

COMPETITION MATTERS

Fostering Fair Competition in the Marketplace



Spring 2015

Case Study: Bid-Rigging on School Milk Contracts

One of the best ways to detect and deter future bid-rigging is to learn from past schemes that have been uncovered and halted. *Competition Matters* will periodically feature case studies from some of the Ohio Attorney General's prior antitrust enforcement efforts regarding public contracts. In this edition, we highlight Ohio's school milk antitrust litigation.

In 1993, executives of two dairies confessed to rigging bids with their competitors on contracts for the sale of milk to public schools in southwestern Ohio. The conspiracy they described was based upon incumbency. The conspirators agreed not to compete with the prior year's winner of any given school district account – the incumbent – for that district's business. Not only did the conspiring dairies agree not to compete with the incumbent on these accounts, but they also submitted intentionally high, losing bids (often called "complementary bids") as needed to ensure that the predetermined winner would actually win.

As a result of these confessions, the State of Ohio filed suit on behalf of 451 public school districts against 13 dairies, alleging a conspiracy that suppressed competition and raised milk prices to districts in the southwest, southeast and northeast regions of the state. Although the case settled before trial, it provides an excellent example of a market susceptible to vendor collusion. Specifically, the school milk market was especially vulnerable to bid-rigging because:

- Milk is homogeneous – the product sold by one vendor is essentially identical to the product sold by another vendor. Conspirators can be sure that they can determine the winner simply by agreeing on who will bid how much;
- The group of dairies available to bid on these contracts was very stable. There were rarely, if ever, new dairies entering the market to disrupt the conspiracy; and
- Executives of the competing dairies socialized with each other frequently. While there is nothing inherently wrong with competitors being friendly, repeated social interactions provide opportunities to orchestrate bid-rigging schemes.

Be especially vigilant in watching for signs of vendor collusion when purchasing goods or services when these factors are present. Vigilance can lead to early detection and reporting of anticompetitive schemes, and may result in significant recoveries of overcharges for public entities targeted by unscrupulous vendors.

The Informed Purchaser – Incumbency

Occasionally, you may encounter terms or concepts unique to antitrust issues, competition, and schemes to exploit purchasers. In this installment of *The Informed Purchaser*, let's talk about incumbency.

Most people are familiar with the term incumbent in relation to an elected office holder; it is a similar concept with vendors. An incumbent vendor is the current contract or award winner. Incumbent vendors have many advantages in the bidding process.

- They have an existing relationship with the purchaser, and changing vendors can be complicated.
- They are familiar with the purchaser's need for a product or service, which gives an advantage during the bidding process.
- They can accurately estimate their costs, and therefore bid pricing.

However, incumbency can sometimes have a negative effect; it can lead to vendor complacency. Moreover, an excessively high incumbency rate may be a warning sign of an agreement among vendors not to take business away from each other.

Official Website for Digital Public Notices in Ohio has Changed

On March 14, 2015, PublicNoticesOhio.com became the "official" website for government entities posting digital notices in Ohio, and newspapers are now required to upload to the website. Public Notices Ohio is a service of the Ohio Newspaper Association (ONA). The State will no longer operate its notice website (formerly publicnoticeohio.gov). Abbreviated notices must be posted pursuant to [Ohio Revised Code 7.16](#). The law keeps the site free to the general public, where the user can find statewide notices about hearings, advertisements for bids, financial reports, adoption of ordinances, and other government activities legally requiring public notices. For more information, please visit [ONA's website](#) or contact [Jason Sanford](#), ONA's manager of communications and content.

We're Looking for Partners to Keep Competition Healthy!

Ohio Attorney General Mike DeWine's Partnership for Competitive Purchasing takes a proactive approach to bid-rigging detection. Our attorneys and investigators regularly work on issues related to anti-competitive activities, giving them the expertise to help you spot bid-rigging and price-fixing. The Partnership offers reviews to analyze bid files for anti-competitive activities and answer your questions or concerns. This is not an audit, but a helpful on-site review to keep competition fair and healthy.

The partnership is a voluntary program open to all Ohio public entities — from cities to villages, from universities to state agencies, from public libraries to school districts. Registration for the partnership is free and easy. Just visit the [Partnership for Competitive Purchasing](#) page and select “[Enroll in the Partnership for Competitive Purchasing](#),” or call us at (614) 466-4328.

We Welcome Your Questions, Speaker Requests

We encourage you to suggest a topic or ask a question of the legal staff of the Ohio Attorney General’s Antitrust Section. Questions will be addressed in future issues of *Competition Matters*. (No individuals’ or organizations’ names will be published.) Please submit your questions or suggested topics to Karen Pierson at Karen.Pierson@OhioAttorneyGeneral.gov.

If you have an upcoming conference or association meeting and would like a speaker from our office to talk about the Partnership for Competitive Purchasing, bid-rigging detection, or other antitrust issues, contact Karen Pierson at 614-728-2493 or Karen.Pierson@OhioAttorneyGeneral.gov.

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