contractors and procurers in general have a relatively good knowledge on the illegality of bid rigging, they have less knowledge on the fines and penalties applicable to bid rigging and cover pricing. As shown in Chart 4.10 below, 30 per cent of respondents indicated that they did not know of any penalties applicable to bid rigging and cover pricing. In particular, respondents have slightly less knowledge about the penalties applicable to cover pricing, compared with bid rigging in general, and have very limited awareness of the maximum fines applicable to bid rigging (only 15 per cent of respondents gave the correct answer when asked about the maximum fine applicable).

CHART 4.10 — KNOWLEDGE OF APPLICABLE PENALTIES BY CONTRACTORS



Base number: 315

Source: GfK contractor survey

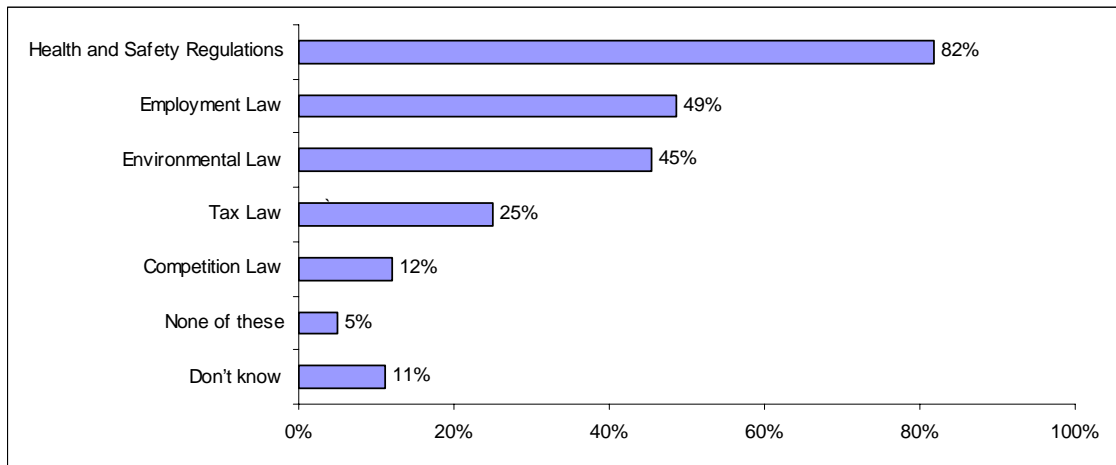
4.26 Likewise we found that the majority of our in-depth interviewees only had a rough idea of the nature or severity of penalties and many of them were unaware of the potential for criminal prosecution. When probed further, some felt that criminal prosecution might be too harsh, while others did not have significant concerns over it, feeling it may serve as an effective deterrent. Moreover, some respondents felt that penalties were not really clearly defined and that there were lots of grey areas which people did not know how to interpret. Our findings suggest then that more effort is needed to raise knowledge amongst contractors of the penalties that apply to bid rigging, including cover pricing.

Importance of competition issues to contractors and procurers

4.27 Having assessed the knowledge of the legality of bid rigging and applicable penalties, we now examine how important competition law issues are to contractors and procurers. We found that training in general competition law issues is less of a priority when compared to compliance training in relation to other laws.

4.28 For contractors, competition law compliance training ranks last when compared to other laws and regulations such as health and safety, employment, environment, and tax, as shown in Chart 4.11 below. Only 12 per cent of contractors surveyed have been involved in any competition law compliance training programme in the last three years.

CHART 4.11 – PERCENTAGE OF RESPONDENTS (CONTRACTORS) INVOLVED IN ANY COMPLIANCE TRAINING PROGRAMME IN THE LAST 3 YEARS

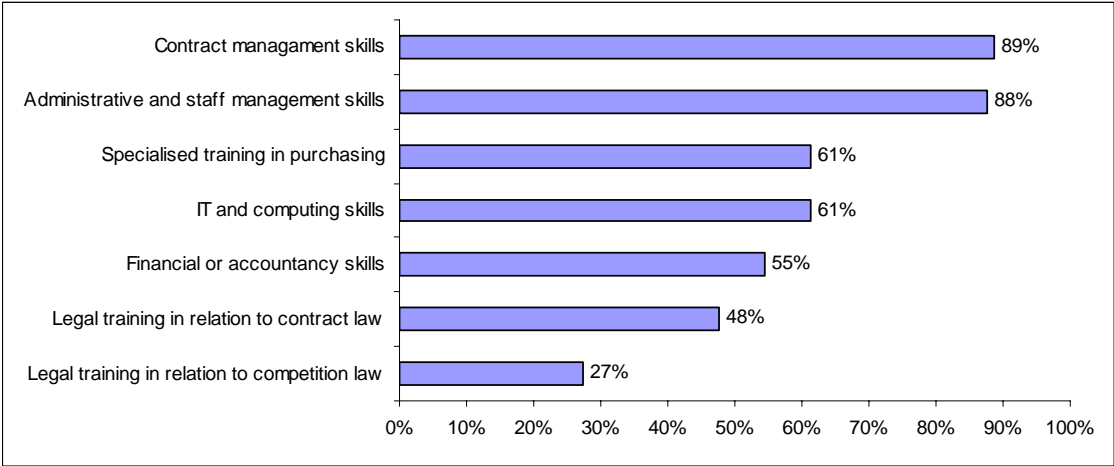


Base number: 315

Source: GfK contractor survey

4.29 For procurers, things are similar. As shown in Chart 4.12 below, procurers rank training in competition law compliance last when asked about the various skills required in their procurement unit. Moreover, only 15 per cent of procurers surveyed have been involved in any competition law compliance training programme in the last three years.

CHART 4.12 — PERCENTAGE OF RESPONDENTS (PROCURERS) REQUIRING VARIOUS SKILLS IN THEIR SPECIALIST PROCUREMENT UNIT



Base number: 88

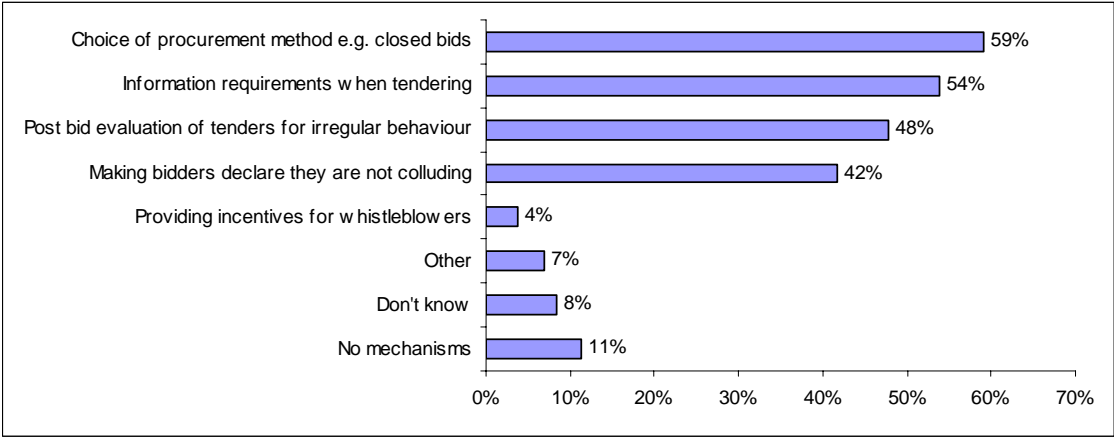
Source: OFT procurer survey

4.30 On the whole, our in-depth interview respondents did not regard competition law compliance as one of the major business issues. In contrast nearly every contractor we spoke to treated health and safety compliance very seriously. Health and safety risk assessments were required in all project and they faced regular inspection. This might also be a reason those we interviewed do not have good knowledge on the penalties applicable under Competition law.

Detecting and preventing bid rigging

4.31 Although competition law training had relatively limited take-up by procurers, most procurers (81 per cent) have in place some mechanisms to detect and prevent bid rigging, and the choice of procurement method is the most frequently used mechanism, as shown in Chart 4.13 below. Our procurer survey also found that, while about 21 per cent of procurers surveyed also used advisors to detect or prevent bid rigging in the last three years, 51 per cent did not, and the remaining 25 per cent responded “don’t know”.

CHART 4.13 — MECHANISMS USED TO DETECT OR PREVENT BID RIGGING BY PROCURERS



Base number: 132

Source: OFT procurer survey

4.32 Moreover, our survey suggests procurers would be prepared to take offenders who participate in bid rigging seriously. Most procurers surveyed (76 per cent) claimed they might blacklist firms who have been convicted of bid rigging. In addition, the length of blacklisting could be long (with 86 per cent of respondents citing more than three years).

Procurement methods and bid rigging

4.33 We have examined the procurement methods used in the construction sector and if these have had any impact on the existence of bid rigging.

Procuring method

4.34 Our survey found that the dominant method of winning work is still through competitive tendering. Amongst contractors surveyed, 70 per cent won most of their work in this way and 76 per cent of procurers surveyed procured most of their work through competitive tendering. 20 per cent of contractors surveyed won most of their work and 17 per cent of procurers surveyed procured most of their work through collaboration and/or partnership with the client. Within competitive

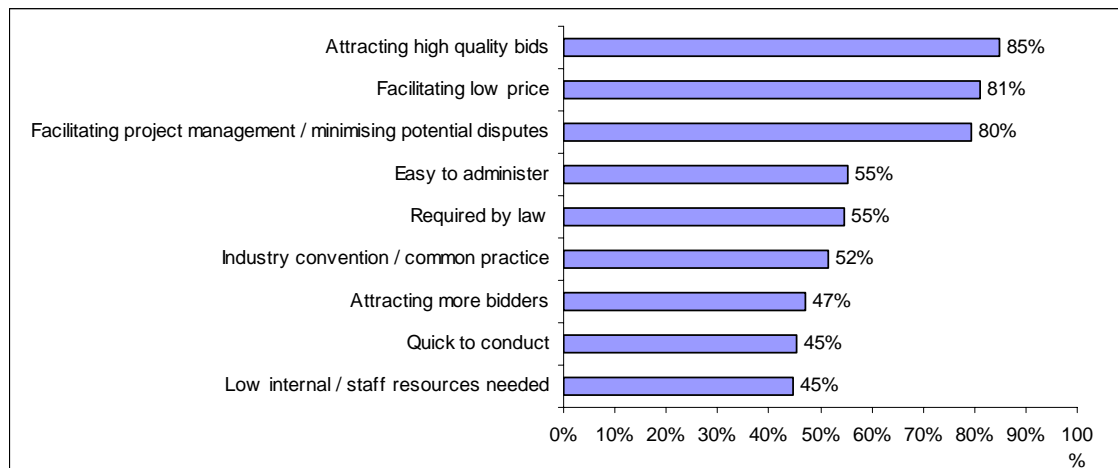
tendering, open tendering is the most frequently used form and accounted for 70 per cent (according to contractor survey) or 80 per cent (according to procurer survey) of competitive tendering. Public procurers rely marginally more than private ones on competitive tendering when procuring construction work.

Rationale for using procuring method

4.35 The three most important reasons cited by procurers for using their most frequently used procuring method, as shown in Chart 4.14 below, are:

- Attracting high quality bids;
- Facilitating low price; and
- Facilitating project management and minimising potential disputes.

CHART 4.14 — REASONS FOR USING THE MOST FREQUENTLY EMPLOYED PROCURING METHOD



Base number: 132

Source: OFT procurer survey

4.36 Attracting high quality bids and facilitating low price ranked top as the reason given by procurers for using the procurement method they chose. Unsurprisingly the procurers we spoke to in-depth generally feel that

ensuring value for money and attracting sufficiently high quality bids are more challenging tasks than attracting a sufficient number of bids.

Perceived effects of procurement methods on bid rigging

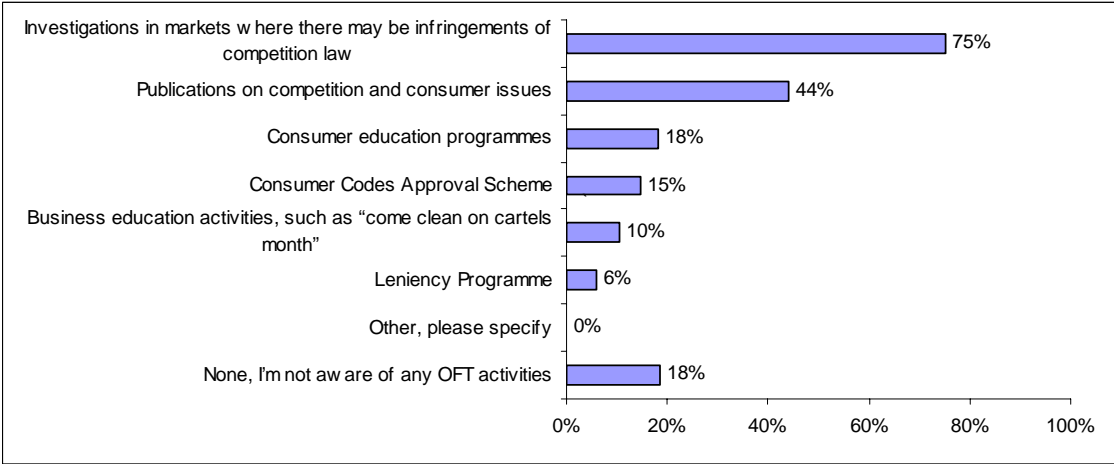
4.37 We also tried to find out if any procurement methods had significant perceived impact on the existence of bid rigging. Most procurers surveyed believe that the procurement methods that are currently in use do not increase the likelihood of bid rigging. Moreover, three quarters of contractors believe that the adoption of framework contracts and partnership arrangements has had a very small effect, if any, on the incidence of bid rigging. The responses from procurers show an almost identical breakdown of views.

Impact of the OFT's activities on bid rigging

Awareness of OFT general activities

4.38 For the OFT's activities to make an impact, contractors and procurers need to be aware of them. As shown in Chart 4.15 below, the majority of contractors (75 per cent) are aware of OFT activity in investigating competition law violations. However, most respondents are not aware of other more specific OFT activities, especially the Leniency Programme.

CHART 4.15 – AWARENESS OF OFT ACTIVITIES BY CONTRACTORS



Base number: 315

Source: GfK contractor survey

4.39 Procurers seem to have similar limited levels of awareness. While the majority of procurers (80 per cent) are aware of OFT activity in investigating competition law violations, most respondents are not aware of other more specific OFT activities, including the OFT/OGC guidelines to procurers (just 15 per cent of procurers were aware of this publication).

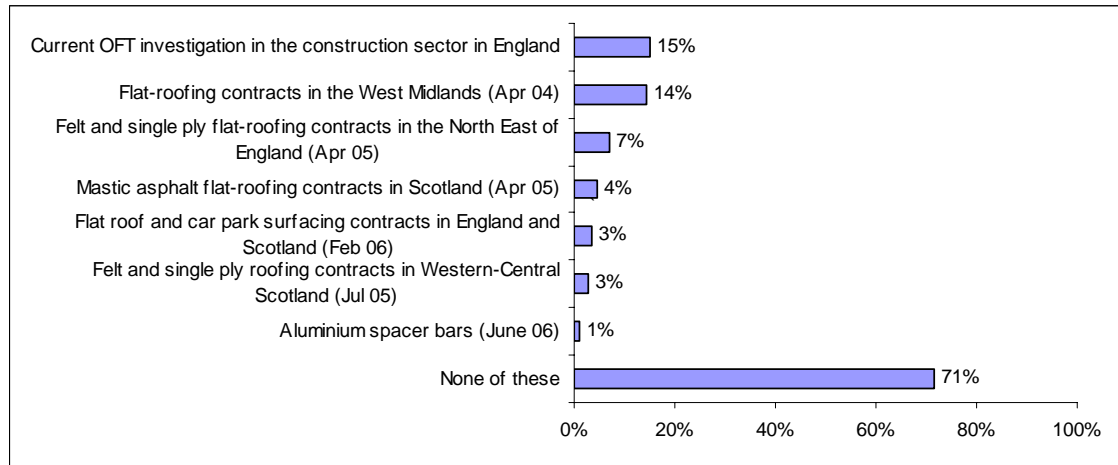
Awareness of OFT cases

4.40 For penalties on bid rigging to be effective, both contractors and procurers need to be aware that offenders have been prosecuted and punished. Therefore we assessed how well contractors and procurers were aware of the six OFT cases in the construction sector completed between 2004 and 2006. Most contractors and procurers surveyed were not aware of any of the cases, although awareness is slightly higher in the regions where the cases were brought.

Awareness of contractors

4.41 The majority of contractors (71 per cent) were not aware of the six previous OFT cases or the current investigation in the construction sector, as shown in Chart 4.16 below (this survey was carried out before OFT published its Statement of Objections in the current case).

CHART 4.16 – AWARENESS OF OFT CASES BY CONTRACTORS



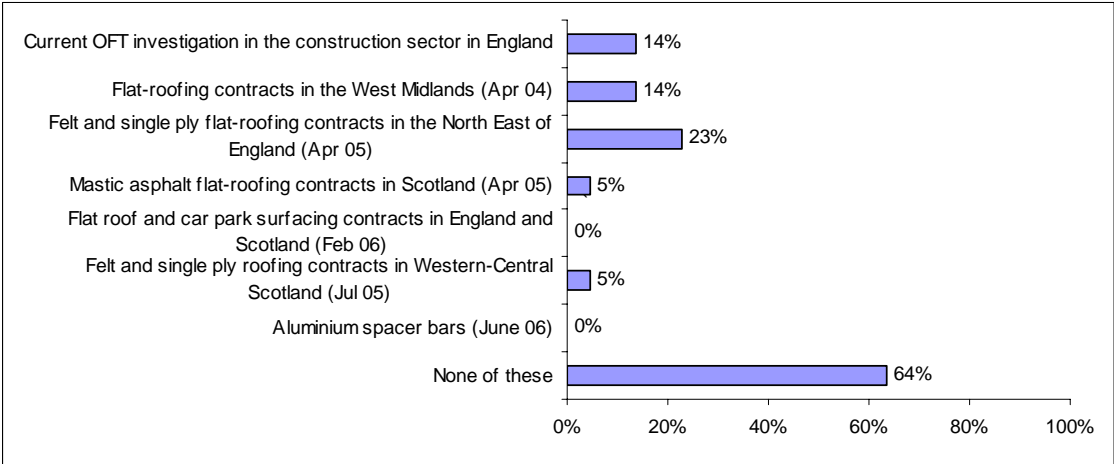
Base number: 315

Source: GfK contractor survey

4.42 There are some regional differences in the awareness of the OFT cases among the four areas that have been subject to either the previous six OFT cases or the current OFT investigation, as shown in the following Charts.

4.43 Although the numbers surveyed in each region are very small, the areas subject to any OFT case appear to show stronger awareness of the case in that area. However, the general awareness of OFT cases was still very low – no higher than 20 per cent for nearly every case in all regions.

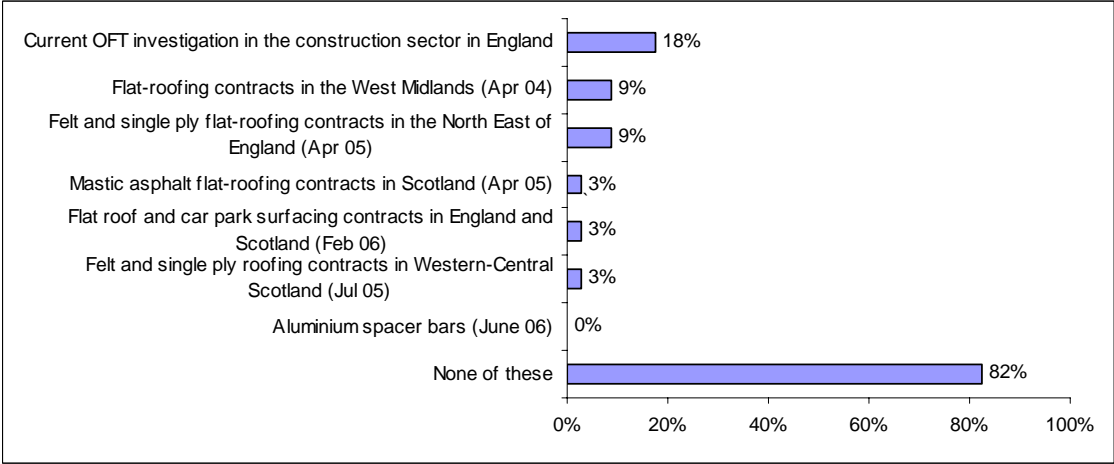
CHART 4.17 — AWARENESS OF OFT CASES BY CONTRACTORS IN NORTH EAST



Base number: 22

Source: GfK contractor survey

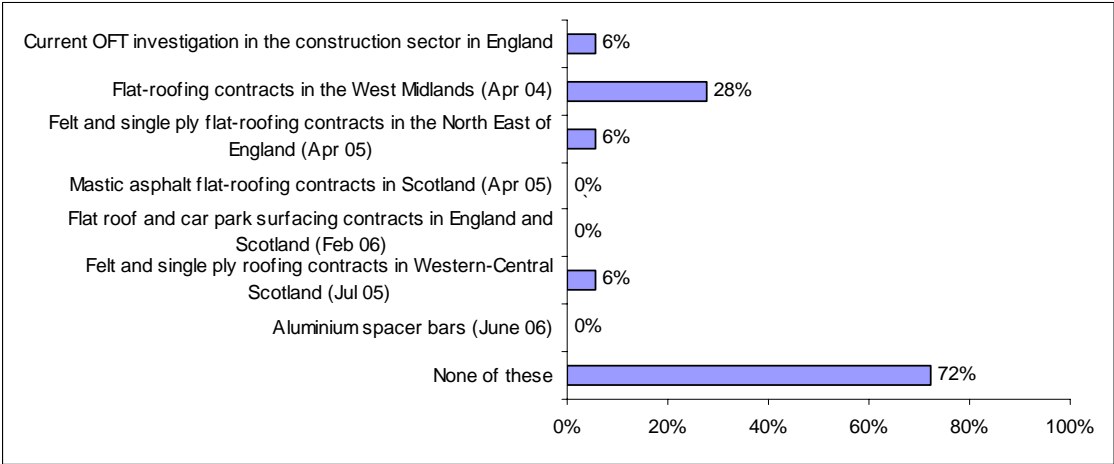
CHART 4.18 — AWARENESS OF OFT CASES BY CONTRACTORS IN YORKSHIRE



Base number: 34

Source: GfK contractor survey

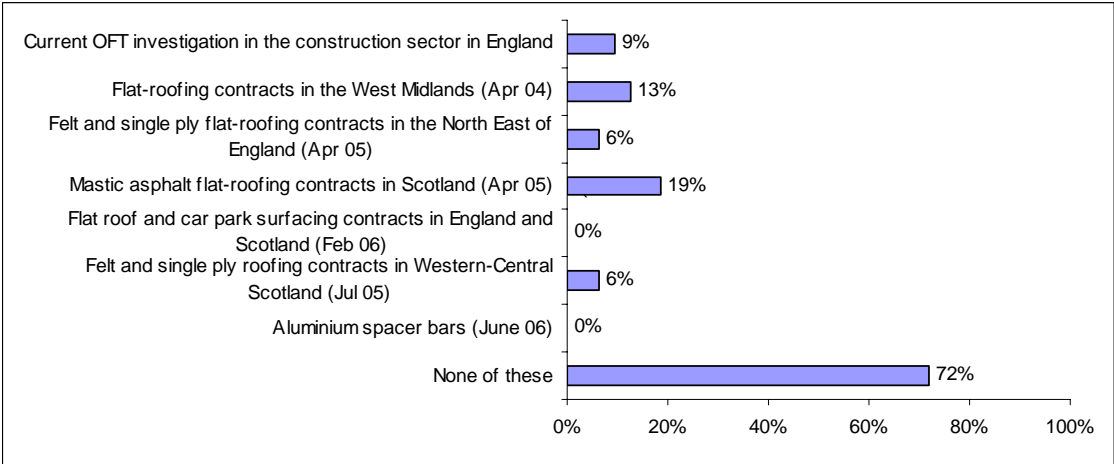
CHART 4.19 — AWARENESS OF OFT CASES BY CONTRACTORS IN WEST MIDLANDS



Base number: 18

Source: GfK contractor survey

CHART 4.20 — AWARENESS OF OFT CASES BY CONTRACTORS IN SCOTLAND



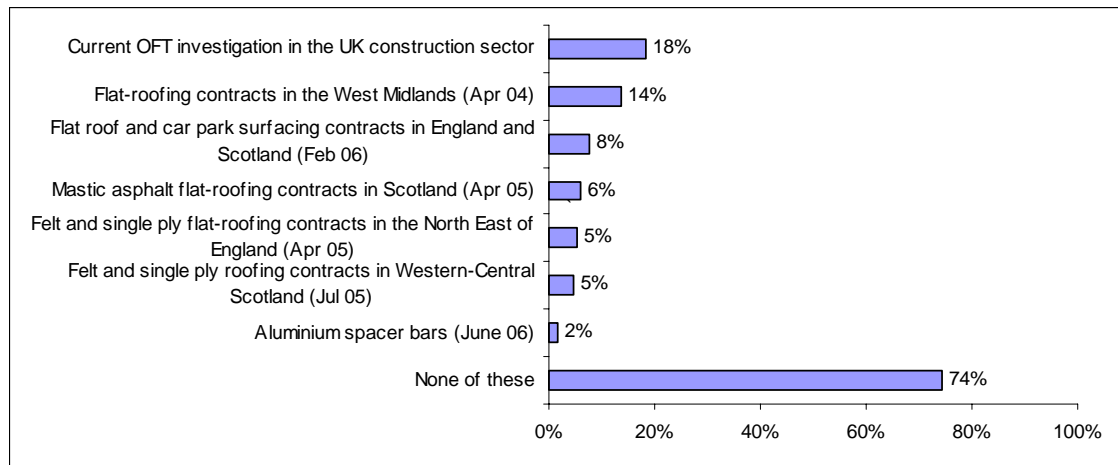
Base number: 32

Source: GfK contractor survey

Awareness of procurers

4.44 As shown in Chart 4.21 below, the majority of procurers were not aware of the six previous OFT cases or the current investigation in the construction sector. The survey does show that public sector procurers have marginally higher awareness of OFT cases than private sector procurers.

CHART 4.21 – AWARENESS OF OFT CASES BY PROCURERS



Base number: 132

Source: OFT procurer survey

4.45 Our procurer survey also found some regional differences in the awareness of previous OFT cases among the four regions that have been the subject of these cases or the current OFT investigation.

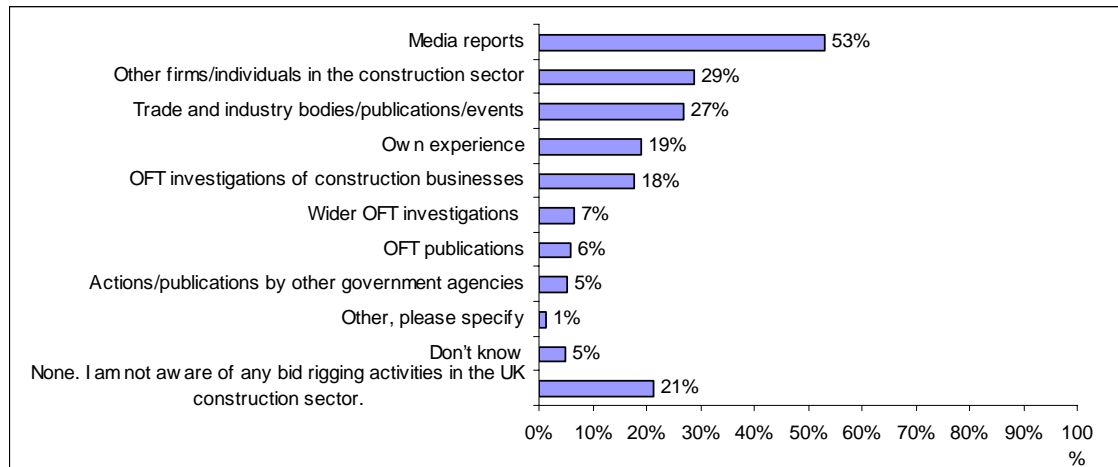
Information sources on bid rigging

4.46 We investigated which sources of information were most used by contractors and procurers and therefore most likely to be effective in raising awareness going forward.

4.47 For contractors, media reports are, by a wide margin, the most important information source on bid rigging (53 per cent of respondents cited this

as an information source on bid rigging), as shown in Chart 4.22 below. Industry sources including the trade press are also important. OFT and other government sources are seen as much less important.

CHART 4.22 – INFORMATION SOURCES ON BID RIGGING BY CONTRACTORS

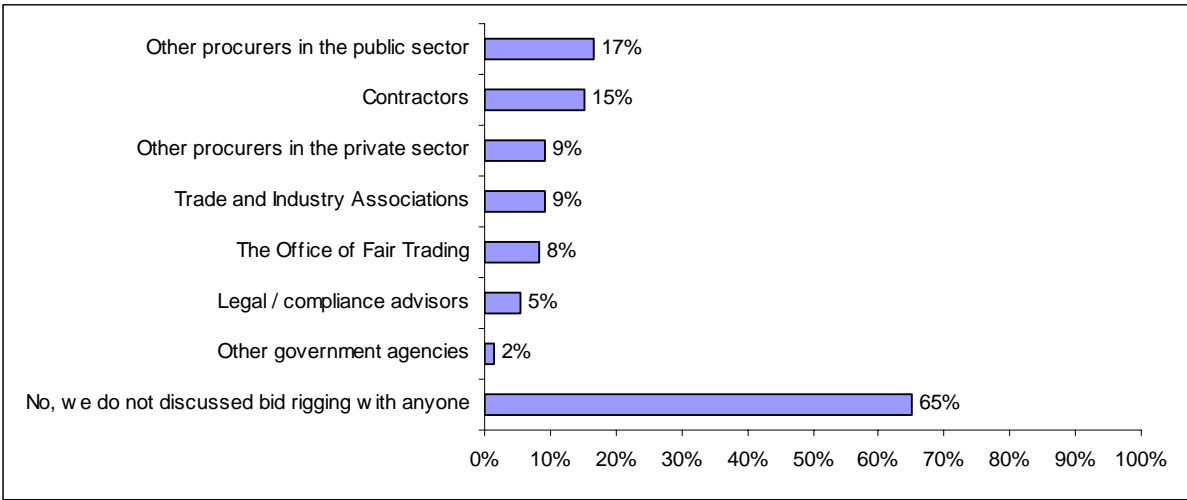


Base number: 315

Source: GfK contractor survey

4.48 For procurers, other procurers and contractors are the most important information sources on bid rigging, as Chart 4.23 below highlights.

CHART 4.23 — INFORMATION SOURCES ON BID RIGGING BY PROCURERS



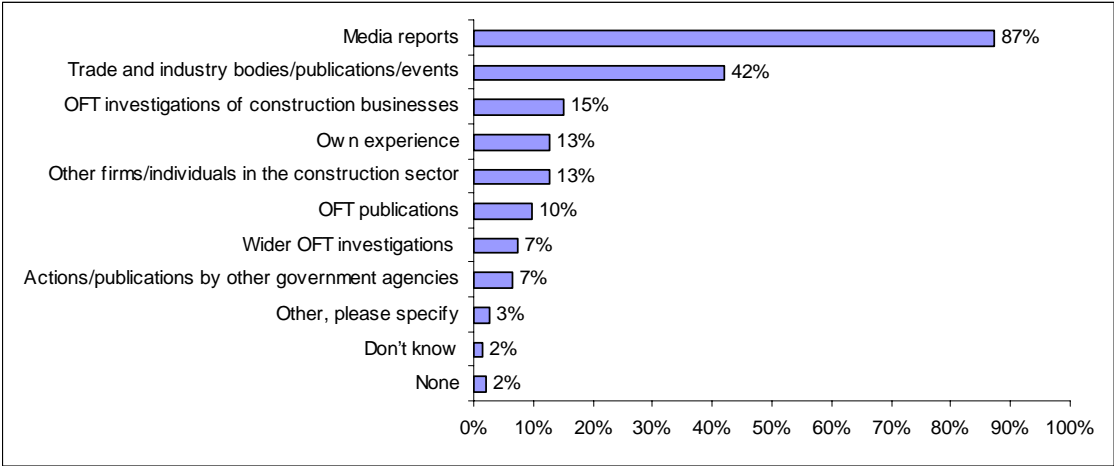
Base number: 132

Source: OFT procurer survey

Information sources on OFT activities

4.49 For those contractors aware of wider OFT activities, media reports are again, by a wide margin, the most important information sources on OFT activities, followed by trade publications and events as shown in Chart 4.24 below. On the other hand, specific OFT-related activities, such as OFT publications or investigations, were not cited by many respondents as their source of information even on OFT activities.

CHART 4.24 – INFORMATION SOURCES ON OFT ACTIVITIES BY CONTRACTORS



Base number: 257

Source: GfK contractor survey

4.50 For those procurers aware of wider OFT activities, media reports are again the most important sources of information about OFT activities, followed by publications or events organised by trade and industry bodies, as shown in Chart 4.25 below. On the other hand, specific OFT-related activities were not cited by many respondents as their source of information about OFT activities.

CHART 4.25 — INFORMATION SOURCES ON OFT ACTIVITIES BY PROCURERS



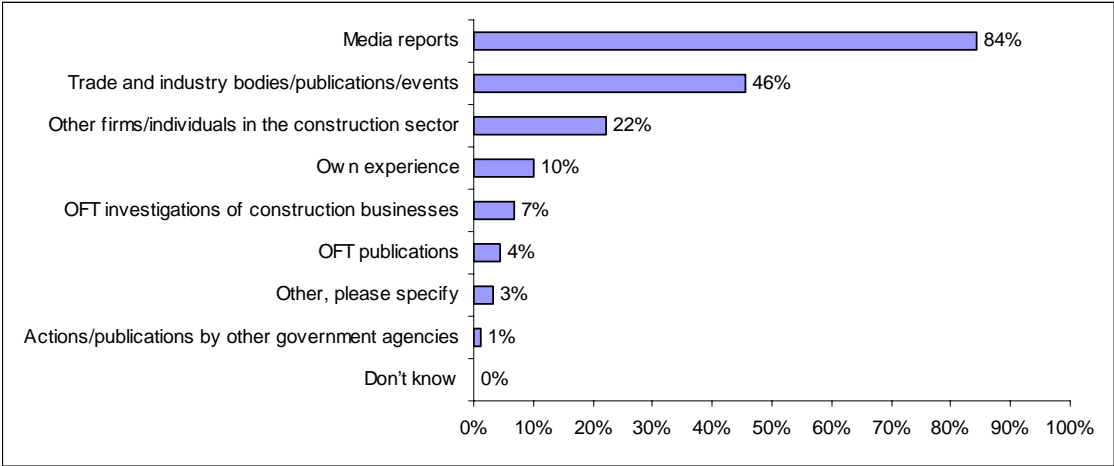
Base number: 117

Source: OFT procurer survey

Information sources on OFT cases

4.51 This is consistent with findings shown in Chart 4.26 below, where, for respondents aware of any of the six previous OFT cases (less than 29 per cent of contractors and 26 per cent procurers surveyed were aware of these specific OFT cases), media reports and trade publications are the most important information sources about OFT cases. Fewer than 11 per cent of these respondents cited OFT-related activities as their source of information about specific OFT cases.

CHART 4.26 — INFORMATION SOURCES ON OFT CASES BY CONTRACTORS



Base number: 90

Source: GfK contractor survey

4.52 In-depth interviewees also confirmed that media reports and trade press are the most important information source for them.

Whistle blowing and leniency programmes

4.53 Most contractors surveyed (71 per cent) are not aware of any arrangements that exist to encourage individuals or firms to provide information to the OFT on bid rigging activities in the construction sector, not least the Leniency Programme. However, most contractors surveyed (87 per cent) agree or strongly agree that whistle blowing is an effective deterrent to bid rigging in the UK construction sector.

4.54 For most contractors and procurers surveyed, anonymity programmes, immunity from either prosecution or fines, and compensation for job losses are regarded by most contractors as either effective or highly effective in encouraging whistle blowing in the UK construction sector.

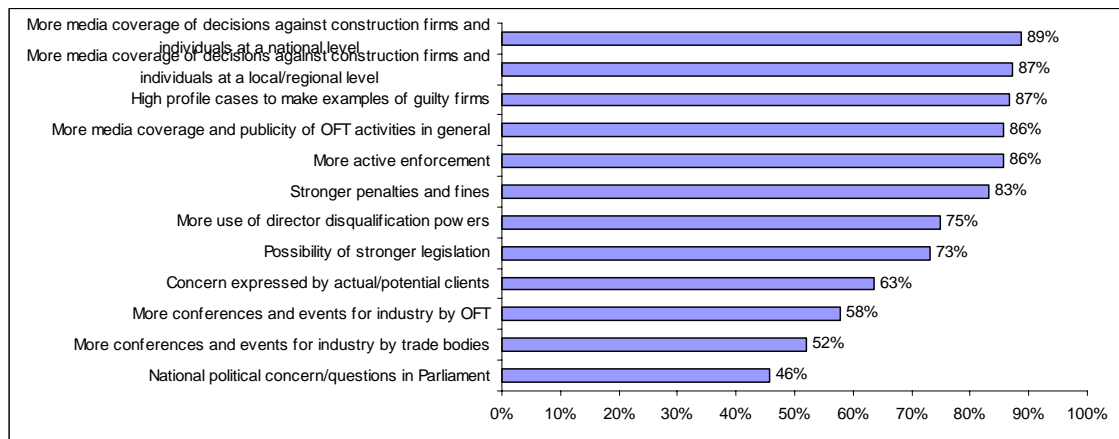
4.55 Similar themes emerged from our in-depth interviews. Interestingly, interviewees were less convinced of the merits of providing financial

incentives for whistle blowers. Whilst the OFT does offer financial incentives as one approach to encourage whistle blowing, interviewees felt that information is more likely to be provided by whistle blowers out of fear for prison or moral considerations than being incentivised by money. Some felt that informants may be lured by the money and provide false information, as “a deterrence programme based on cash rewards might encourage treasure seekers”.

Promoting awareness of OFT work

4.56 We were interested in how the OFT could promote the awareness of its work. As shown in Chart 4.27 below, there are a number of approaches that are perceived to be effective. More media coverage, high profile cases, more active enforcement (including application for competition disqualification orders for directors in appropriate cases), and stronger fines and penalties are all regarded by most respondents as either effective or highly effective in promoting and raising awareness of OFT work.

CHART 4.27 — PERCEIVED EFFECTIVENESS IN PROMOTING AWARENESS OF OFT WORK BY CONTRACTORS



Base number: 315

Source: GfK contractor survey

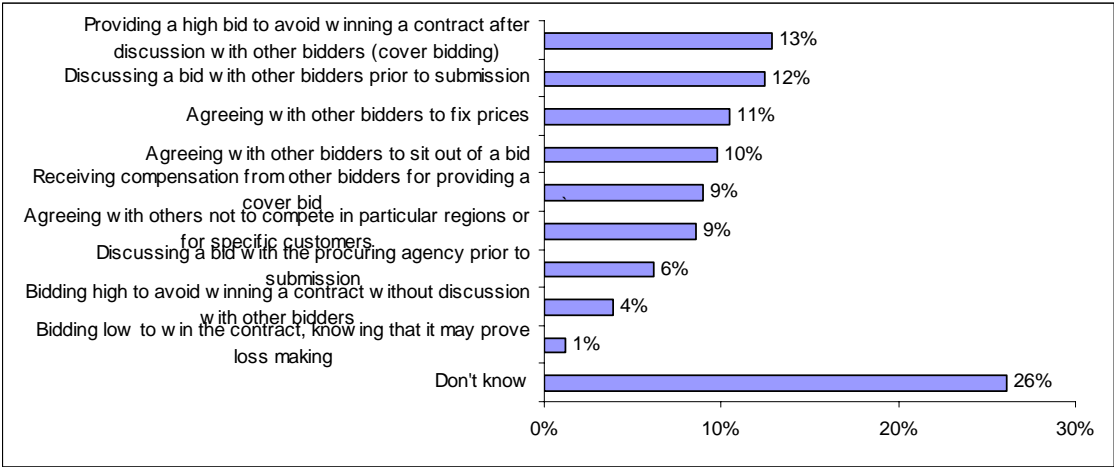
Impact of OFT activities on knowledge and behaviour

4.57 We also explored more directly the impact of the OFT activities on the knowledge and behaviour of contractors and procurers.

Impact on knowledge of law

4.58 The knowledge of most contractors and procurers on the legality of various practices does not seem to have been largely affected by OFT activities (pre SO), as shown in Chart 4.28 and Chart 4.29 below. For instance, only 13 per cent of contractors surveyed suggest that OFT activities have affected their knowledge on the illegality of cover bidding. In addition, 84 per cent of procurers’ knowledge on the illegality of any of the activities listed in the charts is not affected by the OFT.

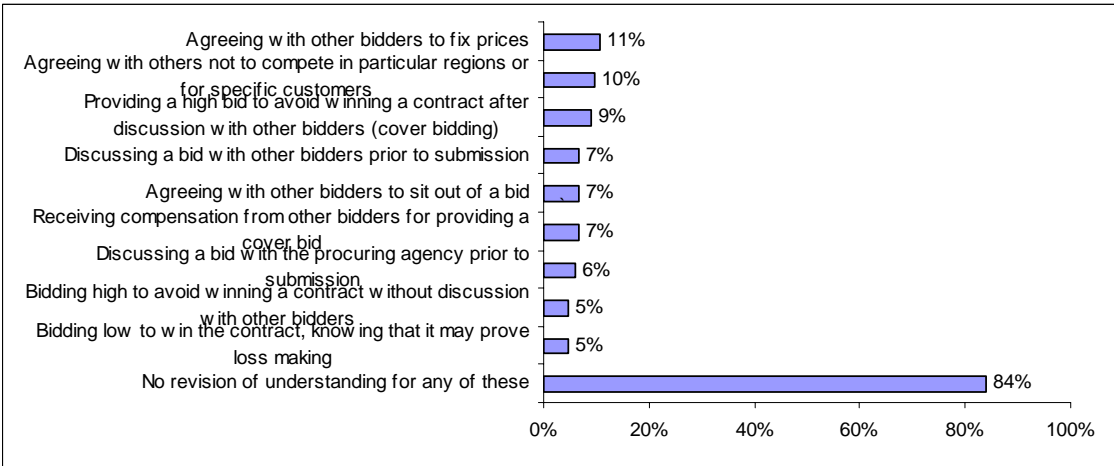
CHART 4.28 – PERCENTAGE OF RESPONDENTS (CONTRACTORS) WHOSE KNOWLEDGE ON THE ILLEGALITY OF BID RIGGING PRACTICES HAS BEEN AFFECTED BY THE OFT’S ACTIVITIES



Base number: 257

Source: GfK contractor survey

CHART 4.29 – PERCENTAGE OF RESPONDENTS (PROCURERS) WHOSE KNOWLEDGE ON THE ILLEGALITY OF BID RIGGING PRACTICES HAS BEEN AFFECTED BY THE OFT’S ACTIVITIES



Base number: 132

Source: OFT procurer survey

Impact on behaviour

4.59 Similarly, the risk of an OFT investigation had not made any impact on the majority of contractors surveyed. 69 per cent of those aware of OFT activities and 77 per cent of those aware of the six previous cases reported they had made no changes to their practices. However, 32 per cent of those aware of OFT activities and 17 per cent of those aware of the specific cases did report they had made some changes. For those firms that did change business practices, restricting information sharing between firms is the most frequently cited change, as shown in Chart 4.30 and Chart 4.31 below.

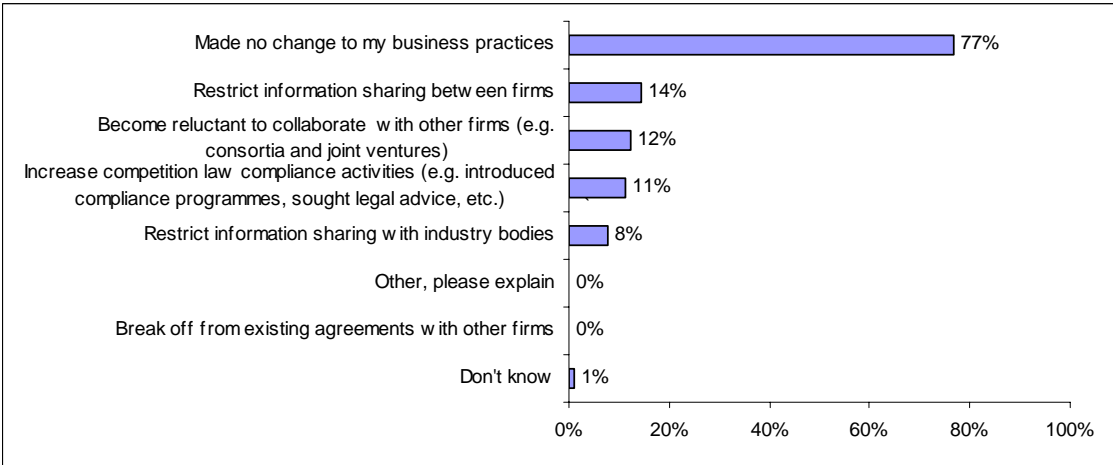
CHART 4.30 — PERCENTAGE OF RESPONDENTS (CONTRACTORS WHO ARE AWARE OF OFT ACTIVITIES) WHOSE BUSINESS PRACTICE HAS BEEN CHANGED DUE TO THE RISK OF AN OFT INVESTIGATION



Base number: 257

Source: GfK contractor survey

CHART 4.31 — PERCENTAGE OF RESPONDENTS (CONTRACTORS WHO ARE AWARE OF SPECIFIC OFT CASES) WHOSE BUSINESS PRACTICE HAS BEEN CHANGED DUE TO THE RISK OF AN OFT INVESTIGATION

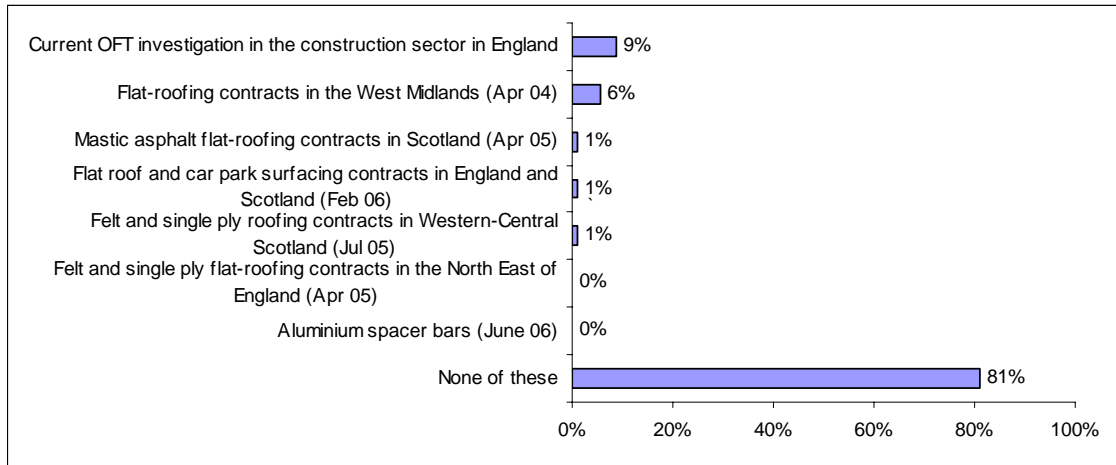


Base number: 90

Source: GfK contractor survey

4.60 In addition, as shown in Chart 4.32 below, for those contractors surveyed who are aware of the OFT cases, most of them (81 per cent) do not think the cases had had a major impact on their business behaviour (although 18 per cent did note an impact on behaviour).

CHART 4.32 — PERCENTAGE OF RESPONDENTS (CONTRACTORS WHO ARE AWARE OF OFT CASES) WHO REGARD OFT CASES AS HAVING THE MOST IMPACT ON THEIR BUSINESS BEHAVIOUR

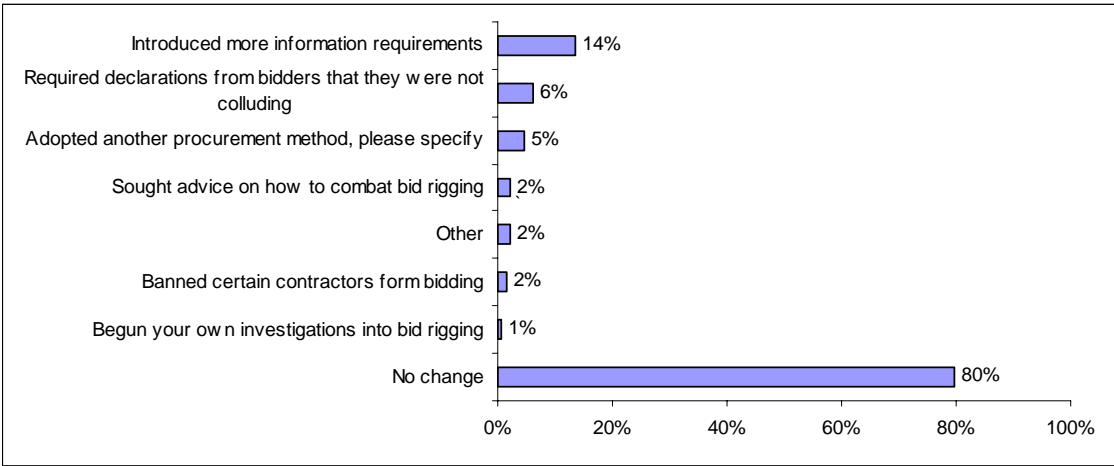


Base number: 90

Source: GfK contractor survey

4.61 Similarly, Chart 4.33 below shows a similar picture for procurers, with 20 per cent of them changing their procurement procedures as a result of OFT activities. Most of these respondents (14 per cent) introduced more information requirements.

CHART 4.33 — PERCENTAGE OF RESPONDENTS (PROCURERS) WHOSE PROCUREMENT PROCEDURE HAS BEEN CHANGED AS A RESULT OF OFT ACTIVITIES IN THE LAST THREE YEARS



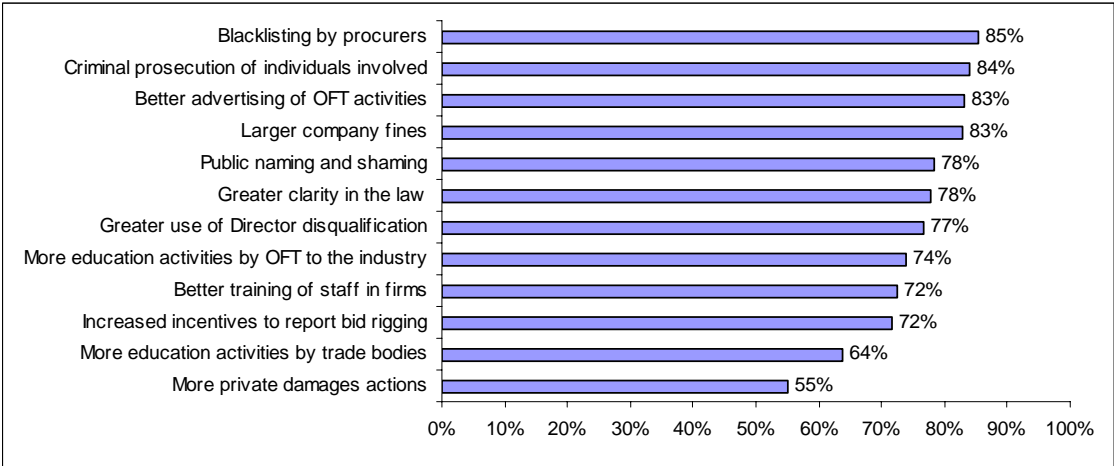
Base number: 132

Source: OFT procurer survey

Deterrence

4.62 Respondents considered many factors to be effective in deterring bid rigging. As shown in Chart 4.34 below, blacklisting by procurers, criminal prosecution, better advertising of OFT activities, and larger company fines are regarded as the most effective deterrents to bid rigging in the UK construction sector by contractors.

CHART 4.34 — PERCEIVED EFFECTIVENESS IN DETERRING BID RIGGING BY CONTRACTORS



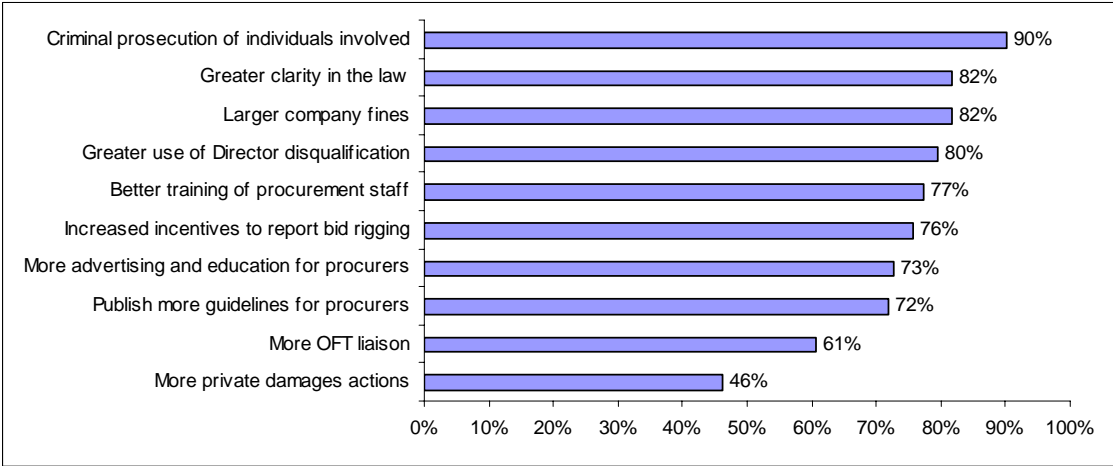
Note: figures in the chart shows the percentage of respondents who believe the various practices are either “highly effective” or “effective” in deterring bid rigging

Base number: 315

Source: GfK contractor survey

4.63 This is similar to the results from the procurer survey, where, as shown in Chart 4.35 below, criminal prosecution is perceived by a wide margin as the most effective deterrent to bid rigging in the UK construction sector.

CHART 4.35 — PERCEIVED EFFECTIVENESS IN DETERRING BID RIGGING BY PROCURERS



Note: figures in the chart shows the percentage of respondents who believe the various practices are either “highly effective” or “effective” in deterring bid rigging

Base number: 132

Source: OFT procurer survey

4.64 In-depth interviewees in general believe penalties imposed on individuals (e.g. criminal prosecution) are more effective than those applying to companies (e.g. fines), because individual penalties raise perceived risks for individuals considerably. Moreover, criminal penalties partly address the agent-principal problem, where individuals may not act in the best interest of the firms they work at, as “people are always looking to get their next job”, especially in small firms. However a number of those interviewed also expressed concern that the OFT’s actions were perceived as “all stick and no carrot”. This had unnecessarily frightened the industry and they felt there was not enough guidance available to contractors about what they can and cannot do.

5 CONCLUSIONS

Bid rigging

Perceived existence and knowledge of law

- 5.1 The findings summarised here are based on industry views collected before the OFT issued its SO to 112 construction companies on 17 April 2008 and do not therefore reflect any impact that issuing the SO may have had on industry attitudes.
- 5.2 Responses both from our questionnaire surveys and from in-depth interviews with contractors and procurers indicate that there is a reasonably high awareness of the types of collusive activity, including forms of bid rigging such as cover pricing, which are now prohibited under competition law. However, 18 per cent of contractors were not aware that cover pricing was illegal. Fines for breach of the law were seen by most respondents to our survey as a deterrent but the survey showed a low level of awareness of the level of fines that could be imposed.
- 5.3 For the most part, respondents to the surveys considered that bid rigging in the form of cover pricing was non-existent or seldom occurred but around 12 per cent of those responding to this question did consider it a common practice with a further 17 per cent stating they did not know. Other forms of bid rigging were perceived as much less common. The more detailed discussions carried out in the interviews showed similar perceptions that bid rigging was not a prevalent activity in the sector nowadays. At the same time many of those interviewed acknowledged that cover pricing had been widespread in the past, but the occurrence was thought to have decreased significantly over the past twenty to thirty years. The practice may have declined in the past three years but it did still occur and represented the main form of bid rigging that was still in operation on any scale.

- 5.4 Many of the contractors we spoke to through our in-depth interviews drew a distinction, either explicitly or implicitly, between cover pricing and other (in their view more serious) forms of bid rigging. Some claimed cover pricing was 'benign' in that the firms submitting the cover bids had no intention of being active competitors in that particular tender. Linked to this is the view expressed by most of the 19 contractors that we interviewed in depth, that cover bids were submitted in order not to upset the client and to avoid being excluded from future invitations to tender rather than to increase prices and profits. The procurer survey found that 20 per cent of procurers would not invite firms to future tenders if they fail to bid. Talking to competitor contractors was seen by some as a way in which firms could protect their position on a tender list while, at the same time, making savings on the costs involved in submitting a full bid.
- 5.5 A number of our in-depth interviewees told us that in their view the effect of a firm submitting a cover bid after discussion with perhaps only one other competitor was no different from that firm submitting a high bid without consultation in order not to win the bid. In both cases the number of 'real' competitors for the work was the same and firms were not aware of any harm being caused whether through time wasted by procurers in assessing bids or possible effects on competition and final tender prices. Such views highlight the need to further communicate the illegal and harmful nature of bid rigging and cover pricing in particular. Some respondents also drew attention to the increased use of collaborative procurement procedures under which the number of competitors for a contract might be reduced by pre-tender discussions between the procurer and contractors. This was seen as having a similar effect to cover bidding in terms of reducing the number of firms competing in each tender.¹⁴

¹⁴ Note that the majority of our contractor and procurer survey believed that the use of framework contracts or partnership agreements had had a very small, if any, effect on the incidence of bid rigging.

Where does bid rigging occur?

- 5.6 Economic theory on cartel behaviour has identified a number of circumstances in which collusive activity, including bid rigging, is likely to be sustainable and of benefit to participants.
- 5.7 Sustainability is more likely to occur in a situation in which a relatively small number of sellers are offering similar products at transparent prices, where there are regular tenders for repeat work and where competitors know each other. In this situation each of the players will have a good understanding of what his 'competitors' are offering and the sales being achieved. Any breaking of ranks will be easily observed and the other members of the group will be well placed to discipline a renegade by collectively adjusting prices to deny him any market benefit. The situation will be strengthened if the market is highly concentrated and the players are of similar sizes.
- 5.8 The potential benefit from participating in a cartel may also be greater in an industry where there is a high level of fixed costs. The risk of having major plant (or indeed a fixed workforce) idle can be offset by sharing out contracts between cartel members. This will be particularly attractive if there is a stable level of demand so that each participant can be sure of getting his share of the total.
- 5.9 Other factors for consideration include the cost of tendering for work relative to the expectation of success and the extent to which information relevant to any tender is available to all participants.
- 5.10 Some, but not all of these features are present in the construction sector. The construction sector as a whole is not a highly concentrated market with only a small number of large firms. Nor is it a sector producing standard products offered at list prices. Projects are often complex and custom built with neither the customer nor the contractor having certainty about what is being delivered until completion of the work. At this level the sector does not exhibit the features of a cartel prone industry.

- 5.11 Nonetheless, within this diversity there are many contracts which are for standard products. Even for more complex projects the work involved can be reduced to standard elements which may conform more closely to the cartel conditions outlined above and which will be supplied by specialist sub-contractors. The supply may in some cases be in the hands of a relatively small number of firms either because it is a specialist product or because the market is limited geographically. It may be more appropriate to consider the construction sector as a collection of inter-related markets rather than as a single homogeneous industry. The general conditions under which cartel activity can be sustained may well apply in these situations.
- 5.12 We explored this in more detail in our interviews. There was a widespread view that insofar as cover pricing took place it was likely to be amongst specialist contractors. The number of participants in any bid might be limited either because the nature of the product did not support a large number of contractors nationally or because supply was limited to a local market with a small number of players.
- 5.13 Firms bidding for specialist work will all be offering very similar products with limited scope for differentiating their bids. There will be a high degree of awareness of who the other bidders are and their costs. Bidders will often be drawing on the same pool of sub-contractors. Regular tender rounds with choice focused primarily on price will also facilitate collusion.

Awareness and Enforcement

- 5.14 From both the surveys and interviews there appears to be a high level of awareness of the OFT's general role in promoting competition and enforcing competition law. However there was a very low level of awareness of any of OFT's activities directed specifically at the construction sector, particularly the six cases completed between 2004 and 2006. Respondents did not consider that there was any clear message about bid rigging coming from the OFT over this period. Awareness of past cases does not differ according to the size of firm but

was somewhat higher in areas, such as the North East, Yorkshire and Humberside, West Midlands, and Scotland, where the offences under the six cases took place.

- 5.15 Publicity associated with the SO issued by OFT in April 2008, after our fieldwork, is likely to have increased awareness but we have not been able to evaluate the scale of its impact given our fieldwork was undertaken before this date.
- 5.16 Nonetheless there is a general view that there has been a change in attitude towards bid rigging over recent years with a reduction in activities like cover pricing. This suggests that some relevant information is reaching industry participants and being acted upon.
- 5.17 The main sources of information relied on by the industry and procurers are media reports and specialised trade press. OFT's own publications featured very low down the list of sources, even for public sector procurers.
- 5.18 The possibility of whistle blowing was seen as an important deterrent to bid rigging. Anonymity, immunity from prosecution and from financial penalties were seen as effective incentives for whistle blowers but knowledge about the OFT's leniency programme was low. As an aside, we note that the OFT currently does not give anonymity to whistle blowers, a practice which it might wish to re-consider if it wishes to increase the effectiveness of whistle blowing. Strong penalties were seen as the most important deterrent. Director disqualification and penalties on individuals such as criminal prosecutions were favoured. In a number of interviews comparison was made with the enforcement regime for health and safety where holding individuals responsible had had a major impact on the attitudes of both contractors and procurers.
- 5.19 Additional penalties on companies through blacklisting by procurers and other forms of 'naming and shaming', for example in trade press, were also possible options raised by our in-depth interviewees. Damage to a firm's reputation was a serious consideration amongst those we interviewed. However some concerns were expressed that such

penalties should not be imposed before a case had been proved and also that this could constitute a double punishment if fines had already been levied.

- 5.20 For both contractors and procurers concern about compliance with competition legislation is not a major preoccupation and few, (even amongst those who were aware of previous OFT activity), had taken any steps in recent years to improve compliance or improve procurement practices in order to detect or eliminate bid rigging.
- 5.21 A number of our interviewees commented on the contrast between the emphasis on competition in the OFT's activities and the encouragement of long term collaborative arrangements in the work of the Office of Government Commerce (OGC).
- 5.22 Collaborative arrangements provide another way of managing risk for both procurers and contractors. Much greater emphasis is placed on long term relationships with a limited number of contractors as the principal means of achieving both quality and economy in projects. To many contractors that we have interviewed this looks close to having the features of a cartel. A limited number of players have close contacts with each other and with the procurer and achieve some degree of security in both the amount of work they receive and the revenue stream. Many see this as a good way forward although others expressed concern at being cut out of major projects as a result.
- 5.23 The joint OFT/OGC paper *Making competition work for you* seeks to address this issue. It emphasises the importance of retaining a competitive tendering element within collaborative arrangements but, from our interviews, it is clear that this is not the message being received at company level and only 14 per cent of procurers surveyed were aware that this guidance existed.

Experience in other countries

- 5.24 Bid rigging in the construction sector has been the subject of investigation in many other countries. Detailed arrangements have been

uncovered through which companies colluded to share out contracts and to maintain agreed market shares. In some cases these included separate book-keeping arrangements which allowed the members of the cartel to see whether the agreed market shares were being followed. Many of these cases involved a higher level of collusion over bid rigging involving extensive price fixing and market sharing than has been uncovered in the construction sector in the UK (pre SO).

- 5.25 Leniency programmes and whistle blowing have been a very important aid in uncovering these activities. These approaches facilitate investigation and also encourage compliance since they increase the offenders' perceived risk of being caught. This is supported by the evidence from our international review, where leniency programmes used in other countries follow a similar structure to the programme operated in the UK.
- 5.26 Substantial fines of up to 5 per cent of turnover have been imposed in many of the cases reviewed. These are seen as a major deterrent although it is not clear how successful they have been in eliminating collusion in subsequent bidding. There is also recognition in a number of countries of the need to engage with a range of different participants in order to bring about a change in the culture under which cartels have developed in the past. This is particularly apparent in the approaches adopted in Australia and Hungary where emphasis is placed on the need to combine enforcement and non-enforcement activities in order to bring about a change in the cultural attitude towards anti-competitive practices. Enforcement and education activities can be tailored to address different participants and circumstances.

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B EXPERIENCE IN OTHER JURISDICTIONS

B.1 To better understand possible approaches to combat bid rigging, our literature survey also included a review of experience in tackling bid rigging in other jurisdictions to draw some lessons. In the process, we have looked at seven countries, Australia, the Netherlands, Canada, Hungary, Italy, France, and Japan. We chose these because of either the anti-cartel work done in the construction sector or other unique experience that might be very valuable. We tried to look for experience in the past ten years.

Australia

Regulatory framework

- B.2 In Australia, the relevant law on bid rigging is the Trade Practices Act 1974 (Cth) (TPA). The Australian Competition and Consumer Commission (ACCC) is an independent, national statutory authority responsible for the administration and enforcement of the TPA.
- B.3 There are currently no criminal sanctions for bid rigging. However, civil penalties may be imposed on corporations and individuals. Currently, the maximum penalties (which apply in relation to contraventions occurring after 1 January 2007) are:
- A\$10 million per violation;
 - three times' the value of the gain by the offending party; or
 - 10 per cent of the annual turnover of the offending firm.
- B.4 The maximum penalty for an individual is A\$500,000.
- B.5 Other applicable penalties include:
- community service;

- probation (orders requiring a company to establish a compliance or training programme or revise its internal procedures); and
- adverse publicity (which may require the publishing of advertisements).

B.6 One of the most significant recent changes in cartel enforcement is the increase in the maximum penalty and the introduction of a measure of turnover option for the calculation of the penalty, which is expected to increase the penalties imposed. The other significant change is the prohibition on companies paying penalties or legal costs of offending employees, which could enhance the deterrence against bid rigging.

Leniency and whistle blowing

B.7 The ACCC's Immunity Policy for Cartel Conduct (the Immunity Policy) applies to cartels. The Immunity Policy is particularly directed at large corporations that have engaged in serious cartel conduct affecting Australian markets. The ACCC might revise its Immunity Policy when the criminal cartel offences are introduced.

B.8 In the case of a corporation, immunity generally could be given to all current and former directors, officers and employees (unless specifically excluded), if the disclosures are "a truly corporate act", which means that disclosure cannot be an isolated confession of an individual representative of the corporation.

B.9 However, the immunity offered by the ACCC does not limit the rights of injured third parties to take action under the TPA to recover damages against any cartel participant.

B.10 While the Immunity Policy will only apply to the first applicant, the ACCC's Cooperation Policy for Enforcement Matters (the Cooperation Policy) may offer some form of limited immunity to subsequent applicants.

Evaluation project

B.11 In Australia, the Centre for Competition and Consumer Policy (CCCP) has conducted a project in evaluating the effectiveness of the compliance and enforcement activity of ACCC, the Australian competition authority.¹⁵

B.12 The project concluded that:

- First, it is reasonable to conclude that ACCC activities have had a significant impact on business awareness of the moral and business value of complying with competition law, which cannot be expected from simply enacting a competition law. It found that the biggest leaps in trade practices compliance awareness came only after the introduction of higher penalties in 1993 and the simultaneous huge increase in ACCC enforcement activity and high profile cases.
- Second, the changes in business behaviour were not as strong as change in attitude and awareness. Increased compliance awareness has not necessarily led to increased compliance commitment and compliance commitment has not necessarily led to compliance behaviour. It found that that compliance programmes in some firms were largely symbolic exercises that had little impact on conduct. Moreover, the acceptance of compliance norms at senior management level does not necessarily permeate down to middle management and employees.
- Third, compliance behaviour was found to be dependent on contextual factors. Therefore for compliance-ensuring action to be effective, it needs to build a web of controls (moral and deterrent) all straining against anti-competitive behaviour.

¹⁵ <http://cccp.anu.edu.au/projects/project1.html>

- Fourth, fairness in enforcement was also important. There is a danger that jumping to conclusions about potential offenders too quickly will provoke anger and disengagement on the part of some of the parties involved and result in a reduced commitment to compliance, or at least cooperation with the ACCC, rather than an increased commitment to compliance.

The Netherlands

Regulatory framework

- B.13 The relevant legislation in the Netherlands is the Dutch Competition Act (the Act), which came into force on 1 January 1998. The cartel prohibition contained in the Act is very similar to that of Article 81 of the EC Treaty.
- B.14 The Dutch Competition Authority (Nederlandse Mededingingsautoriteit, NMa), an independent agency, is the regulatory authority responsible for applying and enforcing the Act.
- B.15 There are no criminal sanctions under the Act. Under the Act and under Regulation (EC) 1/2003, the NMa can impose administrative fines for bid rigging on the individuals or companies committing the offence. Fines of up to €450,000 can be imposed.
- B.16 In addition to fines or penalties for bid rigging per se, fines of up to €450,000 or 1 per cent of turnover can also be imposed for non-cooperation in investigations.
- B.17 On 1 October 2007, a revised Competition Act entered into force, which, among other things:
- increased the fines applicable to non-cooperative actions in investigations;
 - made individuals subject to fines up to €450,000 for involvement in a cartel;

- enabled the NMa to impose a binding order to comply with the Act on the offending organisations or individuals; and
- enabled the NMa to search private homes.

B.18 There are no notable proposals to change the current regime in the near future.

Leniency and whistle blowing

B.19 Companies and individuals may apply for immunity or a reduction in their fine for a cartel offence to the NMa. The NMa's new Leniency Guidelines, published on 10 October 2007, set out its leniency policy.

B.20 In addition, the NMa has published supplementary notices to the Guidelines, specifically concerning certain investigations in the construction sector. These have been produced to help deal with investigations into a massive number of leniency applications from construction companies. The notices set out special rules relating to an "accelerated sanctions procedure" and specially tailored scales of leniency-based fine reductions. The accelerated procedure is indeed not a strict form of leniency in exchange for confession or information. Instead, it applies where a company foregoes individual representation and uses a joint representative and then receives a 15 per cent reduction in fines.

Cases

B.21 In the Netherlands, there has been a wave of cartel investigations conducted by the NMa in the construction sector since 2001, now commonly known as "The Construction Case".

B.22 This case has been regarded as the most important cartel case in Dutch history, as it was found that the anti-competitive behaviour of the undertakings amounted to very serious infringements of the Competition Act in the Netherlands.

- B.23 This high profile investigation started in November 2001, when a Dutch television news programme revealed the existence of secret financial accounts at a major construction company. It comprised two major rounds of activity, starting in 2002 and 2004.
- B.24 The first round of dealing with the “Construction Case” involved six major cases in the civil engineering and infrastructure sector, which involved in total 22 companies with fines exceeding €100 million. It was found that, prior to tendering for contracts, companies would meet to agree on how to share the market and coordinate their bids. Many specially set-up arrangements (so called “black accounts”) were used in the process. The anti-competitive behaviours mostly related to infrastructure works commissioned by public authorities in the period 1998-2002.
- B.25 The second round started in February 2004, when the Dutch media revealed the existence of yet another set of the “black accounts”. Subsequently, the NMa issued a sector-wide appeal for companies to report cartel offences voluntarily. At the same time, the Dutch Government issued a warning that construction companies should “come clean” on past illegal behaviour before 1 May 2004, or otherwise face exclusion from future tenders. It turned out that anti-competitive behaviours, involving bid-rigging and the allocation of sales quota, proved to be endemic among companies in a wide range of sectors including installation engineering, housing and utility construction, cable and pipeline construction, horticultural services, and prefabricated concrete products.
- B.26 Given the sheer size of this project the NMa has even developed a special fast track sanctions procedure for all construction companies in order to ensure that the imposition of fines occurs adequately and within a reasonable time period.
- B.27 In order to be able to handle all the cases with respect to appeal procedures, the NMa offered fine reductions if parties refrained from

appeal. This procedure has proved highly successful in shortening the time required on cases.

- B.28 In total, there had been 1,374 cases brought against companies in the construction sector during this period, and fines totalling €239 million has been levied. It is notable that leniency had been granted to 419 companies.
- B.29 The NMa was able to investigate this cartel structure, due to the secret bookkeeping-system that the parties put in place in order to be able to sustain the system. This bookkeeping-system was provided by a former employee of one of the main players in the Dutch construction sector.

Canada

Regulatory framework

- B.30 Canada has a federal statute the Competition Act which governs all aspects of competition law.
- B.31 Cartel conduct is not per se illegal in Canada. Instead section 45 prohibits only those conspiracies that have “undue” anti-competitive effects determined under a partial rule of reason analysis.
- B.32 In determining whether the agreement would or did cause an “undue” or significant lessening of competition, courts will consider the structure of the market (including the parties’ market shares) and the behaviour of the parties.
- B.33 Prosecutions have proceeded on numerous occasions against international cartels, including cases where the co-conspirators were never present in Canada. In most of those cases, including the Lysine and Vitamins cases, there was evidence to show that the parties had targeted specific Canadian customers and markets.
- B.34 Subsection 45(1)(c) is the specific offence most frequently charged against defendants in conspiracy cases, as it is the most-broadly

worded. It covers “hard core” aspects of cartel behaviour, including price fixing and customer and market allocation.

- B.35 Section 47 provides a per se criminal prohibition on bid-rigging. The offence is exhaustively defined to mean: (i) the submission of bids, in response to a call for bids or tenders, that have been arrived at by agreement or arrangement between two or more parties; or (ii) an agreement or arrangement between two or more parties, in response to a call for bids or tenders, under which one or more parties agree not to submit a bid. The defined conduct will only constitute an offence where the parties to the agreement do not provide notice to the tendering authority, before the deadline for the submission of bids, of their agreement.
- B.36 Bid rigging is a criminal offence and individuals participating in bid rigging may be subject to a term of imprisonment of up to five years. It is also possible for the prosecution to seek a prohibition order to inhibit future repetition of the offence.

Leniency and whistle blowing

- B.37 The Commissioner’s Information Bulletin, “Immunity Program Under the Competition Act”, sets out the circumstances under which immunity can be obtained and the level of co-operation required to maintain immunity throughout the life of an investigation.
- B.38 The Bureau’s programme offers immunity or leniency in exchange for cooperation with a Bureau investigation, subject to certain minimal requirements. The Commissioner will recommend to the Attorney General that immunity be granted to a party in the following situations:
- the Bureau is unaware of an offence, and the party is the first to disclose it; or
 - the Bureau is aware of an offence, and the party is the first to come forward before there is sufficient evidence to warrant a referral of the matter to the Attorney General.

B.39 The requirements for a grant of immunity are as follows:

- the party must take effective steps to terminate its participation in the illegal activity;
- the party must not have been the instigator or the leader of the illegal activity, nor the sole beneficiary of the activity in Canada;
- the party must provide complete and timely co-operation throughout the course of the Bureau's investigation;
- where possible, the party must make restitution for the illegal activity; and
- if the first party fails to meet the requirements, a subsequent party that does meet the requirements may be recommended for immunity.

Cases¹⁶

Electrical contractors case¹⁷

- B.40 On December 19, 1997, four Toronto electrical contractors, 948099 Ontario Inc. (carrying on business as Plan Electric Co.), Ainsworth Inc., Guild Electric Limited and The State Group Limited, pleaded guilty to bid-rigging and had fines totalling \$2.55 million imposed on them.
- B.41 The charges covered the period from 1988 to 1993 and were the result of an extensive investigation conducted by the Bureau into a scheme designed to create the illusion of competitive pricing.

¹⁶ Information on cases is taken from that on the Canadian Competition Bureau website, <http://www.competitionbureau.gc.ca>

¹⁷ Bid-rigging awareness and prevention, Competition Bureau Canada.

- B.42 Although the majority of the rigged tenders involved electrical contracts for the renovation of commercial space, including certain leasehold improvements at Pearson Airport's Terminal III, some of the companies were also convicted of rigging tenders related to major construction projects, including the SkyDome Hotel and BCE Place — Phase 2 .
- B.43 Some of the companies charged received favourable treatment for entering early guilty pleas; others received additional consideration for having cooperated with the investigation. All four companies have taken steps to institute internal compliance programmes designed to ensure compliance with the *Competition Act*.

Freyssinet Limitée

- B.44 The Federal Court of Canada has imposed a fine of \$800,000 on the company Freyssinet Limitée for an international bid-rigging scheme relating to the Hibernia project in St. John's Newfoundland.
- B.45 Freyssinet Limitée, headquartered in Montreal, Quebec, pleaded guilty to rigging a bid to supply and install a system to reinforce the concrete base of the Hibernia Development project. In imposing this fine, the Court took into consideration the fact that the company cooperated fully with the Bureau's investigation. In addition to the fine, the Court imposed an Order prohibiting the repetition of the offence.

Education and advertising campaigns

- B.46 In April 2008 a new online anti-bid-rigging presentation¹⁸ was launched on the Competition Bureau's website. The presentation provides public and private organisations engaged in procurement with information to help them detect, prevent, and report suspected incidences of bid-rigging.

¹⁸ <http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/O2601e.html>

Hungary

Regulatory framework

- B.47 The Hungarian Competition Authority (Gazdasági Versenyhivatal - GVH; its English name used in the early years of operation was Office of Economic Competition) was established by Act LXXXVI of 1990 on the prohibition of unfair market practices, and started its operation on 1 January 1991. The enactment of the prohibition of anti-competitive behaviour and the setting up of the authority was motivated by the will of protecting the freedom and fairness of competition. The Competition Act, which is currently in force, is Act LVII of 1996 on the prohibition of unfair and restrictive market practices. The Act entered into force on 1 January 1997.
- B.48 In 2001, the GVH created a cartel unit as a separate part of its investigation branch. At the same time, new investigative powers were conferred in the GVH. They include the rights to conduct dawn raids to secure incriminating evidence, investigate private premises of corporate officers, and take oral testimony. In late 2003, the GVH adopted a leniency programme .
- B.49 Since 1 September 2005, the Criminal Code has also prohibited any agreement restricting competition in a public procurement and concession tender by fixing the prices (fees) and other contracting terms and conditions or by market sharing for the purpose of manipulating the outcome of the tender, any concerted activities, or participation in making decisions to this effect by an association of undertakings, qualifying any such act committed as a crime.
- B.50 In the case of hardcore cartels, price fixing and market sharing, the serious and unjustifiable restriction of competition and damage to the long-term consumer welfare are regarded as certain, without the need for detailed competition policy analysis. Therefore the GVH considers these practices to be the most serious violations of competition law, and are at the forefront of its enforcement efforts.

Leniency and whistle blowing

- B.51 In cartel cases the official starting of proceedings may be preceded by a leniency application. The leniency policy, which was announced by a notice issued by the President of the Hungarian Competition Authority, together with the Chair of the Competition Council of the Authority, makes it possible for undertakings participating in a cartel but actively assisting in its detection to get, under well-defined conditions, immunity from, or a reduction in the amount of, the fine which would otherwise be imposed on them, as the public interest in ensuring that secret cartels should be detected and eliminated outweighs the public interest in fining the undertakings that participate in those cartels. The application of the leniency policy can be initiated by the submission of an application for leniency.
- B.52 The leniency policy offers two alternatives to cartel members: immunity from fines or the reduction of a fine.
- B.53 Immunity from fines may result from the undertaking being the first to provide a decisive contribution (e.g. in the form of disclosing direct evidence) to the opening of the competition supervision proceedings (investigation) and/or to the finding of an infringement, on condition that it meets certain additional criteria specified in this Notice. A fine may be reduced in the case of the undertakings which, with their active collaboration, contribute substantially to the detection of the cartel and the finding of an infringement. The degree of reduction reflects the contribution of the party to the detection of infringement, in terms of content and timing.

Cases¹⁹

- B.54 In recent years, the Hungarian competition authority has successfully prosecuted several cases involving bid rigging in the construction industry.
- B.55 One involved five companies that conspired to allocate contracts in a motorway tender. Those companies were fined a total of €25 million, at the time the largest fined imposed by the Hungarian agency. The GVH intervention significantly increased public awareness of the social costs of collusion, and the benefits of competition. However there is still concern that anti-competitive behaviour of this sort continues to occur.
- B.56 Another case involved public procurement of the construction of a block of flats. A dawn raid and the cooperation of one participant through a leniency programme produced the incriminating evidence.
- B.57 In another case, involving tenders for the construction of a university building, a draft agreement whereby two conspirators agreed that the winner of the tender would compensate the loser was found in the files of one party.
- B.58 In 2005, the GVH investigated 40 different construction works in Budapest put out to tender by the Municipality. The overall value of the works was around HUF 12 billion (around €46 million). Bid rigging was proved in 19 cases. The eight major construction firms in Hungary, determined the winner and its subcontractors before submitting the tenders. The GVH imposed a fine of HUF 593.9 million (around €2.3 million) on the parties.
- B.59 Similar agreements were concluded in 2001-2002 concerning the construction of six main roads. Works and subcontracts were divided among the parties and to this end, sensitive business information was

¹⁹ Various GVH Annual reports

exchanged. An overall fine of HUF 1.3 billion was imposed (around €5 million). The GVH considered the great number of cartels characterising the construction industry as an attenuating factor. The leniency policy of the GVH was applied in three cases in 2005.

Education and advertising campaign

- B.60 The Competition Act was amended in 2005. Among other changes the President of the GVH has as a new task the responsibility for the development of competition culture. In order to raise public awareness of competition, this allows for the dissemination of knowledge about competition policy, including the provision of information about the benefits resulting from competition. It also aims to improve compliance and create a competitive regulatory environment through the development of competition-related legal and economic activities of public interest. This is being taken forward by the Centre for Competition Culture which receives as a budget 5 per cent of the fines imposed by the GVH and already paid into the Treasury.
- B.61 The existence of a strong competition culture in Hungary is considered very important by the GVH and so its promotion is held as a central task. However, the GVH does not consider itself to have exclusive responsibility for promoting competition culture. The attitudes and behaviour of the business community, administration, political decision-makers, the media and ordinary citizens are all important to society's acceptance of competition.
- B.62 In Hungary a strong competition culture is sought through:
- Academic discussion on competition policy issues, although the GVH is active in promoting competition in all these areas, it attributes special importance to contributions by the academic community.
 - Corporate compliance programmes are an important and beneficial part of competition culture. However, due to potential conflicts of interest, the GVH will not participate in the development or organisation of such programmes. This does not preclude lobbying or

consultations with firms, which the GVH considers to be an unrelated activity.

- Competition law enforcement proceedings;
- Competition advocacy, i.e. most draft legislation and measures affecting competition must be presented to the GVH for comments. In addition, the President of the GVH may attend sessions of Parliament and of Government when the agenda includes issues that hold implications for competition. The GVH can also employ other instruments where necessary for effective competition advocacy. For instance, the GVH may develop a general competition advocacy position in relation to a certain topic, and communicate that position to political decision-makers or the public.

Italy

Regulatory framework

- B.63 The relevant legislation in Italy is the Competition and Fair Trading Act (as amended by Act No. 57 of 4 March 2001 and by Act No. 248).
- B.64 The Act establishes an independent national competition authority, the Antitrust Authority (the Authority), which is responsible for enforcing the Act, including controlling agreements that impede competition, abuses of dominant position, and mergers.
- B.65 There are no criminal sanctions for bid rigging provided for in the Act. As to civil or administrative sanctions, the Act provides that the Authority may impose a fine of up to 10 per cent of the turnover of each undertaking or entity for the previous financial year.
- B.66 In the case of non-compliance with restraining orders, the Authority may impose a fine of up to 10 per cent of the turnover. In cases of repeated non-compliance, the Authority may decide to order the undertaking to suspend activities for up to 30 days.

Leniency and whistle blowing

- B.67 The leniency policy in Italy offers two alternatives to cartel members: immunity from fines or the reduction of a fine. Undertakings which provide the Authority with evidence of an infringement according to paragraph (1) of this Notice may qualify for a reduction, normally not exceeding 50 per cent, of the fines which would otherwise be imposed under section 15(1) of Law no. 287/90 for infringements of section 2 of Law no. 287/90 or Article 81 of the EC Treaty.

Cases

Concrete market²⁰

- B.68 In July 2004 the Authority concluded an investigation into eleven companies operating in the concrete market, including some of the biggest domestic concrete producers.
- B.69 The evidence gathered during the investigation revealed the existence of a horizontal agreement between the concrete manufacturers aimed at sharing the supply of premixed concrete to construction firms in Northern Italy.
- B.70 Under the agreement the market had been divided by determining the market shares attributable to each producer. The agreement was made even more restrictive by the strict control mechanisms put in place, consisting of on-site inspections to check production levels and accounting documents, and by an intensive exchange of confidential information on building sites and supplies, handled on a regular centralized basis by one of the companies participating to the agreement.

²⁰

AGCM Annual report 2004.

B.71 In view of the gravity and duration of the agreement (which lasted for three years from 1999 to at least the end of 2002), the Authority fined the parties amounts that differed in relation to the varying ability of the participating firms to undermine competition, the size of the group to which they belonged and the relations of vertical integration with the cement sector. The fines totalled approximately €40 million.

Consorzio Qualità Veneta Asfalti²¹

B.72 In July 1999 the Authority concluded an investigation into the Consorzio Qualità Veneta Asfalti and thirteen associate companies. The Consorzio Qualità Veneta Asfalti is a private, non-profit consortium, which asphalt producers based and operating in the Veneto Region can join. The constituent instrument and bylaws of the Consortium contained provisions designed to share out production on the basis of previous production quotas, define certain terms and conditions for the supply of asphalt by member firms in cases where the allocated quotas were exceeded, and set minimum selling prices.

B.73 It also contained an explicit ban on selling below cost by associate companies, and arrangements for the regular exchange of information on average unit production and marketing costs. Provision was also made for mechanisms to monitor the conduct of associates and penalties in the case of failure to respect the provisions of the consortium

B.74 The Authority concluded that, in view of the market share held by the firms in the production and sales markets for tar conglomerate (which oscillated between 87 per cent and 98 per cent), the understanding had the potential to produce a considerable reduction in competition. It therefore imposed fines ranging from 1 to 5 per cent of the firms' turnover, for a total of over 4 billion lire (€2 million).

²¹ AGCM Annual report 1999.

Italcalcstruzz²²

- B.75 In March 1997 the Authority ruled that the agreements concluded between four companies under which the allocation of sales quotas and the fixing of concrete prices on different markets in Sardinia were decided, breached competition law.
- B.76 Under the agreements the parties fixed concrete selling price by arranging price lists and determining maximum discounts and uniform conditions concerning the ancillary performances. They also shared the market by allocating large scale works and sharing out the orders for the product.
- B.77 Fines of between 3 and 5 per cent were imposed on the main participants.

France

Regulatory framework

- B.78 The Conseil de la Concurrence acts as safeguard by ensuring the proper operation of markets and cracking down on anticompetitive practices by companies in all sectors of the economy, thereby preserving consumers' interests.
- B.79 Companies participating in anti-competitive practices are subject to a maximum fine of 10 per cent of the global pre-tax group turnover (€3 million for entities other than companies). There is also the provision in the Commercial Code for a prison sentence of four years and a €75,000 fine for persons personally involved in the infringement.
- B.80 In 2006 the Council made two decisions involving an abuse of dominant position and 16 decisions concerning cartel activity. In 2006 the

²² AGCM Annual report 1997.

maximum fine imposed was €47.9 million (compared to €754.4 million in 2005). The fine was made to 34 companies found guilty of bid rigging concerning a large number of public tenders in the Greater Paris area.

Leniency and whistle blowing

- B.81 The French leniency programme was introduced by law. Section IV of Article L. 464-2 of the code de commerce, sets out the principles and outlines of the programme. It allows for immunity from a fine or a reduction of fine to undertakings or bodies which with others have implemented prohibited practices if they contribute to establishing the existence of the prohibited practice and identifying its perpetrators. Between 2002 and 2006 there were around 30 applications for leniency.

Cases²³

Bouygues, Eiffage and Vinci

- B.82 The Conseil levied the highest possible fine on 34 construction companies for colluding on public contracts from 1991 to 1997. Several units of each of the companies, Bouygues, Eiffage and Vinci, were fined a total of €40 million after an inquiry into the construction industry found they had created software that calculated an equal split of the government's contracts among them.

"Pooling agreements" in the building and civil engineering sector

- B.83 In March 2006 the Conseil fined 34 building and civil engineering companies a total of €48 million for engaging in widespread anticompetitive agreements involving public procurement contracts in the Île-de-France (Greater Paris) area. The companies fined had

²³ Information on cases is taken from the Conseil de la concurrence website: http://www.conseil-concurrence.fr/user/standard.php?id_rub=79

organized “pooling agreements” so as to share out the contracts on a geographical basis, by project type, by contracting authority and the type of work involved. The Conseil observed that these agreements had caused particularly serious economic damage in a fast expanding sector, involving 40 contracts representing €1 billion. The Conseil imposed exemplary fines on the majors of the sector (5 per cent of turnover, i.e. at the time the maximum applicable) and between 1 and 4 per cent on the others.

The construction of motorway A84

- B.84 In 2005 the Conseil fined 21 building and civil engineering companies a total of €17 million for entering into agreements for the awarding of contracts to build engineering structures along the A84 motorway, in the Manche département of France.
- B.85 The companies had participated in a large scale agreement, engaging in illegal practices such as exchanging information prior to submitting bids, submitting covering bids and offering compensation to companies which agreed to abstain from bidding, resulting in the contracts being divided up.

Public works in the Meuse département

- B.86 In 2005 the Conseil penalized 11 building and civil engineering companies to pay €7 million for entering into an anticompetitive agreement for the awarding of public works contracts in the Meuse department between 1996 and 1998.
- B.87 The companies had agreed to divide up the contracts between them, others had exchanged information before submitting bids or had submitted what they claimed were competing bids, when in fact they had not been drawn up independently.

Road works in Seine Maritime

- B.88 In 2005 the Conseil fined six building and civil engineering companies specialized in the supply of bituminous material a total of €33.6 million for entering an agreement to share the markets during the awarding of public road works contracts in the Seine-Maritime department.

Japan

Regulatory framework

- B.89 The Law Concerning Prohibition of Private Monopoly and Maintenance of Fair Trade (the Anti-monopoly Law), is the legislation that prohibits bid rigging. In addition to the prohibition under the Anti-monopoly Law of Japan, collusion in a public bid is subject to a penalty under the Criminal Code.
- B.90 The Fair Trade Commission of Japan (the JFTC), an independent administrative commission, is the enforcement agency established by the Anti-monopoly Law. In contrast to the United States, but similarly to the EU, the JFTC is the investigator, prosecutor and judge of the administrative proceeding set forth under the Anti-monopoly Law.
- B.91 Both fines of up to ¥5 million and servitude (labour in a prison) for up to three years could be imposed on individuals engaging in bid rigging, while a fine of up to ¥500 million could be imposed on corporations engaging in bid rigging.

Leniency and whistle blowing

- B.92 There has been a leniency programme since 2006. By the end of 2007 there had been over 150 leniency applications and the JFTC had taken legal measures in 13 cases as a result of information submitted by leniency applicants.

- B.93 Under the programme undertakings that voluntarily report to the JFTC their involvement in cartels or bid rigging can be granted immunity from or a reduction in surcharges.

Cases

- B.94 Forty-four Japanese companies were ordered by the JFTC to pay penalties worth £74 million for colluding to rig the bids for steel bridge construction contracts offered by the government. The fines were the highest-ever imposed by the JFTC. The practice had been going on since at least April 2002.
- B.95 In 2005 the JFTC found a criminal violation of the Anti-monopoly Act and filed an accusation with the Public Prosecutor General against Yokogawa Bridge Corporation, and five other companies engaged in bidding for steel bridge construction projects.
- B.96 The Executive Director of the Japan Highway Public Corporation, was accused of being in conspiracy with individuals from 47 companies engaged in bidding for the steel bridge construction projects ordered by the Japan Highway Public Corporation. They were accused of agreeing to decide in advance the winner of tenders for steel bridge construction projects and would bid at a price convenient for the agreed winner. The 47 companies were found to have substantially restricted competition contrary to the public interest.

C CONTRACTOR SURVEY QUESTIONNAIRE

Introduction

We would like to know a little bit about you and your company.

(0a) Which ONE of the following titles below best describes your position in your organisation?	
Owner/Co-owner/Proprietor/Managing Director	11%
Director	22%
Manager	51%
Foreman	0%
Construction Worker	0%
Estimator	8%
Other	8%

□Base – All respondents (314)

(0b) Where is your company based?	
England	84%
Northern Ireland	3%
Scotland	10%
Wales	3%
Don't Know	

□Base – All respondents (314)

IF ENGLAND SELECTED – Which ONE of the following most accurately describes where your company is based

North East England	8%
North West England	16%
Yorkshire and Humberside	13%
East Midlands	9%
West Midlands	7%
London	11%
East Anglia	4%
South East England	20%
South West England	13%

□Base – All respondents based in England (266)

IF SCOTLAND SELECTED – Which ONE of the following most accurately describes where your company is based

Strathclyde	47%
Dumfries and Galloway	3%
Borders	3%
Lothian	9%
Central	6%
Fife	3%
Tayside	0%
Grampian	16%
Highlands and Western Isles	13%

□Base – All respondents based in Scotland (32)

IF WALES SELECTED – Which ONE of the following most accurately describes where your company is based

North Wales	12%
East Wales	0%
South Wales	88%
West Wales	0%

□Base – All respondents based in Wales (8)

(0c) Over the last 12 months, have the majority of your contracts been with the public or private sector? SINGLE CODE	
Majority public sector	26%
Majority private sector	50%
Equal	22%
Don't know	2%

□Base – All respondents (314)

(0d) Regardless of their share of your work, have you in the last 12 months, bid for contracts in? MULTICODE	
The public sector	82%
The private sector	88%
Don't know	4%

□Base – All respondents (314)

(0e) Over the last 12 months, have the majority of your awarded contracts been for new work or repair and maintenance work? SINGLE CODE	
Majority new work	73%
Majority repair and maintenance work	14%
Equal	11%
Don't know	2%

□Base – All respondents (314)

Bidding practices

We are interested in learning your views on certain bidding practices in the UK construction sector.

Q1a I am now going to read out a list of practices that may or may not occur in the UK construction sector today. For each one I read out can you please tell me whether you believe they are NON-EXISTENT, SELDOM OCCUR, COMMONLY OCCUR or APPEAR IN MOST BIDS

	Non-existent	Seldom	Common	Appears in most bids	Don't Know
Bidding low to win the contract, knowing that it may prove loss making	19%	39%	30%	3%	9%
Bidding high to avoid winning a contract without discussion with other bidders	11%	38%	41%	1%	9%
Agreeing with other bidders to fix prices	51%	27%	4%	1%	17%
Providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	33%	37%	12%	1%	17%
Receiving compensation from other bidders for providing a cover bid	66%	13%	1%	0%	20%
Agreeing with other bidders to sit out of a bid	48%	30%	4%	0%	18%
Agreeing with others not to compete in particular regions or for specific customers	44%	30%	7%	0%	20%
Discussing a bid with other bidders prior to submission	38%	40%	8%	1%	14%
Discussing a bid with the procuring agency prior to submission	24%	25%	31%	6%	14%

□ Base – All respondents (314)

INSTRUCTIONS – IF A RESPONDENT HAS ANSWERED DON'T KNOW TO ANY OF THE PRACTICES AT Q1a THEY ARE NOT TO BE ASKED ABOUT THESE AT Q1b

Q1b We are now going to go through these practices again and for each one I read out could you please tell me whether you believe them to be MORE COMMON, THE SAME or LESS COMMON compared to 3 years ago in the UK construction sector?

Single code accordingly

	More common	The Same	Less Common	Don't Know
Bidding low to win the contract, knowing that it may prove loss making	11%	44%	23%	22%
Bidding high to avoid winning a contract without discussion with other bidders	12%	54%	14%	20%
Agreeing with other bidders to fix prices	2%	30%	29%	39%
Providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	5%	34%	28%	33%
Receiving compensation from other bidders for providing a cover bid	0%	26%	22%	52%
Agreeing with other bidders to sit out of a bid	3%	30%	27%	40%
Agreeing with others not to compete in particular regions or for specific customers	2%	31%	27%	40%
Discussing a bid with other bidders prior to submission	3%	34%	29%	34%
Discussing a bid with the procuring agency prior to submission	11%	46%	16%	27%

□Base – All respondents who did not answer Don't Know at Q1a (Varies by Attribute)

(1c) Which, if any, of the following practices do you think could be regarded as illegal under UK Competition Law? MULTI-CODE)	
Agreeing with other bidders to fix prices	96%
Receiving compensation from other bidders for providing a cover bid	94%
Providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	82%
Discussing a bid with other bidders prior to submission	80%
Agreeing with other bidders to sit out of a bid	71%
Agreeing with others not to compete in particular regions or for specific customers	62%
Discussing a bid with the procuring agency prior to submission	36%
Bidding low to win the contract, knowing that it may prove loss making	7%
Bidding high to avoid winning a contract without discussion with other bidders	4%
Don't Know	2%
None of these	1%

□Base – All respondents (314)

(2a) What do you think is the MAIN reason why some firms might engage specifically in cover pricing ? SINGLE CODE	
Client retention	35%
Competition limitation	18%
Revenue generation	9%
Business survival technique	9%
Business management	6%
Other, please specify	5%
Cost reduction	2%
Don't know	16%

□Base – All respondents (314)

(2b) What sort of penalties are you aware of if a firm is found guilty of engaging in cover pricing? MULTICODE	
Fines	49%
Firms banned from undertaking certain activities (e.g. bidding for work in the future)	44%
Criminal prosecution (possibility of jail sentences)	42%
Staff banned from undertaking certain activities (e.g. director disqualification)	29%
Other	1%
No penalties	2%
Don't know	36%

□Base – All respondents (314)

(2c) What do you think is the MAIN reason why some firms might engage in bid rigging more generally? SINGLE CODE	
Competition limitation	25%
Revenue generation	22%
Client retention	17%
Business management	9%
Business survival technique	8%
Cost reduction	3%
Other	2%
Don't know	14%

□Base – All respondents (314)

(2d) What sort of penalties are you aware of if a firm is found guilty of engaging in bid rigging? MULTICODE	
Fines	57%
Criminal prosecution (possibility of jail sentences)	48%
Firms banned from undertaking certain activities (e.g. bidding for work in the future)	47%
Staff banned from undertaking certain activities (e.g. director disqualification)	33%
Other	0%
No penalties	1%
Don't know	30%

□Base – All respondents (314)

(2e) Under the UK competition law, firms may be fined if they are found guilty of engaging in bid rigging activities (including cover pricing). To the best of your knowledge, what is the MAXIMUM amount of fine applicable? SINGLE CODE	
1% of annual worldwide turnover	1%
5% of annual worldwide turnover	2%
10% of annual worldwide turnover	15%
Over 10% of annual worldwide turnover	2%
Don't know	80%

□Base – All respondents (314)

(2f) How important do you consider each of the following approaches are in deterring bid rigging in the construction industry at present. For each one could you please tell me whether you believe them to be Very Important, Important, Not Important or Not at all important
SINGLE CODE

	Very Important (4)	Important (3)	Not important (2)	Not at all important (1)	Don't Know	Mean
Fines	48%	38%	8%	0%	6%	3.43
Criminal prosecutions (possibility of jail sentences)	57%	27%	7%	1%	8%	3.54
Firm banned from undertaking certain activities (e.g. bidding for work in the future)	57%	32%	4%	0%	7%	3.57
Staff banned from undertaking certain activities (e.g. director disqualification)	41%	35%	13%	2%	9%	3.26
Negative publicity for firms caught	48%	34%	11%	2%	5%	3.35
Compensation claims/Private damages action	28%	41%	17%	3%	11%	3.07

□Base – All respondents (314)

(2g) Are you aware of any arrangements that exist to encourage individuals or firms to provide information to the OFT on bid rigging activities in the construction sector? Tick ONE box only.	
Yes	9%
No	71%
Don't Know	20%

□Base – All respondents (314)

(2g2) Arrangements aware of (All answering yes at Q2g)	
Whistle-blowing	37%
Reduced Fines	22%
Exemption/immunity from prosecution	19%
Others	22%

□Base – All respondents aware of OFT arrangements (27)

(2h) From which, if any, of the following sources have you become aware of activities such as bid rigging in the UK construction sector?. MULTICODE	
Media reports	53%
Other firms/individuals in the construction sector	29%
Trade and industry bodies/publications/events	27%
Own experience	19%
OFT investigations of construction businesses	18%
Wider OFT investigations	7%
OFT publications	6%
Actions/publications by other government agencies	5%
Other	1%
None. I am not aware of any bid rigging activities in the UK construction sector.	21%
Don't know	5%

□Base – All respondents (314)

Impact of OFT activities

We are interested in learning about your awareness of the Office of Fair Trading (OFT).

(3a) Which of the following OFT activities are you aware of? MULTICODE	
Investigations in markets where there may be infringements of competition law	75%
Publications on competition and consumer issues	44%
Consumer education activities	18%
Consumer Codes Approval Scheme	15%
Business education activities, such as “come clean on cartels month”	11%
Leniency Programme	6%
None, I'm not aware of any OFT activities	18%
Other	0%

□Base – All respondents (314)

(3b) From which of the following sources have you learnt about the OFT's activities? MULTICODE	
Media reports	87%
Trade and industry bodies/publications/events	42%
OFT investigations of construction businesses	15%
Own experience	13%
Other firms/individuals in the construction sector	13%
OFT publications	10%
Wider OFT investigations	7%
Actions/publications by other government agencies	7%
Other	2%
None	2%
Don't know	2%

□Base – All respondents aware of OFT activities (257)

(3c) Have any of the OFT's activities made you significantly reassess the legality of any of the activities I am going to read out? MULTICODE	
Providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	13%
Discussing a bid with other bidders prior to submission	12%
Agreeing with other bidders to fix prices	11%
Agreeing with other bidders to sit out of a bid	10%
Receiving compensation from other bidders for providing a cover bid	9%
Agreeing with others not to compete in particular regions or for specific customers	9%
Discussing a bid with the procuring agency prior to submission	6%
Bidding high to avoid winning a contract without discussion with other bidders	4%
Bidding low to win the contract, knowing that it may prove loss making	1%
None of these	52%
Don't Know	26%

□Base – All respondents aware of OFT activities (257)

(3d) Has the risk of an OFT investigation led you to do any of the following in the last 3 years?	
MULTI CODE	
Restrict information sharing between firms	11%
Increase competition law compliance activities (e.g. introduced training or a code of conduct related to competition law, sought legal advice, etc.)	8%
Become reluctant to collaborate with other firms (e.g. consortia and joint ventures)	6%
Restrict information sharing with industry bodies	4%
Break off from existing agreements with other firms	1%
Other	2%
Made no change to our business practices	69%
Don't know	11%

□Base – All respondents aware of OFT activities (257)

(4a) Are you aware of any of the following OFT cases in the UK construction sector?	
MULTICODE	
Current OFT investigation in the construction sector in England	15%
Flat-roofing contracts in the West Midlands (Apr 04)	14%
Felt and single ply flat-roofing contracts in the North East of England (Apr 05)	7%
Mastic asphalt flat-roofing contracts in Scotland (Apr 05)	4%
Flat roof and car park surfacing contracts in England and Scotland (Feb 06)	4%
Felt and single ply roofing contracts in Western-Central Scotland (Jul 05)	3%
Aluminium spacer bars (June 06)	1%
None of these	71%

□Base – All respondents (314)

(4b) From which sources have you learnt about these cases?	
MULTICODE	
Media reports	84%
Trade and industry bodies/publications/events	46%
Other firms/individuals in the construction sector	22%
Own experience	10%
OFT investigations	7%
OFT publications/press releases	4%
Actions/publications by other government agencies	1%
Other	3%
Don't know	0%

□Base – All respondents aware of OFT cases (90)

(4c) Have these OFT cases led you to do any of the following in the last 3 years?	
MULTI CODE	
Restrict information sharing between firms	14%
Become reluctant to collaborate with other firms (e.g. consortia and joint ventures)	12%
Increase competition law compliance activities (e.g. introduced training or a code of conduct related to competition law, sought legal advice, etc.)	11%
Restrict information sharing with industry bodies	8%
Break off from existing agreements with other firms	0%
Other	0%
Made no change to our business practices	77%
Don't know	1%

□Base – All respondents aware of OFT cases (90)

(4d) Which of these cases has had the most impact on your business behaviour? SINGLE CODE	
Current OFT investigation in the construction sector in England	9%
Flat-roofing contracts in the West Midlands (Apr 04)	6%
Mastic asphalt flat-roofing contracts in Scotland (Apr 05)	1%
Felt and single ply roofing contracts in Western-Central Scotland (Jul 05)	1%
Flat roof and car park surfacing contracts in England and Scotland (Feb 06)	1%
Felt and single ply flat-roofing contracts in the North East of England (Apr 05)	0%
Aluminium spacer bars (June 06)	0%
None of these	81%
Don't Know	1%

□Base – All respondents aware of OFT cases (90)

(4e) Has the behaviour of procurers of construction services changed in any of the following ways in the last three years? MULTICODE	
No change	31%
Revised procurement methods	22%
Banned certain firms from bidding	3%
Procurer began own investigations to detect bid rigging	0%
Other	1%
Don't know	46%

□Base – All respondents (314)

(4f) To what extent have moves in the construction industry to adopt partnership arrangements and participate in framework agreements increased the potential for bid rigging in the construction sector? SINGLE CODE	
Not at all	27%
Small increase	14%
Medium increase	9%
Large increase	5%
Don't know	45%

□Base – All respondents (314)

We are interested in learning if you or any of your firm's staff have undertaken any training with regard to competition law or compliance procedures.

(5a) Have you or your firm been involved in any training programmes with regard to competition law in the last three years? SINGLE CODE	
Yes	12%
No	63%
Don't know	25%

□Base – All respondents (314)

(5b) Have you or your firm been involved in any training programmes with regard to compliance procedures in any of the following areas in the last three years? MULTICODE	
Health and Safety Regulations	82%
Employment Law	49%
Environmental Law	46%
Tax Law	25%
Competition Law	12%
None of these	5%
Don't know	11%

□Base – All respondents (314)

(5c) Has your firm ever used any external compliance advisors and/or competition compliance auditors to provide competition law compliance advice in the last three years? SINGLE CODE	
Yes	9%
No	57%
Don't know	34%

□Base – All respondents (314)

We are interested in your views on the impact of whistle blowing on illegal activities in the UK construction sector.

(6a) To what extent do you agree or disagree that the possibility of whistle-blowing is an effective deterrent to bid rigging in the UK construction sector? Would you say that you Strongly Agree, Agree, Disagree or Strongly Disagree		
SINGLE CODE		
Strongly Agree		19%
Agree		57%
Disagree		10%
Strongly Disagree		2%
Don't Know		12%

□ Base – All respondents (314)

(6b) And how effective do you believe each of the following might be in encouraging whistle-blowing in the UK construction sector?

For each one I read out could you please tell me whether you believe them to be Highly effective, Effective, Ineffective or Highly Ineffective

SINGLE CODE

	Highly effective (4)	Effective (3)	Ineffective (2)	Highly ineffective (1)	Don't Know	Mean
Immunity from prosecution	26%	52%	5%	1%	16%	3.23
Immunity from fines	24%	53%	6%	1%	16%	3.18
Anonymity programme	38%	40%	8%	0%	14%	3.35
Compensation for job loss (even if temporary)	26%	41%	14%	2%	17%	3.10
Other incentives to report non-compliance	10%	42%	15%	1%	32%	2.90

□ Base – All respondents (314)

(7a) We are interested in your suggestions for what more can be done to deter bid rigging. Please say how effective you think each of the following would be in deterring bid rigging in the UK construction sector

Again, for each one I read out could you please tell me whether you believe them to be Highly effective, Effective, Ineffective or Highly Ineffective

SINGLE CODE

	Highly effective (4)	Effective (3)	Ineffective (2)	Highly ineffective (1)	Don't Know	Mean
Larger company fines	27%	56%	8%	0%	9%	3.21
Criminal prosecution of individuals involved	42%	43%	6%	0%	9%	3.40
Better advertising of OFT activities	25%	59%	9%	1%	6%	3.15
More education activities by OFT to the industry	16%	58%	14%	2%	10%	2.99
More education activities by trade bodies	11%	53%	21%	2%	13%	2.85
Better training of staff in firms	10%	63%	16%	1%	10%	2.92
Greater use of Director disqualification	29%	48%	11%	1%	11%	3.19
More OFT communication with the industry	19%	53%	14%	0%	14%	3.05
Increased incentives to report bid rigging	27%	51%	11%	0%	11%	3.17
Greater clarity in the law	12%	43%	22%	1%	22%	2.85
More private damages actions	40%	46%	6%	0%	8%	3.36

Black listing by procurers	38%	41%	14%	0%	7%	3.25
Public naming and shaming	5%	20%	75%	0%	0%	2.30

□Base – All respondents (314)

(7b) Are there any other deterrents that could be effective? If so, please specify in the space provided.	
Yes	5%
No	19%
Don't Know	75%

□Base – All respondents (314)

(7c) For each of the following I am going to read out please say how effective you think they would be in promoting and raising awareness of OFT work?

For each one I read out could you please tell me whether you believe them to be Highly effective, Effective, Ineffective or Highly Ineffective

	Highly effective (4)	Effective (3)	Ineffective (2)	Highly ineffective (1)	Don't Know	Mean
More media coverage of decisions against construction firms and individuals at a local/regional level	27%	60%	7%	0%	6%	3.21
More media coverage of decisions against construction firms and individuals at a national level	30%	59%	6%	0%	5%	3.24
More media coverage and publicity of OFT activities in general	20%	66%	8%	0%	6%	3.11
More conferences and events for industry by OFT	6%	52%	29%	3%	10%	2.69
More conferences and events for industry by trade bodies	6%	46%	33%	3%	12%	2.63
More active enforcement	19%	67%	5%	0%	9%	3.15
High profile cases to make examples of guilty firms	35%	52%	5%	0%	8%	3.32
Stronger penalties and fines	29%	54%	8%	0%	9%	3.23
More use of director disqualification powers	27%	48%	14%	0%	11%	3.14
Possibility of stronger legislation	15%	58%	14%	0%	13%	3.00
Concern expressed by actual/potential clients	14%	50%	25%	1%	10%	2.85
National political concern/questions in Parliament	6%	40%	37%	5%	12%	2.53

□Base – All respondents (314)

(7d) Are there any other methods that could be effective? If so, please specify in the space provided.
Yes 2%
No 18%
Don't Know 80%

□Base – All respondents (314)

Demographics

Please provide us some more information about your business requested below.

(D1) How many years has your company been in the construction business? SINGLE CODE					
Up to 1 year	1-3	4-5	6-10	11 +	Don't know
0%	3%	3%	7%	84%	3%

□Base – All respondents (314)

(D2) How many employees work in your firm? SINGLE CODE					
None	1-9	10-24	25-49	50-249	250 +
0%	7%	11%	17%	35%	29%

□Base – All respondents (314)

(D3) In which of the following regions of the UK have you conducted construction work over the last 12 months? MULTICODE	
England	89%
Northern Ireland	14%
Scotland	35%
Wales	34%

□Base – All respondents (314)

IF ENGLAND SELECTED – Which of the following REGIONS describe where your company has conducted construction work over the last 12 months (MULTICODE)

North East England	42%
North West England	47%
Yorkshire and Humberside	47%
East Midlands	46%
West Midlands	43%
London	49%
East Anglia	35%
South East England	53%
South West England	46%

□Base – All respondents who have conducted construction work in Wales (281)

IF SCOTLAND SELECTED – Which of the following REGIONS describe where your company has conducted construction work over the last 12 months (MULTICODE)

Strathclyde	47%
Dumfries and Galloway	37%
Borders	40%
Lothian	42%
Central	46%
Fife	29%
Tayside	29%
Grampian	31%
Highlands and Western Isles	34%

□Base – All respondents who have conducted construction work in Scotland (110)

IF WALES SELECTED – Which of the following REGIONS describe where your company has conducted construction work over the last 12 months (MULTICODE)

North Wales	56%
East Wales	41%
South Wales	73%
West Wales	49%

□Base – All respondents who have conducted construction work in Wales (108)

(D4) Over the past 12 months in which of the following sectors I am going to read out have you conducted the majority (in terms of the contract value) of your UK construction work in terms of		
a) New work		
b) Repair and maintenance		
SINGLE CODE		
	(a) New work	(b) Repair and maintenance
Housing	18%	15%
Social or student housing	5%	7%
Infrastructure – utilities such as electricity, gas, etc.	2%	2%
Infrastructure – transport such as rail, road, etc.	8%	10%
Factories	2%	4%
Warehouses	6%	3%
Oil, steel and coal	0%	0%
Health	3%	3%
Education	17%	8%
Offices	9%	8%
Entertainment	2%	2%
Garages	1%	0%
Retail	7%	7%
Agriculture	1%	2%
Commercial Buildings	1%	0%
Hotels	1%	0%
Other	6%	3%
Not applicable	3%	17%
Don't Know	8%	9%

□Base – All respondents (314)

(D5) Please give an estimate of your annual revenues. SINGLE CODE	
Less than £2,000,000	15%
£2,000,001-£10,000,000	28%
£10,000,001-£50,000,000	30%
More than £50,000,000	17%
Don't know	4%
Prefer not to (6%

□ Base – All respondents (314)

(D6) Please give an estimate of the value of your last contract in the UK construction sector. SINGLE CODE	
Less than £10,000	3%
£10,001-£100,000	16%
£100,001-£1,000,000	30%
More than £1,000,000	42%
Don't know	4%
Prefer not to	6%

□ Base – All respondents (314)

(D7) In which sector was your last contract in the UK construction sector? SINGLE CODE	
Public sector	36%
Private sector	56%
Don't know	8%

□ Base – All respondents (314)

(D8) And in which sector of the economy was this last contract? SINGLE CODE	
Housing	19%
Social or student housing	6%
Infrastructure – utilities such as electricity, gas, etc.	2%
Infrastructure – transport such as rail, road, etc.	9%
Factories	3%
Warehouses	8%
Oil, steel and coal	0%
Health	3%
Education	16%
Offices	11%
Entertainment	3%
Garages	0%
Retail	7%
Agriculture	0%
Other, please specify	7%
Don't Know	6%
Not applicable	2%

□Base – All respondents (314)

(D9) Through which means have you won the MAJORITY of your contracts over the last 12 months? SINGLE CODE	
Competitive tendering	69%
Collaboration and/or partnership with the client	20%
Private finance initiative (PFI)	1%
Public Private Partnerships (PPP)	0%
Other, please specify	3%
Don't know	7%

□Base – All respondents (314)

(D10) Which tendering process was most commonly used by the procuring agency? SINGLE CODE	
Open tendering	68%
Restricted tenders/framework contracts	16%
Two stage tendering	14%
Other, please specify	0%
Don't know (DO NOT READ OUT)	2%

□Base – All who have won contracts through competitive tendering (217)

D PROCURER SURVEY QUESTIONNAIRE

OFFICE OF FAIR TRADING: IMPACT ASSESSMENT QUESTIONNAIRE:

CONSTRUCTION SECTOR BUYER SURVEY: PAPER VERSION

In our initial letter we explained how the Office of Fair Trading is conducting research into the above topic, and the importance of the work. The most convenient way of taking part is by pasting the link below into your web browser. This link will take you directly to our dedicated research web site, where you will see the introduction page to the questionnaire.

This is a secure OFT site (https) and you will not be required to provide any login or password details.

<https://surveys.oft.gov.uk/mrIWeb/mrIWeb.dll?l.Project=CONSTRUCTIONSECT>

However, if you prefer to complete a paper version of the questionnaire, please print out and complete the version below. It can be returned to the FREEPOST address given at the end of the form. Thank you for your continued participation.

The Office of Fair Trading is carrying out research on the impact of its investigations into bid rigging in the construction sector. As part of this research, a representative sample of firms and agencies that are involved in the procurement of construction goods and services are being asked to take part in this on line survey. We would very much appreciate you taking the time to answer the questions below. The questionnaire has been designed so that typically it will take around twenty minutes to complete, perhaps a little longer in a few cases.

We stress that this research is not aiming to uncover instances of competition law infringements or single out instances of bad procurement practice. All answers received will be aggregated for publication purposes. Individual responses will be treated in the strictest confidence. If you have any further queries with regard to this questionnaire please contact Andrew Lincoln of the OFT (Andrew.lincoln@oft.gsi.gov.uk), or by email to BuyerSurvey@oft.gsi.gov.uk .

Please note that you may take part in the survey while retaining complete anonymity. But one disadvantage of allowing this (by not issuing individual logon IDs and passwords) means that participants completing the on line questionnaire are unable to stop part way through and save their progress. Note well that should you quit part way through the questionnaire your progress will be lost and you will need to begin again when you reconnect. We hope this will not cause undue inconvenience.

About you and your organisation

Introduction1

Reference number:

The original invitation letter to take part in this research provided a reference number made up of two letters followed by three digits. If you have this reference number, please enter it below. This is not absolutely essential but will help the OFT to monitor responses, and should we need to issue reminders we will be able to avoid bothering people unnecessarily. If you wish to retain anonymity you may leave the first three introduction questions blank.

Reference number _____

Introduction2

Your name _____

Introduction3

The name of your organisation _____

Introduction4

Is yours a public sector or a private sector organisation?

Public sector Private sector Other, please specify _____

Question1A

Where is your organisation based?

- | | |
|--|---|
| <input type="radio"/> England: North East region | <input type="radio"/> England: North West region |
| <input type="radio"/> England: Yorkshire and Humberside region | <input type="radio"/> England: East Midlands region |
| <input type="radio"/> England: West Midlands region | <input type="radio"/> England: London region |

- England: East Anglia region
- England: South West region
- Scotland
- Other please, specify _____
- England: South East region
- Northern Ireland
- Wales

Question1B

In which economic sector would you categorise your organisation as being?

- Private housing
- Infrastructure - utilities such as gas, electricity, etc road, rail etc
- Oil, steel or coal
- Central government
- Local government
- Education
- Entertainment
- Retail specify _____
- Social or student housing
- Infrastructure - transport such as
- Factories
- Regional government
- Health
- Offices
- Garages
- Other, please

Question1C

For how many years has your organisation been procuring construction goods and services?

- Up to 2 years
- Over 2 years up to 5 years
- Over 5 years up to 10 years
- Over 10 years
- Don't know

Question1D

Approximately how many employees work in your organisation within the UK?

- Up to 25 persons
- From 26 to 50 persons
- From 51 to 100 persons
- From 101 to 250 persons
- From 251 to 500 persons
- From 501 to 1000 persons
- More than 1000 persons
- Don't know

Question1E

Do you have a specialised procurement section or sections that undertake procurement of construction goods and services on behalf of the organisation as a whole?

- Yes
- No
- Don't know

Question1F

If you have a specialised section, collectively, what sort of skills and experience does the section contain? Please tick all that apply.

Administrative and staff management skills

Contract management skills

Legal training in relation to contract law

Legal training in relation to competition law

Financial or accountancy skills

IT and computing skills

Specialised training in purchasing

Don't know

None of the skills listed

Other, please specify _____

Question1G

In the absence of a specialised section(s), which of the following best describes the arrangements that exist for the procurement of construction goods and services within your organisation?

Procurement is devolved to departments or staff teams, who enjoy complete autonomy over methods

Procurement is devolved to individual members of staff, who enjoy complete autonomy over methods

Procurement is devolved to departments or staff teams, but they undertake the procurement under organisational guidelines and controls

- Procurement is devolved to individual members of staff, but they undertake the procurement under organisational guidelines and controls

Question1H

Please give an estimate of the value of your annual procurement budget for construction goods and services in the UK

- Less than £50,000
- Between £50,001 and £250,000
- Between £250,001 and £1,000,000
- Between £1,000,001 and £5,000,000
- Between £5,000,001 and £10,000,000
- More than £10,000,000
- Not willing to answer
- Don't know

About the market and you

Question2A

How did you procure your last construction project in the UK?

- Competitive tendering
- Collaboration or partnership with contractor

- Private finance initiative
- Don't know
- Public Private Partnerships (PPP)
- Other, please specify _____

Question2B

In which sector of the economy did you procure this construction work?

- Private housing
- Infrastructure - utilities such as gas, electricity, etc
- Oil, steel or coal
- Central government
- Local government
- Education
- Entertainment
- Retail
- specify _____
- Social or student housing
- Infrastructure - transport such as road, rail, etc
- Factories
- Regional government
- Health
- Offices
- Garages
- Other, please

Question2C

In the last 12 months, in which sector of the economy did your organisation procure most of your construction work (in terms of contract value)?

- Private housing
- Social or student housing

Infrastructure - utilities such as gas, electricity, etc Infrastructure - transport such as road, rail, etc

Oil, steel or coal

Factories

Central government

Regional government

Local government

Health

Education

Offices

Entertainment

Garages

Retail

Other, please

specify _____

Question2D

Over the same 12 month period, has the majority of your awarded contracts been for new construction work or for repair and maintenance work?

New construction maintenance

Existing construction - for repair and

Question2E

In the last 12 months, what was your most commonly used method of procuring construction work?

Competitive tendering

Collaboration or partnership with contractor

Private finance initiative

Public Private Partnership (PPP)

Don't know

Other, please

specify _____

Question2F

Remembering your answer to the previous question, how important are the following reasons for choosing your most frequently used method of procuring construction work?

	<u>Important</u>	<u>Not imp orta nt</u>	<u>Don't know</u>
Low internal / staff resources needed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Easy to administer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quick to conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitating project management / minimising potential disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attracting more bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attracting high quality bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitating low price	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Required by law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Industry convention / common practice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question2G

When procuring construction goods and services, how big a challenge is each of the following?

	<u>Not a chall enge</u>	<u>Some chall enge</u>	<u>Significant challenge</u>	<u>Don't know</u>
Attracting a sufficient number of bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Attracting sufficient high quality bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Evaluating the different bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring value for money	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

We are interested in learning your views on certain practices in the UK construction sector

Question3A

How often do you think the following practices occur today in the UK construction sector?

	<u>Never</u>	<u>Seldom</u>	<u>Common</u>	<u>Appears in most bids</u>	<u>Don't know</u>
Contractors agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding low to win the contract, knowing that the contract may prove loss making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Contractors providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing to receive compensation from other bidders as condition of providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with others not to compete	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with the procuring agency prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question3B

Do you think the following practices are more or less common today compared to three years ago in the UK construction sector?

More
com
 About
the
 Less
com
 Don't

	<u>mon</u>	<u>same</u>	<u>mon</u>	<u>know</u>
Contractors agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding low to win the contract, knowing that the contract may prove loss making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing to receive compensation from other bidders as condition of providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with others not to compete	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with the procuring agency prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question3C

Which of the following activities, in your opinion, could be regarded as illegal under Competition law?

Legal

Not
lega

Don't

		!	<u>know</u>
Contractors agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding low to win the contract, knowing that the contract may prove loss making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing to receive compensation from other bidders as condition of providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with others not to compete	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with the procuring agency prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

We are interested in learning your views on activities such as bid rigging. Bid rigging involves contractors agreeing amongst themselves to abstain from bidding or not to compete in various ways. Bid rigging activities may include cover pricing, where a company that is not intending to win a contract submits a price for it after communicating with competitors in the tender process. The cover price is not intended to win the contract but to give the appearance of competition.

Question4A

If a firm had been found guilty of activities such as bid rigging in the past, would this exclude them from participating in your procurements (blacklisting)?

- Yes, the firm would be excluded
Don't know
- No, the firm would not be excluded
-

Question4B

If excluded, for how long would the firm be excluded from your procurements?

- Up to 1 year
- More than 1 year up to 3 years
- More than 3 years up to 5 years
exclusion
- More than 5 years, including permanent
exclusion
- Don't know

Question4C

If not excluded, why does your organisation not exclude the offending firm from participating in your procurements?

We are interested to learn how your procurement procedures operate to prevent and detect activities such as bid rigging.

Question5A

*What sorts of mechanisms do you have in place to detect and prevent activities such as bid rigging?
Please tick all that apply.*

- Providing incentives for whistleblowers
- Post bid evaluation of tenders for irregular behaviour
- Information requirements when tendering
- Making bidders declare they are not colluding
- Choice of procurement method e.g. closed bids
- No mechanisms
- Don't know
- Other, please specify :

Question5B

Where the respondent indicated providing incentives to whistleblowers . What incentive or incentives does your organisation provide for whistleblowers to prevent and detect bid rigging?

Question5C52

Where the respondent indicated choosing particular procurement methods to help prevent and detect bid rigging. What particular procurement method do you choose to achieve this?

Question5C

To what extent do you agree or disagree with the statement that "current methods of procurement normally used for construction goods and services increases the likelihood of contractors engaging in activities such as bid rigging"?

- Strongly agree
- Disagree
- Don't know
- Agree
- Strongly disagree

Question5D

In your view, to what extent have moves in the construction industry to adopt partnership arrangements and framework agreements increased the potential for bid rigging in the construction sector?

- No increase
- Medium increase
- Small increase
- Large increase

- Don't know

Question5E

Is it your practice not to select construction companies to tender where these companies have failed to provide bids for other construction projects?

- We would still invite companies to tender even if they had failed to provide bids for other construction projects
- We would not invite companies to tender if they had failed to provide bids for other construction projects
- Not applicable or circumstances have not arisen
- Don't know

Question5F

Have you discussed the issue of cartels and other competition issues with any of the following groups? Please tick all that apply.

- | | |
|--|---|
| <input type="checkbox"/> Contractors | <input type="checkbox"/> Trade and Industry Associations |
| <input type="checkbox"/> The Office of Fair Trading | <input type="checkbox"/> Other procurers in the public sector |
| <input type="checkbox"/> Other procurers in the private sector | <input type="checkbox"/> No, not discussed with anyone |
| <input type="checkbox"/> Legal / compliance advisors, please specify _____ | |
| <input type="checkbox"/> Other government agencies, please specify _____ | |

We are interested in learning about your awareness of OFT activities

Question6A

Which of the following OFT activities are you aware of? Please tick all that apply

- Investigations in markets where there may be potential infringements of competition law
- Consumer education
- Publications on competition and consumer issues
- Business education activities, such as "come clean on cartels month"
- Consumer Codes approval scheme
- Leniency program
- OFT / Office of Government Commerce publication "Making competition work for you"
- OFT 2006 guidelines
- Other, please specify _____
- None, I'm not aware of any OFT activity

Question6B

*Are you aware of any of the following cases the OFT has investigated in the construction sector?
Please tick all that apply.*

- Flat-roofing contracts in the West Midlands (Apr 04)
- Mastic asphalt flat-roofing contracts in Scotland (Apr 05)
- Felt and single ply flat-roofing contracts in the North East of England (Apr 05)
- Felt and single ply roofing contracts in Western-Central Scotland (Jul 05)
- Flat roof and car park surfacing contracts in England and Scotland (Feb 06)
- Aluminium spacer bars (June 06)
- Current OFT investigation in the UK construction sector
- None of these

Question6C

From which sources have you learned about OFT activities? Please tick all that apply.

- Own experience
- Other procurers
- Media and news reports
- OFT publications
- Trade and industry bodies, publications or events
- Actions or publications from other government agencies
- OFT investigations
- Don't know

Other, please specify _____

None, I'm not aware of OFT activity

Question6D

Have these OFT activities / cases caused you to revise your understanding of whether the activities listed below are illegal? Please tick all boxes that apply.

Agreeing with other bidders to fix prices

Bidding low to win the contract, knowing that the contract may prove loss making

Bidding high to avoid winning a contract without discussion with other bidders

Providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)

Agreeing to receive compensation from other bidders as condition of providing a cover bid

Agreeing with other bidders to sit out of a bid

Contractors agreeing with others not to compete

Discussing a bid with other bidders prior to submission

Discussing a bid with the procuring agency prior to submission

No revision of understanding for any of these

Question6E

As a result of OFT activity (or otherwise) have you changed your procurement procedures in any of the following ways over the last three years? Please tick all boxes that apply.

- Introduced more information requirements
- Sought advice on how to combat bid rigging
- Required declarations from bidders that they were not colluding
- Banned certain contractors from bidding
- Begun your own investigations into bid rigging
- No change

Adopted another procurement method, please specify _____

Other, please explain _____

We are interested to learn if any of your organisation's staff have undertaken any training with regard to competition law or compliance procedures

Question7A

Have you or your organisation been involved in any training programmes over the last three years relating to competition law?

Yes

No

Don't know

Question7B

If yes, please describe the nature of the training program

Question7C

Has your organisation ever used external advisors to assist you in detecting or preventing bid rigging?

Yes

No

Don't know

We are interested in your views on the impact of fines, penalties and whistle blowing on cartel activity in the UK construction sector

Question8A

Do you think that fines or penalties have changed contractor behaviour in any of the following ways in the UK construction sector in the last three years? Please tick all that apply.

Restricts cartel activity

Restricts collaboration between firms

No impact

Don't know

Other, please specify _____

Question8B

How effective do you believe the following might be in encouraging whistle blowing in the UK construction sector?

	<u>Highly effective</u>	<u>Effective</u>	<u>Ineffective</u>	<u>Highly ineffective</u>	<u>Don't know</u>
Immunity from prosecution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Immunity from fines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Financial incentives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Anonymity program	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compensation for job loss	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-disclosure of	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

information
supplied to third
party damage
claimants

Question8C

For each of the following potential remedies please say how effective you think they would be in deterring illegal activities such as bid rigging in the UK construction sector?

	<u>Highly effect ive</u>	<u>Effective</u>	<u>Ineffective</u>	<u>Highly ineffe ctive</u>	<u>Don't know</u>
Larger company fines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Criminal prosecution of individuals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater use of director disqualification	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More effective advertising and education about bid rigging for procurers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better training for procurement staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Publish more guidelines for procurers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More OFT liaison	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased incentives to report cartels	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater clarity in the law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Encourage private
damages actions



Question8D

Have you any ideas for other potential remedies that you think might be effective in deterring illegal activities such as bid rigging in the UK construction sector?

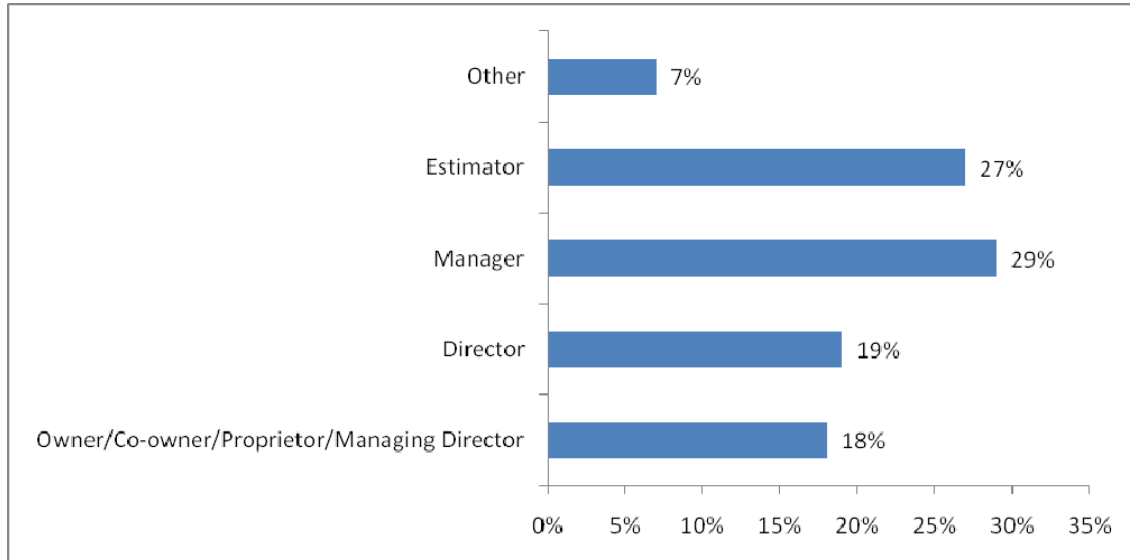
You have reached the end of the survey. On behalf of the OFT and the impact investigation team, we would like to offer sincere thanks for your help and contribution.

Annexe B

ADDITIONAL SURVEY RESULTS AND QUESTIONNAIRES

Additional survey results

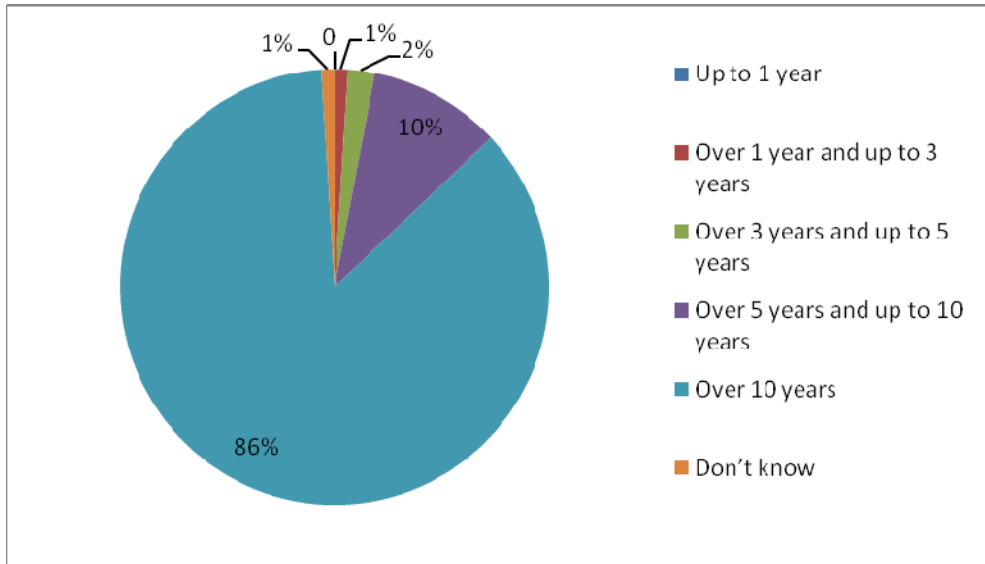
Figure B.1: Which ONE of the following titles best describes your position in your organisation?



Base: 416

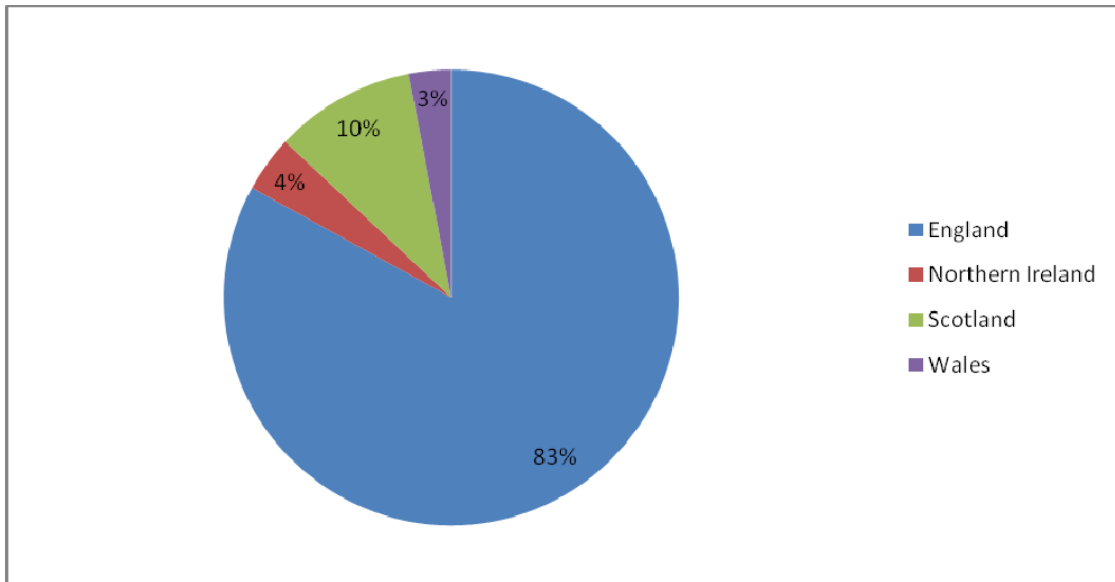
Source: GfK contractor survey 2010

Figure B.2: How long has your company been in business?



Base: 416. Source: GfK contractor survey 2010

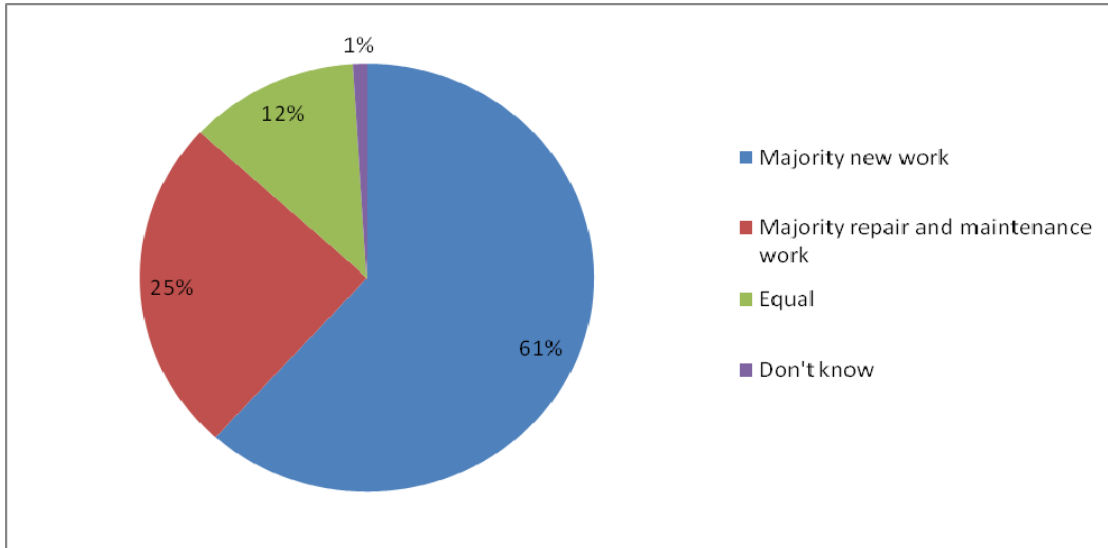
Figure B.3: Where is your company based?



Base: 416

Source: GfK contractor survey 2010

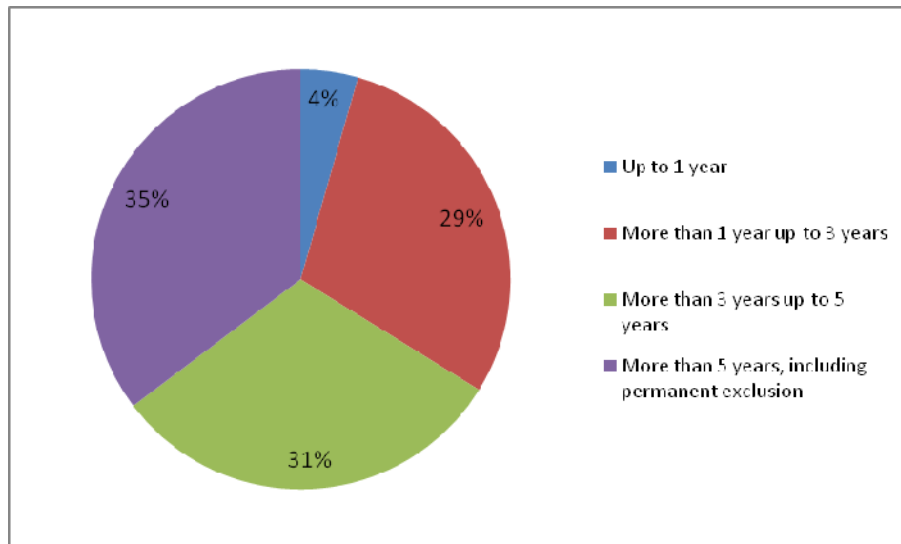
Figure B.4: Over the last 12 months, have the majority of your awarded contracts (by contract value) been for new work or repair and maintenance work?



Base: 416

Source: GfK contractor survey 2010

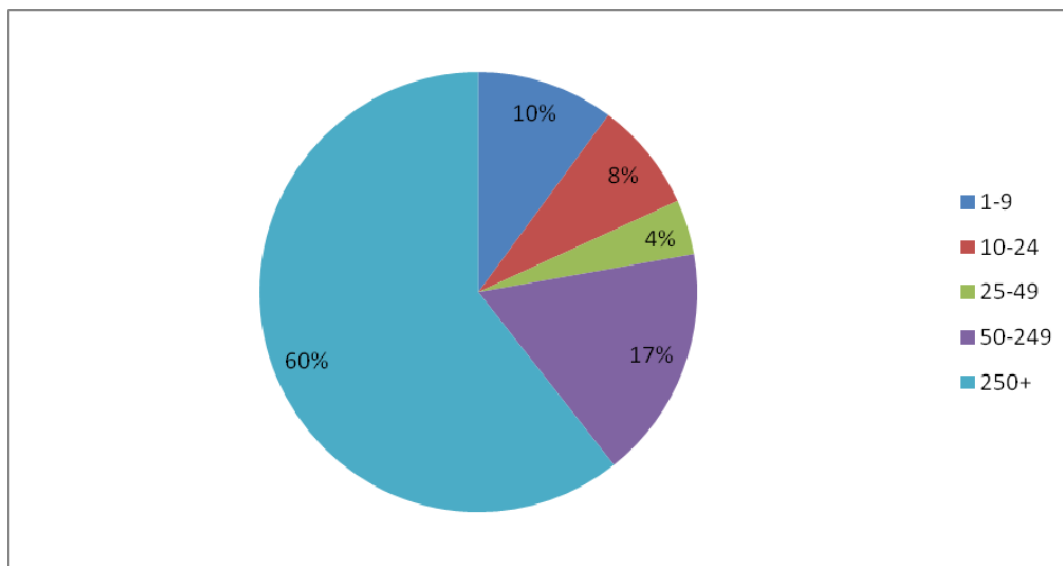
Figure B.5: For how many years has your organisation been procuring construction goods and services?



Base: 252

Source: GfK procurer survey 2010

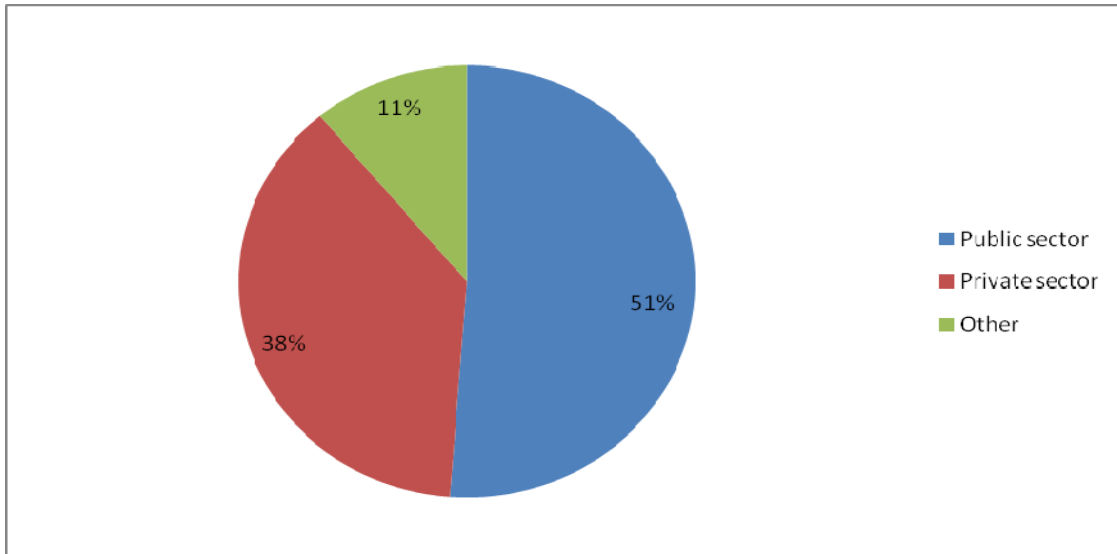
Figure B.6: Approximately how many employees work in your organisation within the UK?



Base: 252

Source: GfK procurer survey 2010

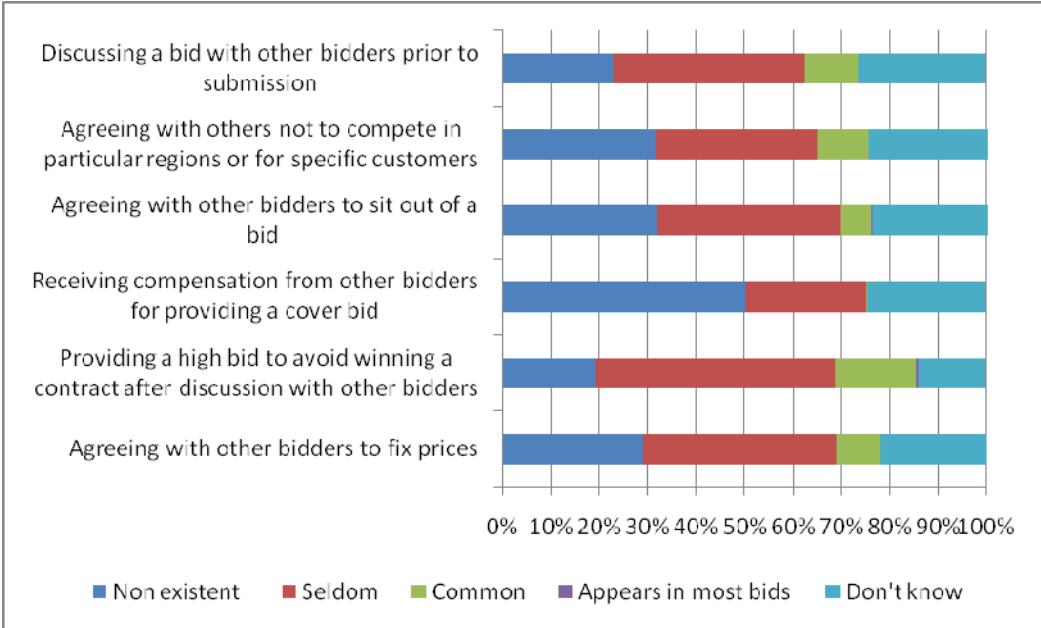
Figure B.7: Is yours a public sector or a private sector organisation?



Base: 252

Source: GfK procurer survey 2010

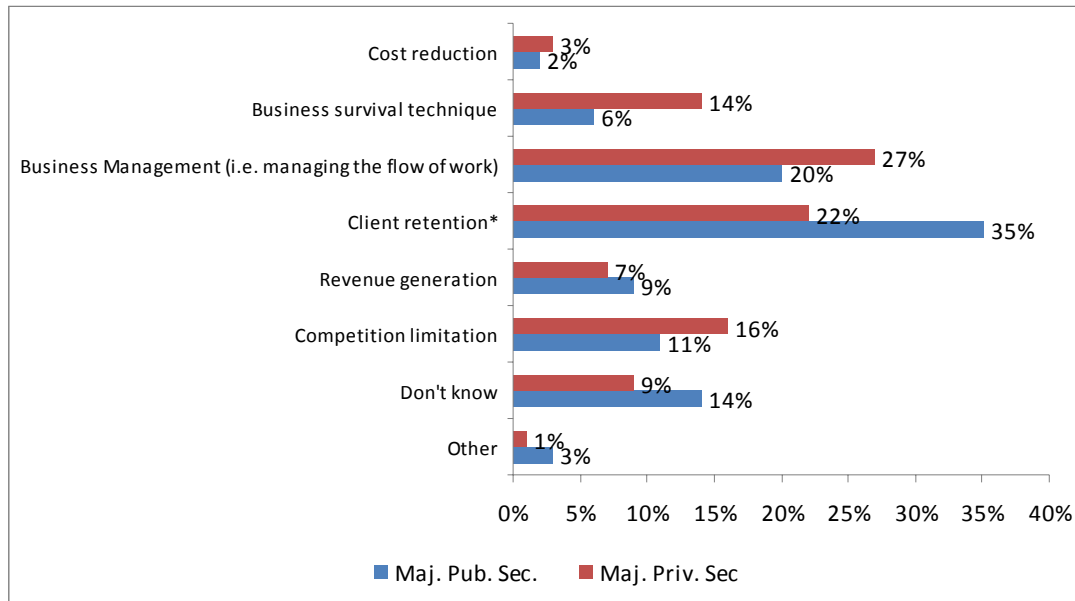
**Figure B.8: Perceived current existence of bid rigging by contractors
(contractors weighted by size)**



Base number: 416

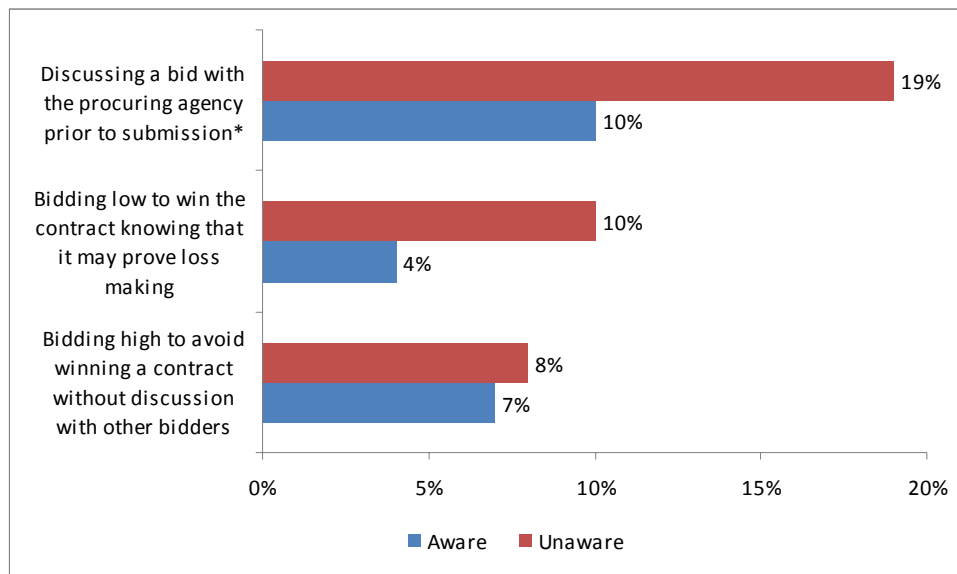
Source: GfK contractor survey 2010

Figure B.9: What do you think is the MAIN reason why some firms might engage in cover pricing? (contractors split by public/private)



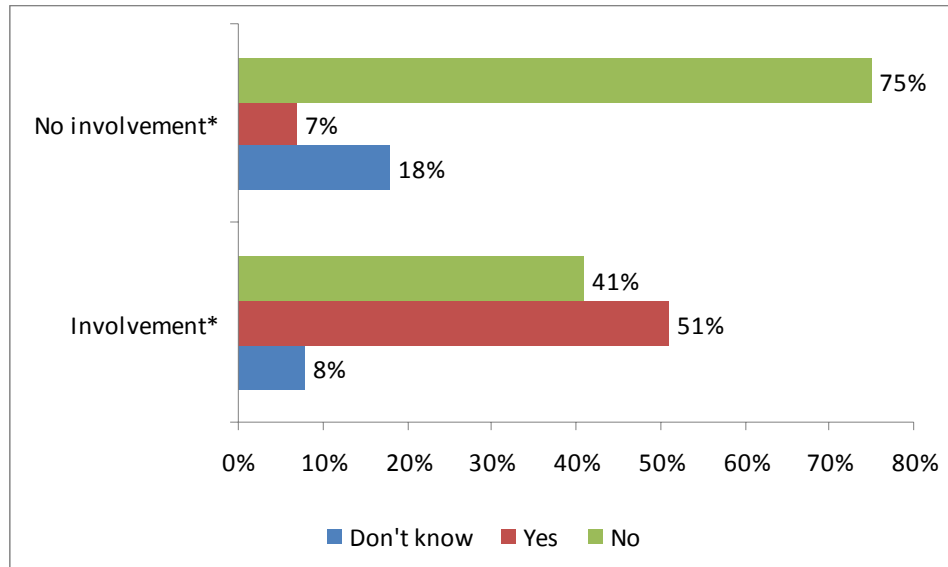
Base: 416, Source: GfK contractor survey 2010

Figure B.10: Percentage of contractors believing that legal practices listed in the chart are illegal (contractors split by awareness of OFT activities)



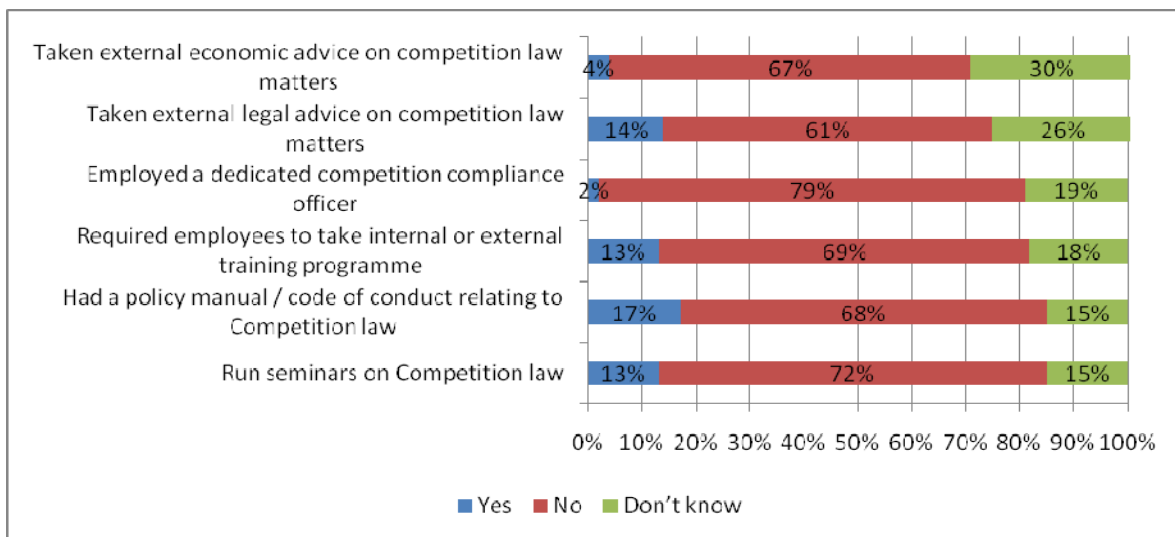
Base number: 416, Source: GfK contractor survey 2010

Figure B.11: Percentage of contractors involved in competition law training over the last 2 years (contractors split according to whether they have had any previous involvement with the OFT)



Base: 416, Source: GfK contractor survey 2010

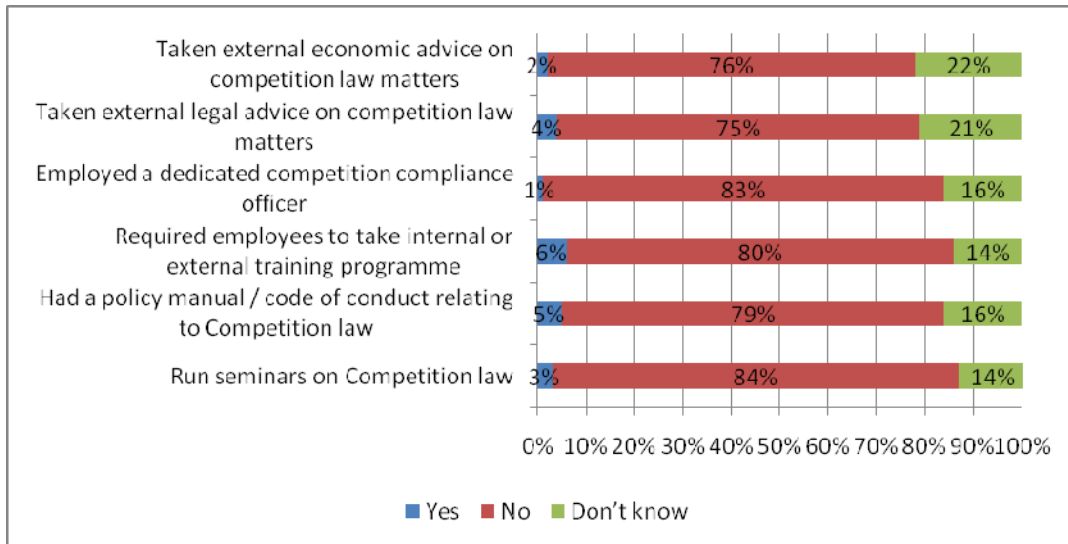
Figure B.12: Over the last 2 years have you or your organisation taken any of the actions listed below? (public sector contractors)



Base: 168

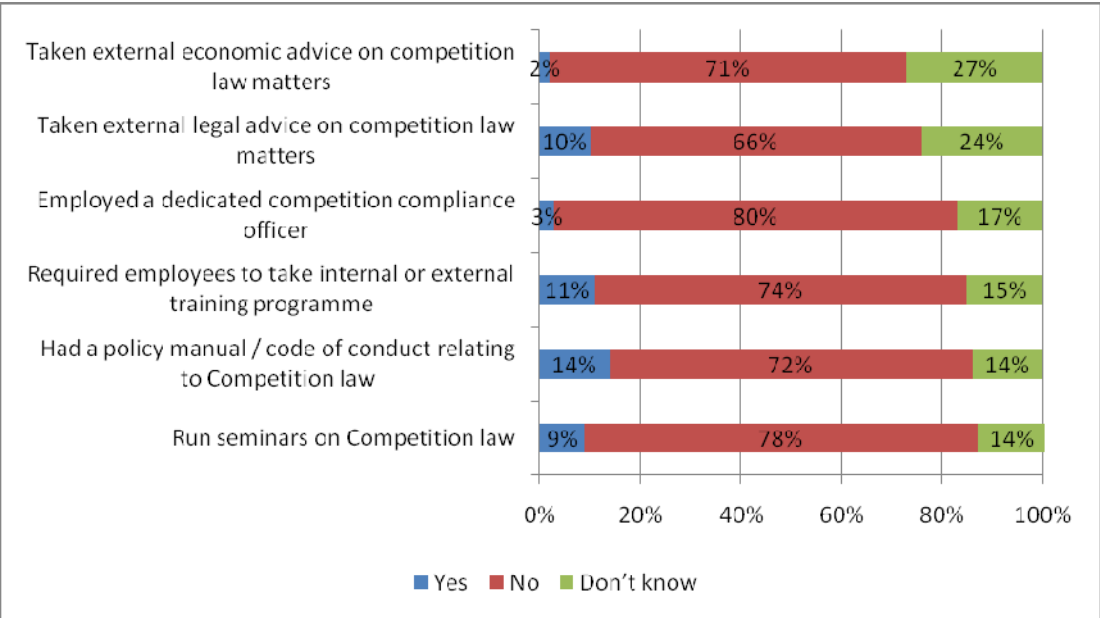
Source: GfK contractor survey 2010

Figure B.13: Percentage of contractors that have taken any of the actions listed below over the last 2 years (private sector contractors)



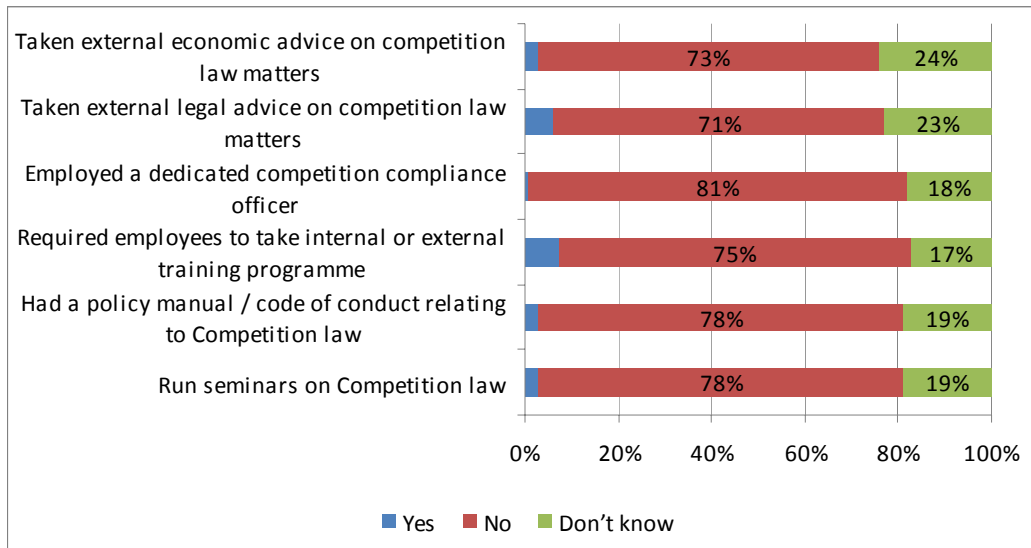
Base: 158, Source: GfK contractor survey 2010

Figure B.14: Percentage of contractors that have taken any of the actions listed below over the last 2 years (contractors aware of OFT activities)



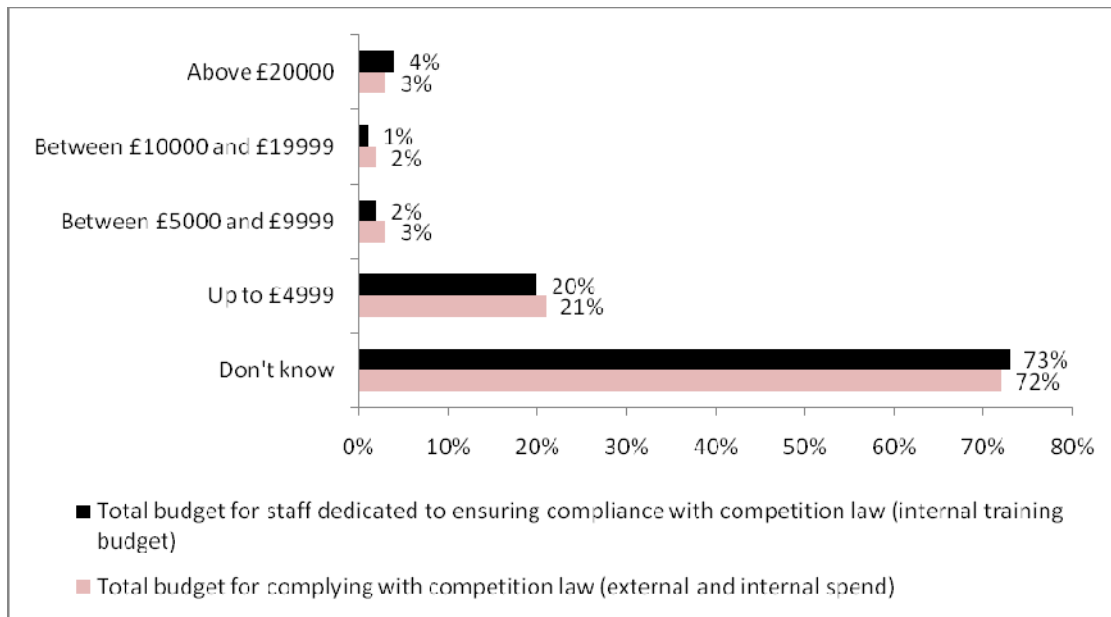
Base: 307, Source: GfK contractor survey 2010

Figure B.15: Percentage of contractors that have taken any of the actions listed below over the last 2 years (contractors unaware of OFT activities)



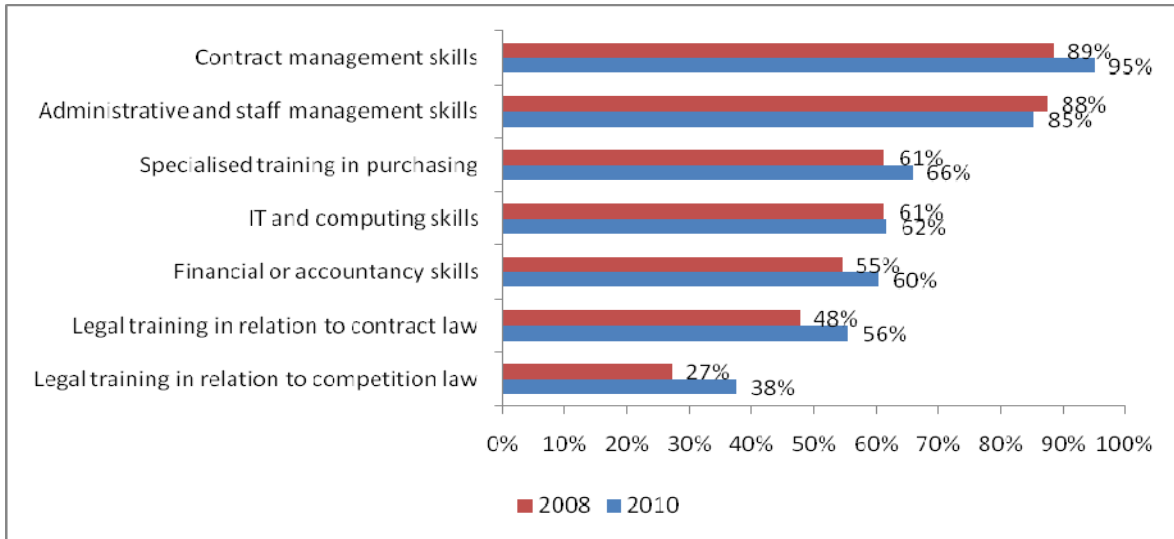
Base: 109, Source: GfK contractor survey 2010

Figure B.16: Internal and external spend on compliance activities of contractors



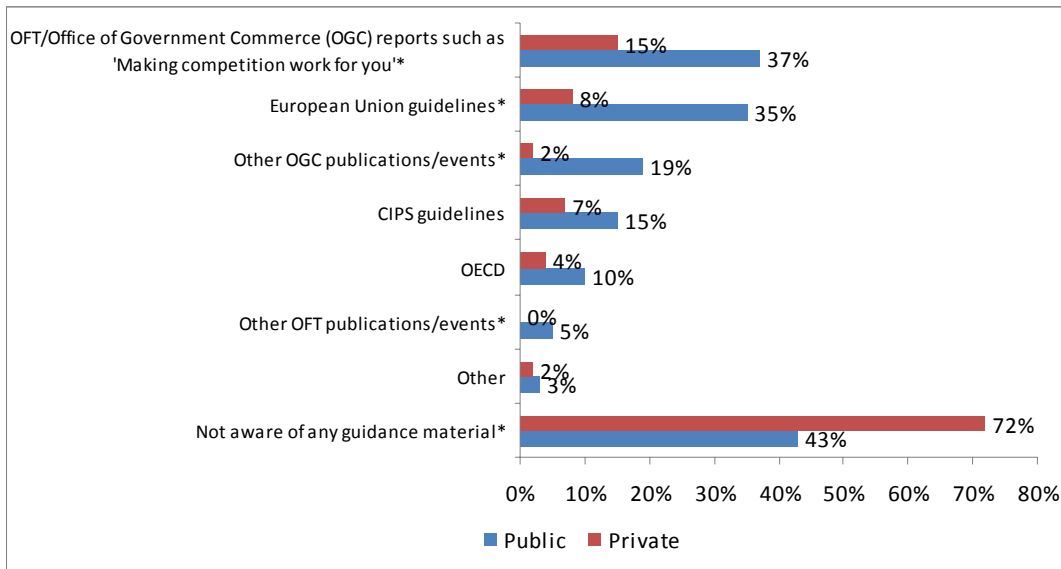
Base: 416, Source: GfK contractor survey 2010

Figure B.17: Percentage of procurers with the skills listed in the chart below in their specialised procurement sections



Base: 155 (2010 survey), 78 (2008 survey)
 Source: GfK procurer survey 2008 and 2010

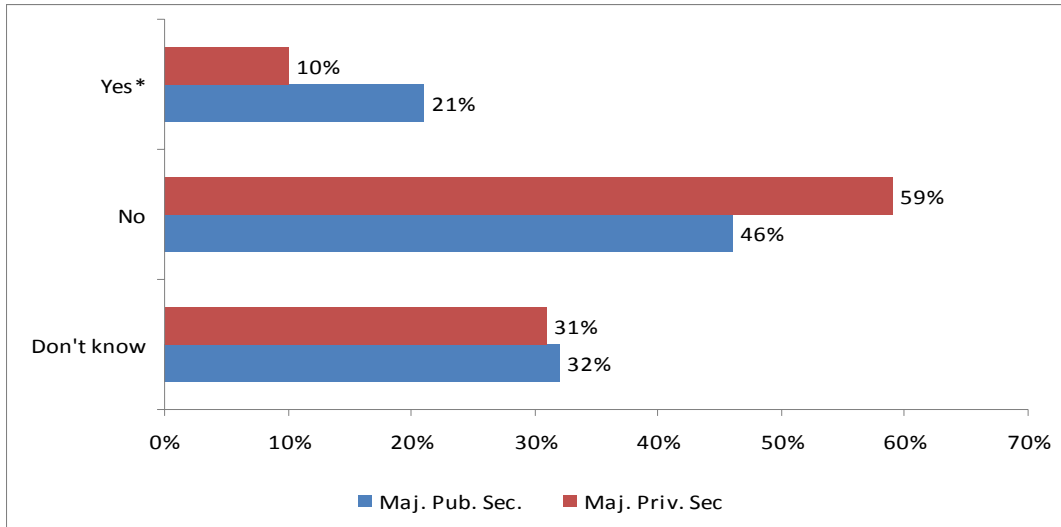
Figure B.18: Percentage of procurers aware of any guidance on reducing anti-competitive behaviour from the following sources listed in the chart (procurers split by private/public)



Base: 252,

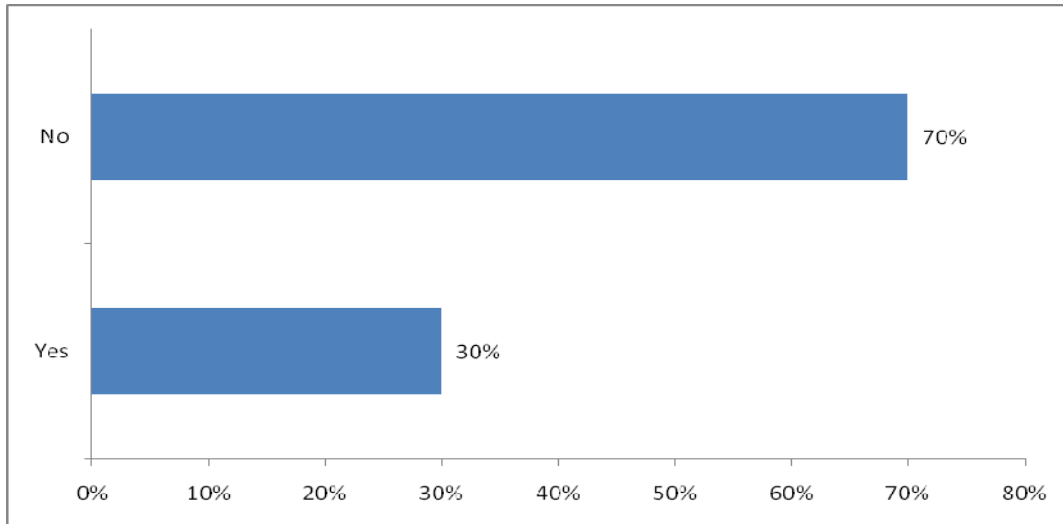
Source: GfK procurer survey 2010

Figure B.19: Percentage of contractors aware of recently created competition law codes of conduct within the construction industry (contractors split by private/public)



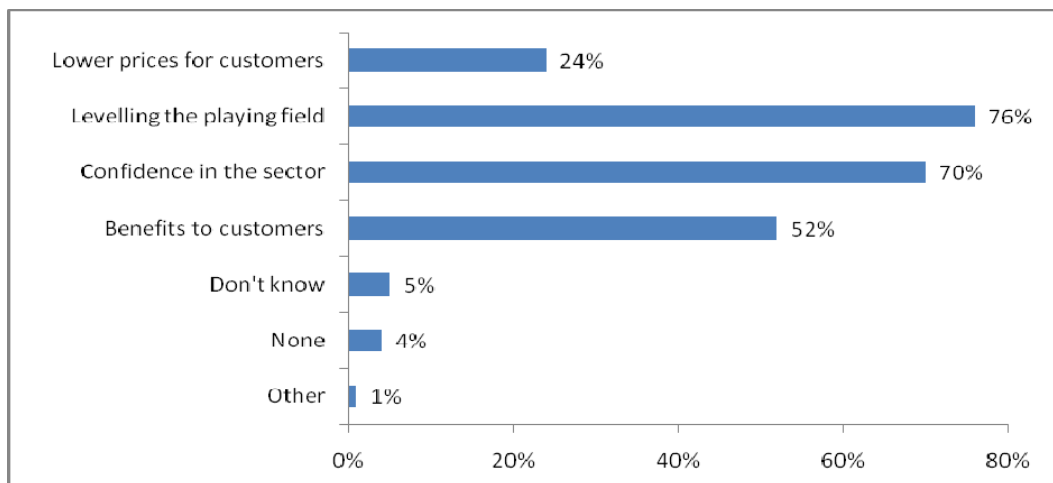
Base: 416, Source: GfK contractor survey 2010

Figure B.20 Percentage of contractors that are members of the National Federation of Builders or the UK Contractors Group



Base: 416. Source: GfK contractor survey 2010

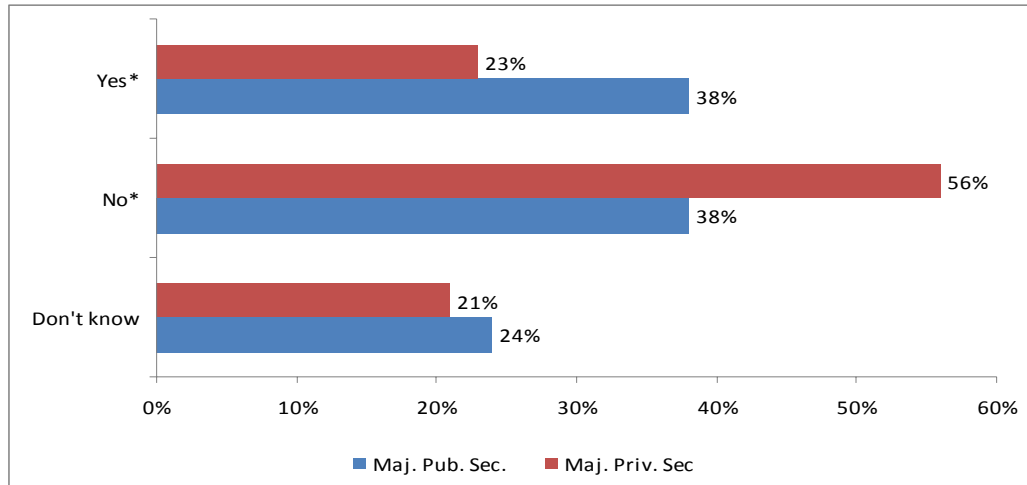
Figure B.21: Contractors' perceptions of benefits of competition law enforcement



Base: 416

Source: GfK contractor survey 2010

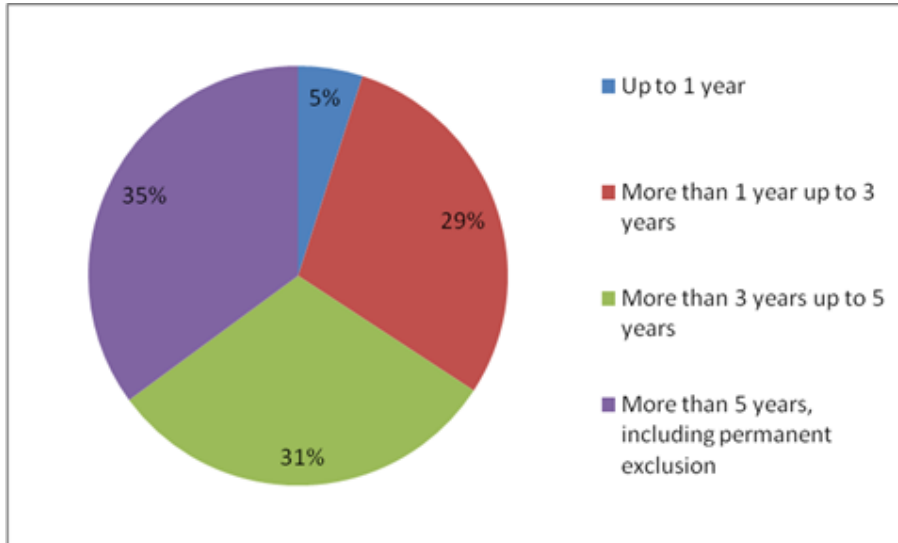
Figure B.22: Percentage of contractors with internal mechanisms in place to make sure that their organisation ensures compliance with Competition law across the supply-chains and subcontractors (contractors split by private/public)



Base: 326

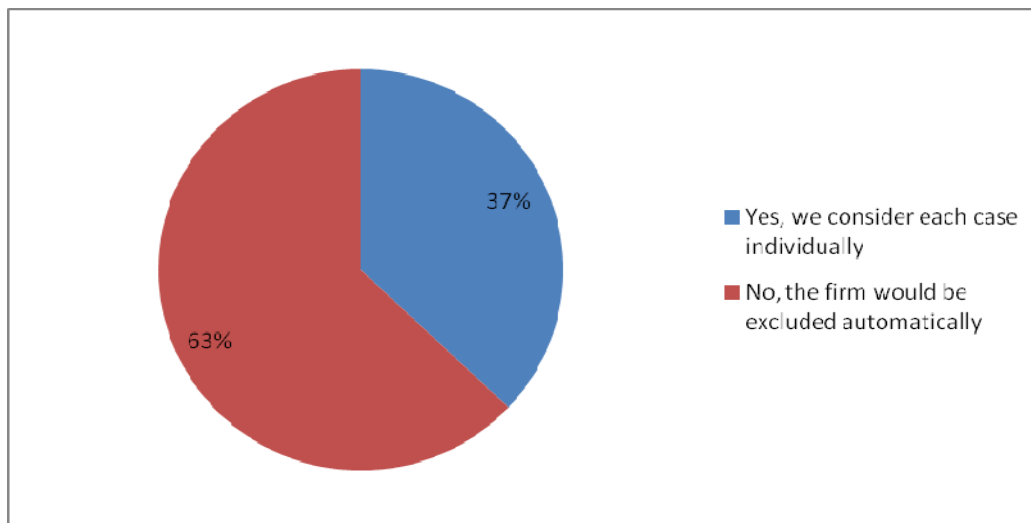
Source: GfK contractor survey 2010

Figure B.23: Length of exclusion period by procurers for firms found guilty of bid rigging (Don't know responses excluded)



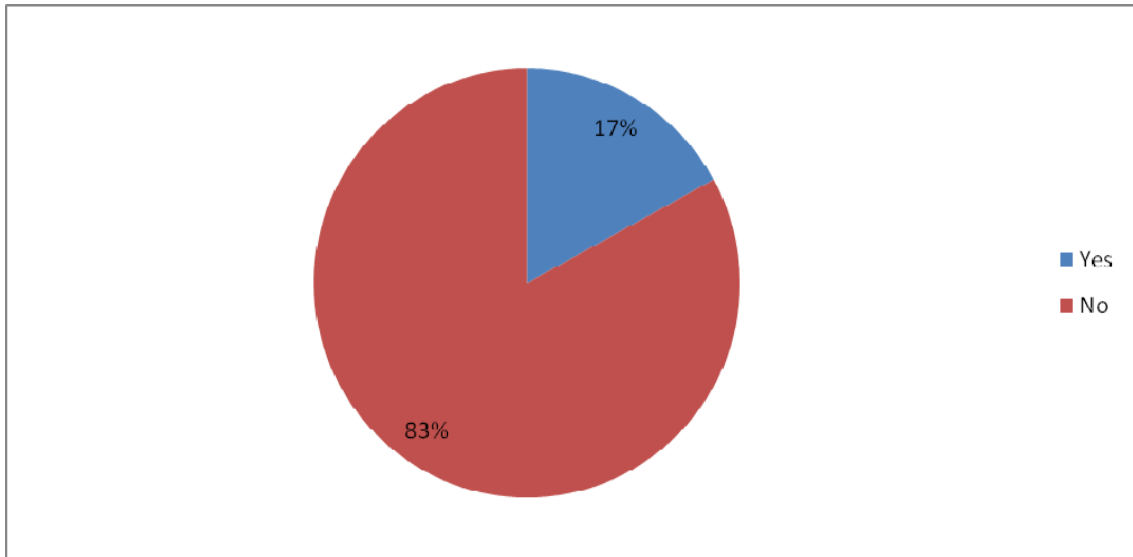
Base: 68. Source: GfK procurer survey 2010

Figure B.24: Percentage of procurers that would/would not exclude a firm automatically from future procurement projects (blacklisting) if found guilty of bid rigging



Base: 120. Source: GfK contractor survey 2010

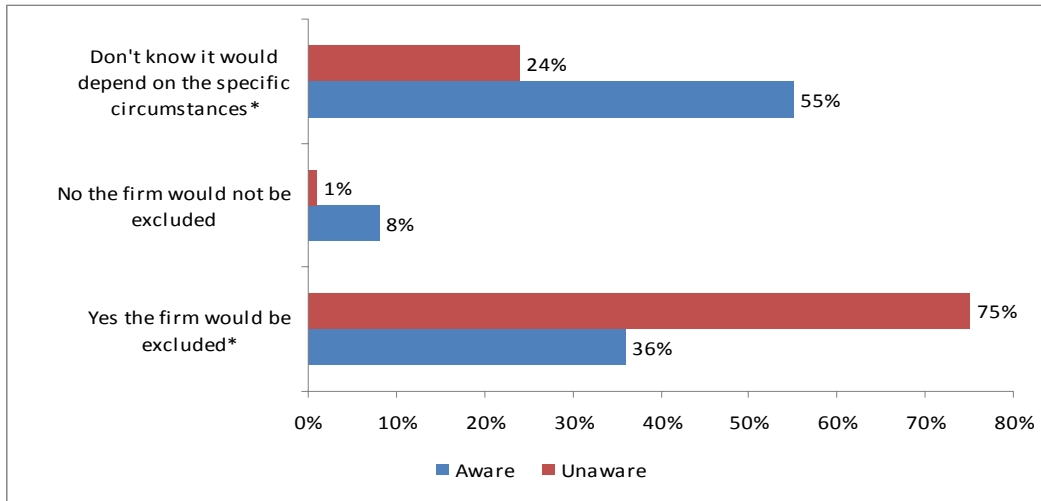
Figure B.25: Percentage of procurers that have excluded one or more construction firms from their procurement projects in the last two years



Base: 252

Source: GfK procurer survey 2010

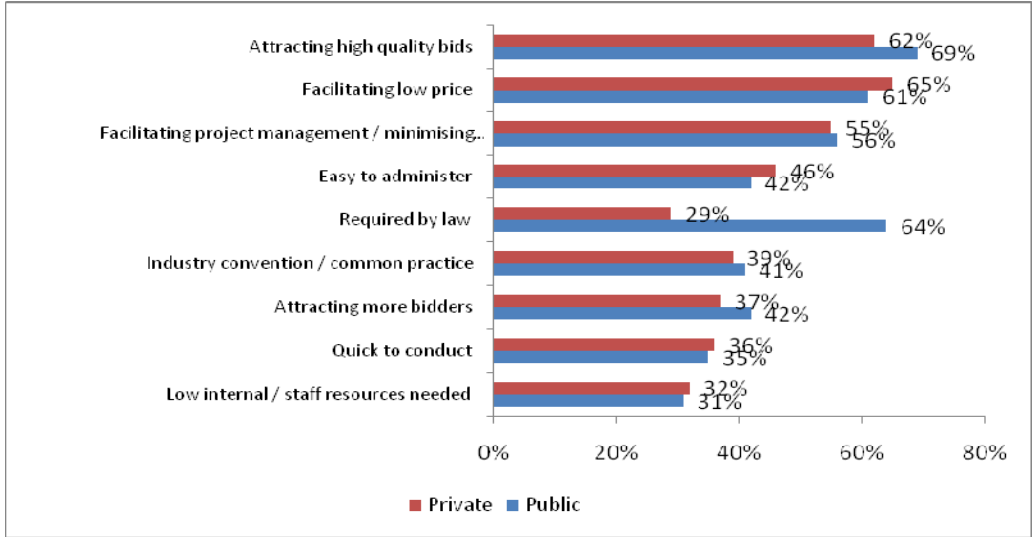
Figure B.26: Percentage of procurers that would exclude a firm (blacklisting) from participating in future procurement projects if found guilty of activities such as bid rigging (procurers split by awareness of OFT activities)



Base: 252,

Source: GfK procurer survey 2010

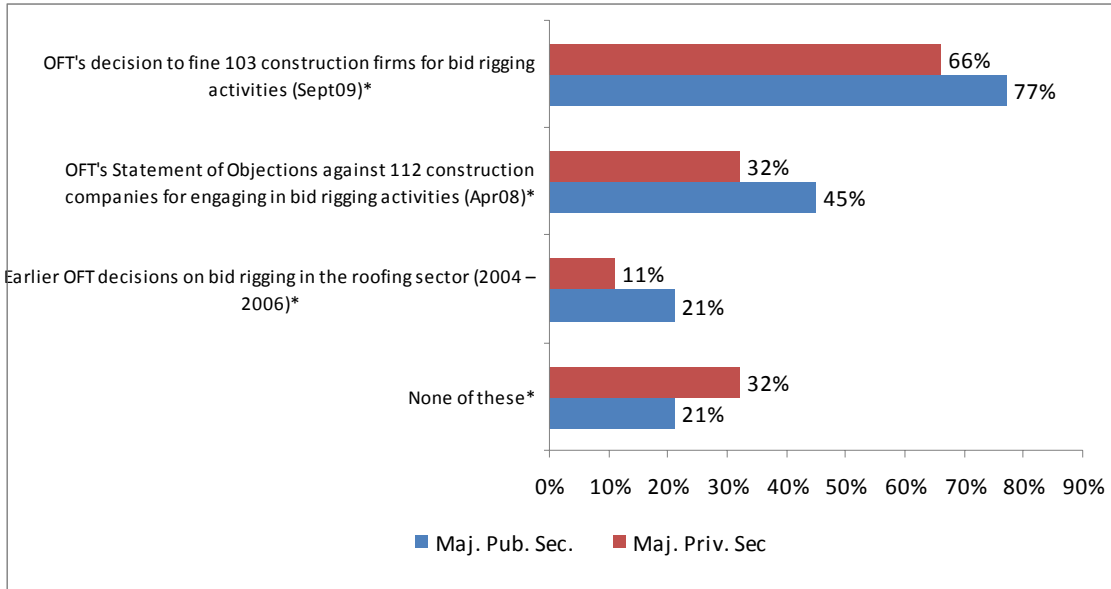
Figure B.27: The importance for procurers of the factors listed in the chart in choosing their most frequently used method of procuring construction work (procurers split by private/public)



Base: 252

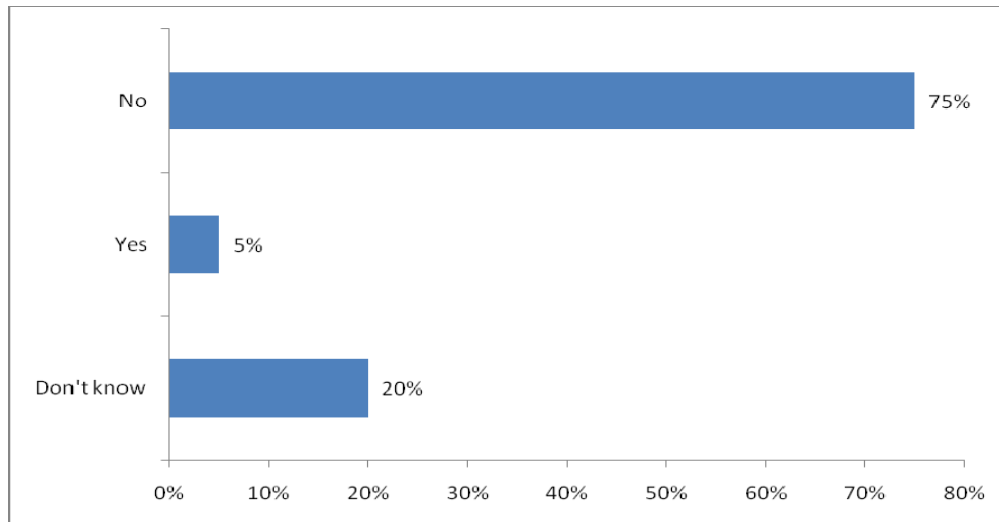
Source: GfK procurer survey 2010

Figure B.28: Percentage of contractors aware of any of the OFT actions listed in the chart (contractors split by private/public)



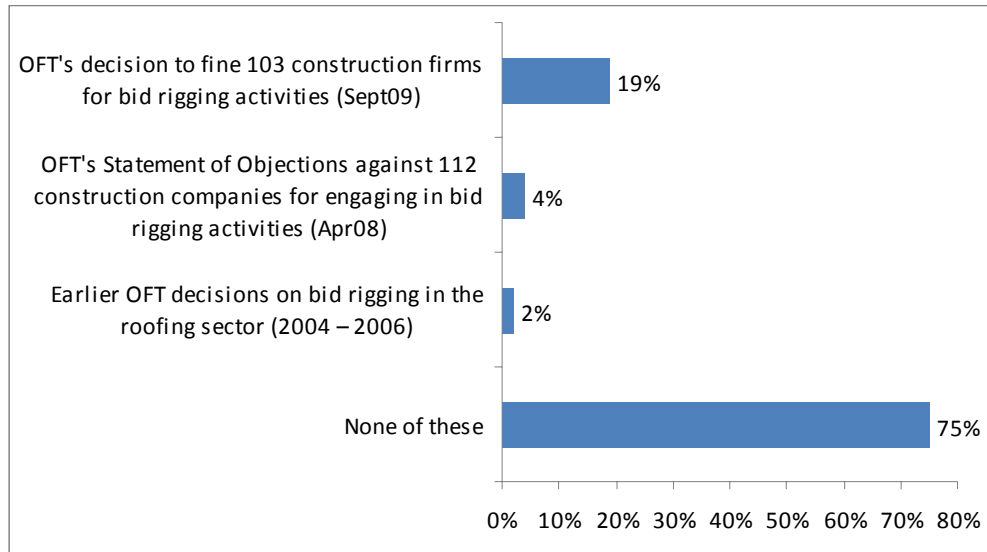
Base: 416, Source: GfK contractor survey 2010

Figure B.29: Percentage of contractors that have abandoned, decided not to engage or significantly modified arrangements, or proposed arrangements, with other firms because of the risk of infringing competition law



Base: 416, Source: GfK contractor survey 2010

Figure B.30: Percentage of contractors whose business behaviour has been impacted by the following OFT activities



Base: 416, Source: GfK contractor survey 2010

2010 Construction questionnaire

Europe Economics and GfK NOP have been commissioned by the Office of Fair Trading (OFT) to carry out independent research into the impact of the OFT's investigations into bid rigging in the construction sector.

As part of this research, a representative sample of firms and agencies that are involved in the procurement of construction goods and services are being asked to take part in this online questionnaire. Individual questionnaire answers will be treated in the strictest confidence by Europe Economics and GfK NOP.

Any information you provide, or views you express will not be attributable to you by name or firm. Only aggregated data and anonymised individual responses will be seen by the OFT. In due course a report will be prepared from this survey summarising grouped findings, which should be published later this year.

Information provided to the OFT may be used and/or disclosed in the performance of OFT's statutory functions and may also be subject to disclosure under the Freedom of Information Act 2000.

We very much appreciate your taking the time to complete this questionnaire. This should take about 15-20 minutes.

If you have any further queries with regard to this questionnaire please contact **Shahrazad Green** of Europe Economics (Shahrazad.green@europe-economics.com) or **Andrew McKay** of GfK NOP (andrew.mckay@gfk.com).

About you and your organisation

Question 0A

Your name _____

The name of your organisation _____

→ Go to (0B)

Question 0B

Which ONE of the following titles best describes your position in your organization?

Owner/Co-owner/Proprietor/Managing Director

- Director
- Manager
- Estimator
- Other _____

→ Go to (0C)

Question 0C

Where is your company based? Tick ONE box only.

- | | |
|---|--|
| <input type="checkbox"/> England: North East region | <input type="checkbox"/> England: North West region |
| <input type="checkbox"/> England: Yorkshire and Humberside region | <input type="checkbox"/> England: East Midlands region |
| <input type="checkbox"/> England: West Midlands region | <input type="checkbox"/> England: London region |
| <input type="checkbox"/> England: East Anglia region | <input type="checkbox"/> England: South East region |
| <input type="checkbox"/> England: South West region | <input type="checkbox"/> Northern Ireland |
| <input type="checkbox"/> Scotland | <input type="checkbox"/> Wales |

→ Go to (0D)

Question 0D

In which of the following regions of the UK did you conduct construction work over the last 12 months?

- | | |
|---|--|
| <input type="checkbox"/> England: North East region | <input type="checkbox"/> England: North West region |
| <input type="checkbox"/> England: Yorkshire and Humberside region | <input type="checkbox"/> England: East Midlands region |
| <input type="checkbox"/> England: West Midlands region | <input type="checkbox"/> England: London region |
| <input type="checkbox"/> England: East Anglia region | <input type="checkbox"/> England: South East region |
| <input type="checkbox"/> England: South West region | <input type="checkbox"/> Northern Ireland |
| <input type="checkbox"/> Scotland | <input type="checkbox"/> Wales |

→ Go to (1A)

Question1A

Over the last 12 months, have the majority of your contracts (by contract value) been with the public or private sector? Tick ONE box only.

Majority Public Sector

Majority Private Sector

Equal

Don't know

→ Go to (1B)

Question1B

Regardless of their share of your contracts, have you in the last 12 months, bid for contracts in? Tick ALL boxes that apply.

The Public Sector

The Private Sector

Don't know

→ Go to (1C)

Question1C

Over the last 12 months, have the majority of your awarded contracts (by contract value) been for...? Tick ONE box only.

Domestic buildings

Non-domestic buildings

Don't know

→ Go to (1D)

Question1D

Over the last 12 months, have the majority of your awarded contracts (by contract value) been for new work or repair and maintenance work? Tick ONE box only.

- Majority new work
- Majority repair and maintenance work
- Equal
- Don't know

→ Go to (2A)

BIDDING PRACTICES

We are interested in learning your views on certain bidding practices in the UK construction sector. Please note that your responses to the questions below do not have to be based on your own direct experience.

Question2A

How common do you think the following practices are today in the UK construction sector?

	<u>Never</u>	<u>Seldom</u>	<u>Common</u>	<u>Appears in most bids</u>	<u>Don't know</u>
Bidding low to win the contract, knowing that the contract may prove loss making	○	○	○	○	○

Bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing a high bid to avoid winning a contract after discussion with other bidders (cover pricing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Receiving compensation from other bidders for providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agreeing with others not to compete in particular regions or for specific customers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discussing a bid with the procuring agency prior to submission – e.g. clarifying requirement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (2B)

Question2B

Do you think the following practices are more or less common today compared to 2 years ago in the UK construction sector?

	<u>More common</u>	<u>The same</u>	<u>Less common</u>	<u>Don't know</u>
Bidding low to win the contract, knowing that the contract may prove loss making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Providing a high bid to avoid winning a contract after discussion with other bidders (cover pricing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Receiving compensation from other bidders for providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Agreeing with others not to compete in particular regions or for specific customers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discussing a bid with the procuring agency prior to submission – e.g. clarifying requirements.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (2C)

Question2C

Which, if any, of the following practices do you think could be regarded as illegal under UK Competition Law? Tick ALL boxes that apply.

- Bidding low to win the contract, knowing that the contract may prove loss making
- Bidding high to avoid winning a contract without discussion with other bidders
- Agreeing with other bidders to fix prices
- Providing a high bid to avoid winning a contract after discussion with other bidders (cover pricing)
- Agreeing with other bidders to sit out of a bid
- Agreeing with others not to compete in particular regions or for specific customers
- Discussing a bid with other bidders prior to submission
- Discussing a bid with the procuring agency prior to submission – e.g. clarifying requirements
- None of these
- Don't know

→ Go to (3A)

Before moving onto the next set of questions we would be grateful if you could please consider the following definition of bid rigging.

Bid rigging involves contractors agreeing amongst themselves to abstain from bidding or to fix the amount of the winning bid. This may include agreeing not to compete in particular regions or for specific customers.

Bid rigging activities may include cover pricing where a company that is not intending to win a contract submits a price for it after communicating with a competitor in the tender process. The cover price is not designed to win the contract but is intended to give the appearance of competition.

We would be grateful if you could keep this definition in mind when answering the following questions.

Question3A

What do you think is the MAIN reason why some firms might engage in cover pricing? Tick ONE box only.

- Revenue generation
- Cost reduction
- Client retention
- Competition limitation
- Business Management (i.e. managing the flow of work when resources limited)
- Business survival technique
- Other, please specify _____
- Don't know

→ Go to (3B)

Question3B

What sort of penalties are you aware of if a firm is found guilty of engaging in cover pricing? Tick ALL boxes that apply.

- Fines

- Criminal prosecution (possibility of jail sentences)
 - Firms banned from undertaking certain activities (e.g. bidding for work in the future)
 - Staff banned from undertaking certain activities (e.g. director disqualification)
 - Other, please specify _____
 - I think that there are no penalties
 - Don't know
- Go to (3C)

Question3C

What do you think is the MAIN reason why some firms might engage in bid rigging more generally? Tick ONE box only.

- Revenue generation
 - Cost reduction
 - Client retention
 - Competition limitation
 - Business Management (i.e. managing the flow of work when resources limited)
 - Business survival technique
 - Other, please specify _____
 - Don't know
- Go to (3D)

Question3D

What sort of penalties are you aware of if a firm is found guilty of engaging in bid rigging more generally? Tick ALL boxes that apply.

- Fines

- Criminal prosecution (possibility of jail sentences)
- Firms banned from undertaking certain activities (e.g. bidding for work in the future)
- Staff banned from undertaking certain activities (e.g. director disqualification)
- Other, please specify _____
- I think that there are no penalties
- Don't know

→ Go to (4A)

Question4A

Under UK competition law, firms may be fined if they are found guilty of engaging in bid rigging activities (including cover pricing). To the best of your knowledge, what is the MAXIMUM amount of fine applicable? Tick ONE box only.

- 1% of annual worldwide turnover
- 5% of annual worldwide turnover
- 10% of annual worldwide turnover
- Over 10% of annual worldwide turnover
- Don't know

→ Go to (4B)

Question4B

How important do you consider the following approaches are in deterring bid rigging in the construction industry at present?

Very

Not

Not at all

	<u>important</u>	<u>important</u>	<u>important</u>	<u>important</u>
		<u>Important</u>		
Fines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Criminal prosecutions (possibility of jail sentences)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Firm banned from undertaking certain activities (e.g. bidding for work in the future)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Staff banned from undertaking certain activities (e.g. director disqualification)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Negative publicity for firms caught	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Compensation claims/Private damages action	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Don't know	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
→ Go to (4C)				

Question4C

[Note to GfK: to be asked to all] Are there any other approaches which you would consider to be important in deterring bid rigging?

Yes, Please specify _____

No

→ Go to (4D)

Question4D

Are you aware of any arrangements that exist to encourage individuals or firms to provide information to the OFT on bid rigging activities in the construction sector? Tick ONE box only.

Yes, Please specify _____

No

→ Go to (5A)

Question5A

From which, if any, of the following sources have you become aware of activities such as bid rigging in the UK construction sector? Tick ALL boxes that apply.

- Own experience of being approached
- Other firms/individuals in the construction sector
- Media reports
- Trade and industry bodies/publications/events
- OFT publications on construction investigation / decision
- Other OFT publications
- Actions/publications by other government agencies
- Other, Please specify _____
- None. I am not aware of any bid rigging activities in the UK construction sector.
- Don't know

→ Go to (5Ba) If chose media. Otherwise go to (5C)

Question5Ba

Please can you indicate from which type of media report you became aware of these activities? Tick ALL boxes that apply.

- National television, radio, press coverage
- Local television, radio, press coverage
- Trade press coverage
- Online or email bulletin

→ Go to (5C)

Question5C

Do you think your company has ever been disadvantaged by the activities of your competitors where they have engaged in bid rigging, including cover pricing?

Yes

No

Don't know

→ *Go to (5D)*

Question5D

What, if any, benefits does your organisation see as a result of the enforcement of competition law? Please tick ALL that apply.

Benefits to customers

Confidence in the sector

Levelling the playing field

Lower prices for customers

Other, Please specify _____

None

Don't know

→ *Go to (6A)*

Impact of OFT activities.

We are interested in learning about your awareness of the Office of Fair Trading (OFT) and its work.

Question6A

Are you aware of any of the following OFT actions in the construction sector? Tick ALL boxes that apply.

- OFT's decision to fine 103 construction firms for bid rigging activities (Sept09)
- OFT's Statement of Objections against 112 construction companies for engaging in bid rigging activities (Apr08)
- Earlier OFT decisions on bid rigging in the roofing sector (2004 – 2006)
- None of these

→ Skip 6B, 6Ba, 6C & 6D, if choose "None...", otherwise go to (6B)

Question6Ba

Please could you indicate from which type of media report you became aware of these activities? Tick ALL boxes that apply.

- National television, radio, press coverage
- Local television, radio, press coverage
- Trade press coverage
- Online or email bulletin

→ Go to (6C)

Question6C

Have these cases led you to do any of the following in the last 2 years? Please tick ALL that apply. Please be reassured that all responses will be treated in strict confidence.

- Increase competition law compliance activities (e.g. introduced training or a code of conduct related to competition law, sought legal advice, etc.)
- Break off from or modify existing agreements with other firms

- Become reluctant to collaborate with other firms (e.g. consortia and joint ventures)
- Restrict information sharing between firms
- Restrict information sharing with industry bodies
- Seek advice from trade association
- Other, Explain _____
- Made no change to my business practices
- Don't know

→ Go to (6D)

Question6D

Which of the following OFT actions has had the most impact on your business behaviour? Tick ONE box only.

- OFT's decision to fine 103 construction firms for bid rigging activities (Sept09)
- OFT's Statement of Objections against 112 construction companies for engaging in bid rigging activities (Apr08)
- Earlier OFT decisions on bid rigging in the roofing sector (2004 – 2006)
- None of these

→ Go to (7A)

Question7A

Are you or your company aware of any recently created competition law Codes of Conduct within the construction industry such as the UK Contractors Group and the National Federation of Builders Competition law code? Please tick ONE box only.

- Yes
- No
- Don't know

→ Go to (7B)

Question7B

Are you or your company a member of either of these bodies (i.e. the National Federation of Builders or the UK Contractors Group)? Tick ONE box only.

Yes

No

→ Go to (7C)

Question7C

Over the last 2 years, has your company abandoned, decided not to engage in or significantly modified arrangements, or proposed arrangements, with other firms because of the risk of infringing competition law? Please be reassured that all responses will be treated in strict confidence,

Yes, please specify the number of arrangements.

No

Don't know

→ Go to (7D)

We are interested in learning if you or any of your firm's staff have undertaken any training with regard to competition law or compliance procedures.

Question7D

Have you or your firm been involved in any training programmes with regard to competition law in the last 2 years?

Yes.

No

Don't know

→ Go to (8A)

Question 8A

Over the last 2 years have you or your organisation taken any of the actions listed below?

	<u>Yes</u>	<u>No</u>	<u>Don't know</u>
Run seminars on Competition law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Had a policy manual / code of conduct relating to Competition law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Required employees to take internal or external training programme	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Employed a dedicated competition compliance officer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Taken external legal advice on competition law matters	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Taken external economic advice on competition law matters	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (8B)

Question 8B

Does your company have any internal mechanisms in place to make sure that your organisation ensures compliance with Competition law across the supply-chains and with sub-contractors?

- Yes.
- No
- Don't know

→ Go to (8Ba) if answered 'yes' otherwise go to (8C)

Question8B a [Note to GfK: where respondent answered yes in the previous question]

Please could you specify what these internal mechanisms are?

→ Go to 8C

Question8C

Over your last financial year, please could you estimate your company's total budget (i.e. both internal and external spend) for complying with Competition law? Please tick ONE box only where the exact amount is not known.

£0.

Enter estimate of budget (if known) _____

Don't know

→ Go to (8Ca) if answered 'Don't know' otherwise go to (8D))

Question8C a [Note to GfK: Ask if the respondent indicates 'don' know]

If you do not know the exact budget, please could you indicate the approximate budget by selecting one of the following options. Please tick One box only.

Up to £4,999

Between £5,000 and £9,999

Between £10,000 and £19,999

Above £20,000

→ Go to (8D)

Question8D

Over your last financial year, please could you estimate your company's total budget for members of staff dedicated to ensuring compliance with Competition law (i.e. your budget for internal staff members and internal staff training)? Please tick ONE box only where the exact amount is not known.

- £0.
- Enter estimate of budget (if known) _____
- Don't know

→ Go to (8Da) if answered 'Don't know' otherwise go to (9A)

Question8D a [Note to GfK: Ask if the respondent indicates 'don' know]

If you do not know the exact budget, please could you indicate the approximate budget by selecting one of the following options. Please tick One box only.

- Up to £4,999
- Between £5,000 and £9,999
- Between £10,000 and £19,999
- Above £20,000

→ Go to (9A)

Question9A

For each of the following please say how strongly you agree or disagree with the following statements?

	<u>Strongly</u> <u>Agree</u>		<u>Disagree</u>	<u>Strongly</u> <u>disagree</u>	<u>Don't</u> <u>know</u>
		<u>Agree</u>			
The UK competition regime is effective in	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

detering competition law infringements.

Bid rigging, including cover pricing is a serious breach of Competition Law attracting serious penalties

The risk of OFT action for breaching competition law is a significant factor motivating my company to comply with competition law.

Our business sees the enforcement of competition law as something that helps our business by deterring bad practices across our sector.

→ Go to (9B)

Question9B

*Please could you indicate whether you or your company have been involved at all with the OFT in any way?
Please tick the boxes that apply.*

- Were involved in the recent OFT investigation
- Have been investigated by the OFT in earlier investigations
- Have been involved directly with the OFT in other ways (please specify)_____
- Have never been involved with the OFT

→ Go to (10A)

Demographics

Question 10A

How many years has your company been in the construction business? Tick ONE box only.

- up to 1 year
- Over 1 year and up to 3 years
- Over 3 years and up to 5 years
- Over 5 years and up to 10 years
- Over 10 years
- Don't know

→ *Go to (10B)*

Question 10B

How many employees work in your firm? Tick ONE box only.

- None
- 1-9
- 10-24
- 25-49
- 50-249
- 250+

→ *Go to (10C)*

Question 10C

Please give an estimate of your annual revenues (i.e. gross turnover in the last accounting year). Tick ONE box only.

- Less than £2,000,000
- £2,000,001-£10,000,000
- £10,000,001-£50,000,000
- More than £50,000,000
- Don't know
- Prefer not to say

→ Go to (10D)

Question 10D

Through which means have you won the majority of your contracts over the last 12 months? Tick ONE box only.

- Competitive tendering
- Collaboration and/or partnership with the client
- Other collaboration: Private finance initiative (PFI)
- Other collaboration: Public Private Partnerships (PPP)
- Other, please specify _____

Don't know

→ Go to (10E)

Question 10E

Over the last 12 months, which tendering process (on contracts applied for) was most commonly used by the procuring agency / agencies? Tick ONE box only

- Open tendering
- Framework contracts
- Two stage tendering
- Other, please specify
- Don't know

2010 Construction sector buyer questionnaire

Europe Economics and GfK NOP have been commissioned by the Office of Fair Trading (OFT) to carry out independent research into the impact of the OFT's investigations into bid rigging in the construction sector.

As part of this research, a representative sample of firms and agencies that are involved in the procurement of construction goods and services are being asked to take part in this online questionnaire. Individual questionnaire answers will be treated in the strictest confidence by Europe Economics and GfK NOP.

Any information you provide, or views you express will not be attributable to you by name or firm. Only aggregated data and anonymised individual responses will be seen by the OFT. In due course a report will be prepared from this survey summarising grouped findings, which should be published later this year.

Information provided to the OFT may be used and/or disclosed in the performance of OFT's statutory functions and may also be subject to disclosure under the Freedom of Information Act 2000.

We very much appreciate your taking the time to complete this questionnaire. This should take about 15-20 minutes.

If you have any further queries with regard to this questionnaire please contact **Shahrazad Green** of Europe Economics (Shahrazad.green@europe-economics.com) or **Andrew McKay** of GfK NOP (andrew.mckay@gfk.com).

About you and your organisation

Question 0A

Your name _____

→ Go to (0B)

Question 0B

The name of your organisation _____

→ Go to (0C)

Question 0C

Is yours a public sector or a private sector organisation?

Public sector Private sector Other, please specify _____

Question 0C (a)

In which part of the public sector would you categorise your organisation as being?

Central government

Regional/Local government

Health

Education

Other, please specify _____

→ Go to (1A)

Question (0Cb)

In which part of the private sector would you categorise your organisation as being?

Housing

Infrastructure

Mining and Quarrying

Manufacturing

Health

Education

Professional, Scientific and Technical

Administrative and support

Entertainment

Garages

Retail

Agriculture

Other, please specify _____

→ Go to (1A)

Question1A

Where are the headquarters of your organisation based?

- | | |
|---|--|
| <input type="checkbox"/> England: North East region | <input type="checkbox"/> England: North West region |
| <input type="checkbox"/> England: Yorkshire and Humberside region | <input type="checkbox"/> England: East Midlands region |
| <input type="checkbox"/> England: West Midlands region | <input type="checkbox"/> England: London region |
| <input type="checkbox"/> England: East Anglia region | <input type="checkbox"/> England: South East region |
| <input type="checkbox"/> England: South West region | <input type="checkbox"/> Northern Ireland |
| <input type="checkbox"/> Scotland | <input type="checkbox"/> Wales |
| <input type="checkbox"/> Other please, specify _____ | |

→ *Go to (1B)*

Question1B

For how many years has your organisation been procuring construction goods and services?

- Up to 2 years
- Over 2 years and up to 5 years
- Over 5 years and up to 10 years
- Over 10 years
- Don't know

→ *Go to (1C)*

Question1C

Approximately how many employees work in your organisation within the UK?

1-9

10-24

25-49

50-249

250+

→ Go to (1D)

Question1D

Do you have a specialised procurement section or sections that undertake procurement of construction goods and services on behalf of the organisation as a whole?

Yes

No

Don't know

→ If Yes Go to (2A)

→ If no – Go to 2B)

Question2A

If you have a specialised section, collectively, what sort of skills and experience does the section contain? Please tick all that apply.

Administrative and staff management skills

Contract management skills

Legal training in relation to contract law

Legal training in relation to competition law

Financial or accountancy skills

IT and computing skills

Specialised training in purchasing

Don't know

None of the skills listed

Other, please specify _____

→ Go to (2C)

Question2B

In the absence of a specialised section(s), which of the following best describes the arrangements that exist for the procurement of construction goods and services within your organisation?

- Procurement is devolved to departments or teams, who enjoy complete autonomy over methods
- Procurement is devolved to individual members of staff, who enjoy complete autonomy over methods
- Procurement is devolved to departments or teams, but they undertake the procurement under organisational guidelines and controls
- Procurement is devolved to individual members of staff, but they undertake the procurement under organisational guidelines and controls

→ Go to (2C)

Question2C

Please give an estimate of the value of your annual procurement budget for construction goods and services in the UK

- Less than £50,000
- Between £50,001 and £250,000
- Between £250,001 and £1,000,000
- Between £1,000,001 and £5,000,000
- Between £5,000,001 and £10,000,000
- More than £10,000,000
- Not willing to answer
- Don't know

→ Go to (2D)

About the market and you

Question2D

In the last 12 months, has the majority of your awarded contracts (by contract value) been for new construction work or for repair and maintenance work?

New construction

Existing construction - for repair and maintenance

→ Go to (3A)

Question 3A: *In the last 12 months, have you used any of the following methods of procuring construction work?*

Competitive tendering – full tendering process

Competitive tendering - through framework agreement

Collaboration or partnership with contractor

Other collaboration: Private finance initiative

Other collaboration: Public Private Partnership (PPP)

Other, please specify _____

Don't know

→ Go to (3B)

Question 3B

In the last 12 months, what was your most commonly used method of procuring construction work?

Competitive tendering – full tendering process

Competitive tendering - through framework contract

Collaboration or partnership with contractor

Other collaboration: Private finance initiative

Other collaboration: Public Private Partnership (PPP)

Other, please specify _____

Don't know

→ Go to (3C)

Question3C

Taking into account your answer to the previous question, how important are the following reasons for choosing your most frequently used method of procuring construction work?

	<u>Important</u>	<u>Not important</u>	<u>Don't know</u>
Low internal / staff resources needed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Easy to administer	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Quick to conduct	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitating project management / minimising potential disputes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attracting more bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attracting high quality bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Facilitating low price	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Required by law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Industry convention / common practice	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (3D)

Question3D

When procuring construction goods and services, how challenging is each of the following?

	<u>Not a challenge</u>	<u>Some challenge</u>	<u>Significant challenge</u>	<u>Don't know</u>
Attracting a sufficient number of bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Attracting sufficient high quality bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Evaluating the different bids	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Ensuring value for money	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (4A)

We are interested in learning your views on certain practices in the UK construction sector

Question4A

How often do you think the following practices occur today in the UK construction sector?

	<u>Never</u>	<u>Seldom</u>	<u>Common</u>	<u>Appears in most bids</u>	<u>Don't know</u>
Contractors agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding low to win the contract, knowing that the contract may prove loss making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors providing a high bid to avoid winning a contract after discussion with other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

bidders (cover bidding)

Contractors agreeing to receive compensation from other bidders as condition of providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with others not to compete in particular regions or for specific customers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with the procuring agency prior to submission – e.g. clarifying requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (4B)

Question4B

Do you think the following practices are more or less common today compared to 2 years ago in the UK construction sector?

	<u>More common</u>	<u>About the same</u>	<u>Less common</u>	<u>Don't know</u>
Contractors agreeing with other bidders to fix prices	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding low to win the contract, knowing that the contract may prove loss making	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors bidding high to avoid winning a contract without discussion with other bidders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Contractors providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing to receive compensation from other bidders as condition of providing a cover bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with other bidders to sit out of a bid	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors agreeing with others not to compete in particular regions or for specific customers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with other bidders prior to submission	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contractors discussing a bid with the procuring agency prior to submission – e.g. clarifying requirements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (4C)

Question4C

*Which, if any, of the following practices do you think could be regarded as illegal under UK Competition Law?
Tick ALL boxes that apply.*

- Bidding low to win the contract, knowing that it may prove loss making
- Bidding high to avoid winning a contract without discussion with other bidders
- Agreeing with other bidders to fix prices
- Providing a high bid to avoid winning a contract after discussion with other bidders (cover pricing)
- Receiving compensation from other bidders for providing a cover bid
- Agreeing with other bidders to sit out of a bid
- Agreeing with others not to compete in particular regions or for specific customers
- Agreeing with others not to compete in particular regions or for specific customers
- Discussing a bid with other bidders prior to submission
- Discussing a bid with the procuring agency prior to submission – e.g. clarifying requirements
- None of these

→ Go to (5A)

We are interested in learning your views on activities such as bid rigging. Bid rigging involves contractors agreeing amongst themselves to abstain from bidding or to fix the amount of the winning bid. Bid rigging activities may include cover pricing, where a company that is not intending to win a contract submits a price for it after communicating with competitors in the tender process. The cover price is not intended to win the contract but to give the appearance of competition.

Question5A

If a firm had been found guilty of activities such as bid rigging in the past, would you exclude them from participating in your procurement projects (blacklisting)?

- Yes, the firm would be excluded
- No, the firm would not be excluded
- Don't know, it would depend on the specific circumstances

→ Skip questions 5A(a), 5A (B) if answered, "No, the firm would not be excluded", otherwise go to 5A(a)

Question 5A (a)

Would that decision to exclude the firm from future procurement projects due to bid rigging be made on the specific circumstances of the case?

- Yes, we consider each case individually
- No, the firm would be excluded automatically

→ Go to 5A (b)

Question 5A (b)

If excluded, for how long would the firm be excluded from your procurements?

- Up to 1 year
- More than 1 year and up to 3 years
- More than 3 years and up to 5 years
- More than 5 years, including permanent exclusion
- Don't know

→ Go to (5B))

Question 5B

Have you excluded any construction firms from your procurement projects in the last two years?

- Yes
- No

→ Go to (5C)

We are interested to learn how your procurement procedures operate to prevent and detect activities such as bid rigging.

Question 5C

What sorts of mechanisms do you have in place to detect and prevent activities such as bid rigging? Please tick all that apply.

- Anti-collusion clauses in contracts
- Making bidders declare they are not colluding in tender application forms
- Providing incentives for whistleblowers
- Post bid evaluation of tenders for irregular behaviour
- Information requirements when tendering
- Choice of procurement method e.g. closed bids
- None of these
- Don't know
- Other, please specify:

Question5C (a)

What incentive or incentives does your organisation provide for whistleblowers to prevent and detect bid rigging?

→ Go to 5C (b)

Question 5C (b)

What particular procurement method do you choose to prevent and detect bid rigging practices?

→ Go to (5D)

Question 5D

Which of the mechanisms that you selected in question 5C have been implemented over the last 2 years? Tick all that apply

- Anti-collusion clauses in contracts
- Making bidders declare they are not colluding in tender application forms
- Providing incentives for whistleblowers
- Post bid evaluation of tenders for irregular behaviour
- Information requirements when tendering
- Choice of procurement method e.g. closed bids
- None
- Don't know
- Other, please specify

→ Go to (6A)

Question 6A

How do you treat construction companies which have failed to provide bids for other construction projects?

- We still invite companies to tender even if they have failed to provide bids for other construction projects
- We do not invite companies to tender if they have failed to provide bids for other construction projects

Not applicable or circumstances have not arisen

Don't know

→ Go to (6B)

Question 6B

Have you discussed the issue of cartels and other competition issues with any of the following groups? Please tick all that apply.

Contractors

Trade and Industry Associations

The Office of Fair Trading

Other procurers in the public sector

Other procurers in the private sector

No, not discussed with anyone

Legal / compliance advisors, please specify _____

Other government agencies, please specify _____

→ Go to (7A)

We are interested in learning about your awareness of OFT activities

Question 7A

Are you aware of any of the following OFT actions in the construction sector? Please tick all that apply.

OFT's decision to fine 103 construction firms for bid rigging activities (Sept09)

OFT's Statement of Objections against 112 construction companies for engaging in bid rigging activities (Apr08)

Earlier OFT decisions on bid rigging in the roofing sector (2004-2006)

None of these

→ Go to (7B)

Question 7B

From which sources have you learnt about OFT activities? Please tick all that apply.

- OFT publications on construction investigation / decision
- Other OFT publications
- Own experience
- Other procurers
- Media reports
- Professional bodies publications or events – e.g. CIPS Supply Management
- Trade and industry bodies, publications or events
- Actions or publications from other government agencies
- Don't know
- Other, please specify _____
- None, I'm not aware of OFT activity

→ Go to (7C)

Question 7C

Have the OFT activities / cases listed in question 7A above caused you to revise your understanding of whether the activities listed below are illegal? Please tick all boxes that apply.

- Agreeing with other bidders to fix prices
- Bidding low to win the contract, knowing that the contract may prove loss making
- Bidding high to avoid winning a contract without discussion with other bidders
- Providing a high bid to avoid winning a contract after discussion with other bidders (cover bidding)
- Agreeing to receive compensation from other bidders as condition of providing a cover bid
- Agreeing with other bidders to sit out of a bid

- Contractors agreeing with others not to compete in particular regions or for specific customers
- Discussing a bid with other bidders prior to submission
- Discussing a bid with the procuring agency prior to submission
- No revision of understanding for any of these

→ Go to (7D)

Question 7D

As a result of OFT activity (or otherwise) have you changed your procurement procedures in any of the following ways over the last 2 years? Please tick all boxes that apply.

- Added anti-collusion clauses in contracts
- Made bidders declare they are not colluding in tender application forms
- Introduced more information requirements
- Sought advice on how to combat bid rigging
- Banned certain contractors from bidding
- Begun your own investigations into bid rigging
- Indicated to firms that they will not be de-listed if they do not submit a bid
- No change
- Adopted another procurement method, please specify _____
- Other, please explain _____

→ Go to (8A)

Question 8A

Are you aware of any guidance on reducing anti-competitive behaviour from the following sources? Please tick all boxes that apply.

- OFT/Office of Government Commerce (OGC) reports such as 'Making competition work for you'

- Other OFT publications / events
- Other OGC publications / events
- OECD (e.g. 'Guidelines for fighting bid rigging in public procurement')
- European Union guidelines
- CIPS guidelines
- Other, please specify
- Not aware of any guidance material

→ Go to (8B)

Question 8B

Has your organisation ever used external advisors to assist you in detecting or preventing bid rigging?

- Yes
- No
- Don't know

→ Go to (8C)

We are interested in your views on the impact of fines, penalties and whistle blowing on cartel activity in the UK construction sector

Question 8C

Do you think that fines or penalties have changed contractor behaviour in any of the following ways in the UK construction sector in the last 2 years? Please tick all that apply.

- Restricts cartel activity
- Restricts collaboration between firms

No impact

Don't know

Other, please
specify _____

→ Go to (8D)

Question 8D

For each of the following potential approaches please say how effective you think they would be in deterring illegal activities such as bid rigging in the UK construction sector?

	<u>Highly effective</u>	<u>Effective</u>	<u>Ineffective</u>	<u>Highly ineffective</u>	<u>Don't know</u>
Higher fines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Criminal prosecution of individuals	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater use of director disqualification	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More effective advertising and education about bid rigging for procurers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Better training for procurement staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Publish more guidelines for procurers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More OFT liaison	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased incentives to report cartels	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater clarity in the law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Encourage private damages actions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

→ Go to (9A)

Question 9A

Have you any ideas for other potential remedies that you think might be effective in deterring illegal activities such as bid rigging in the UK construction sector?