FACULTY OF LAW
Comenius University
Bratislava

Carrying the Torch Alone: A Bright Flame, But Still Too Many Shadows:

The Story of the Slovak NCA's Success in the Anti-Bid-Rigging Fight

Ondrej BLAŽO

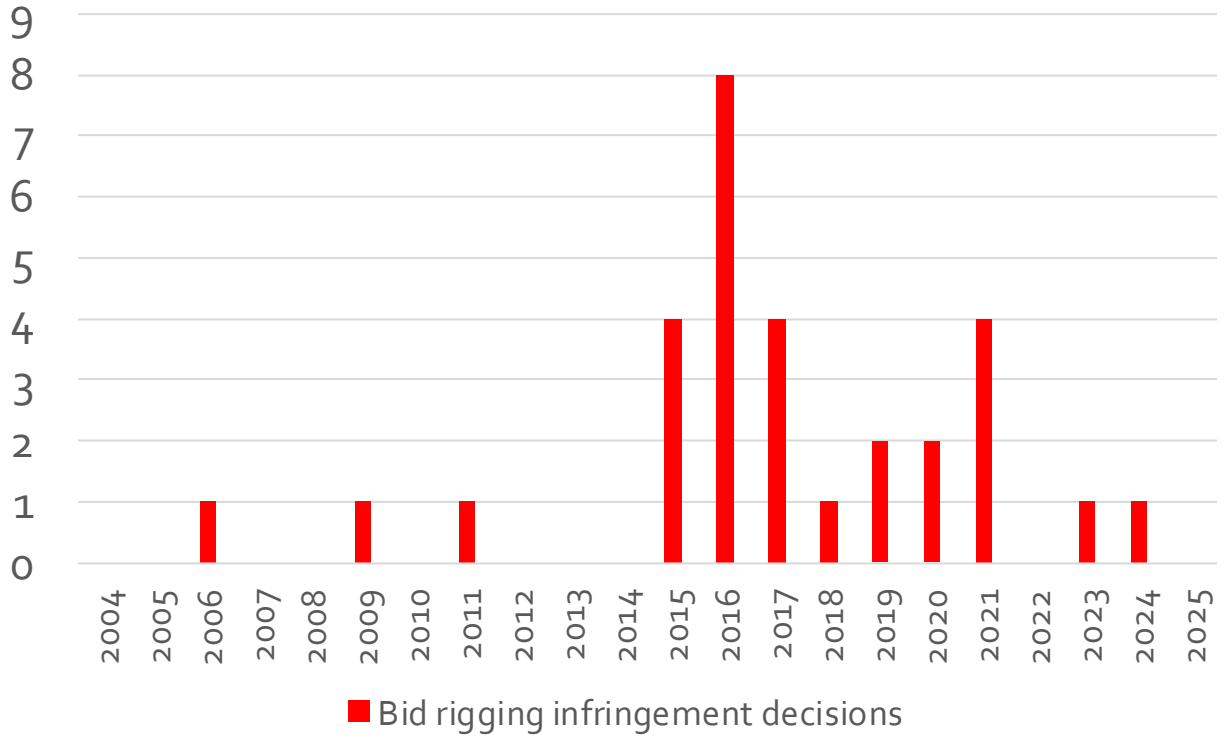
A Bright Flame ....

Highway construction cartel

- Flagship bid rigging case
- Transnational corporations involved in case
- Evidence based on indexes between the economic operators‘ tenders

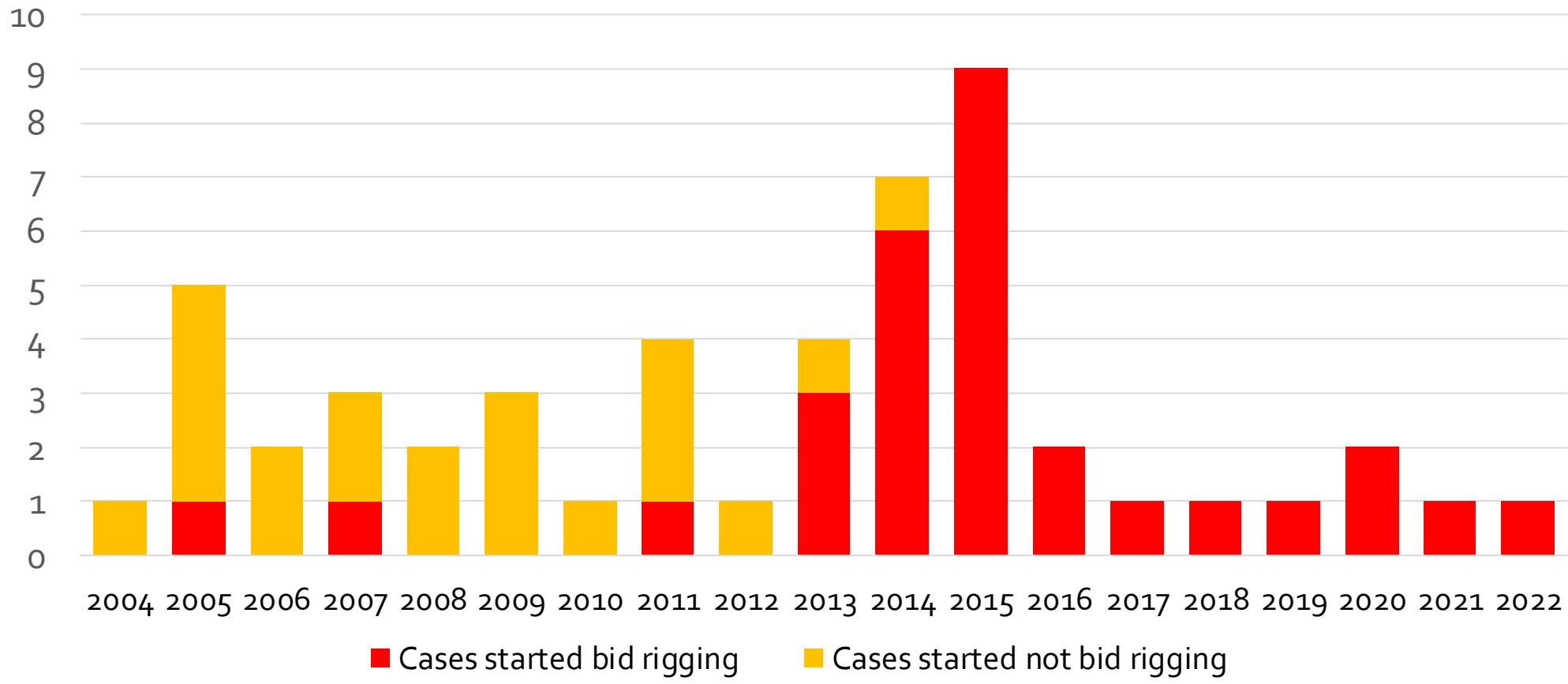
From 2010s

- Published methodology
- Educational activities
- Cooperation with audit agencies

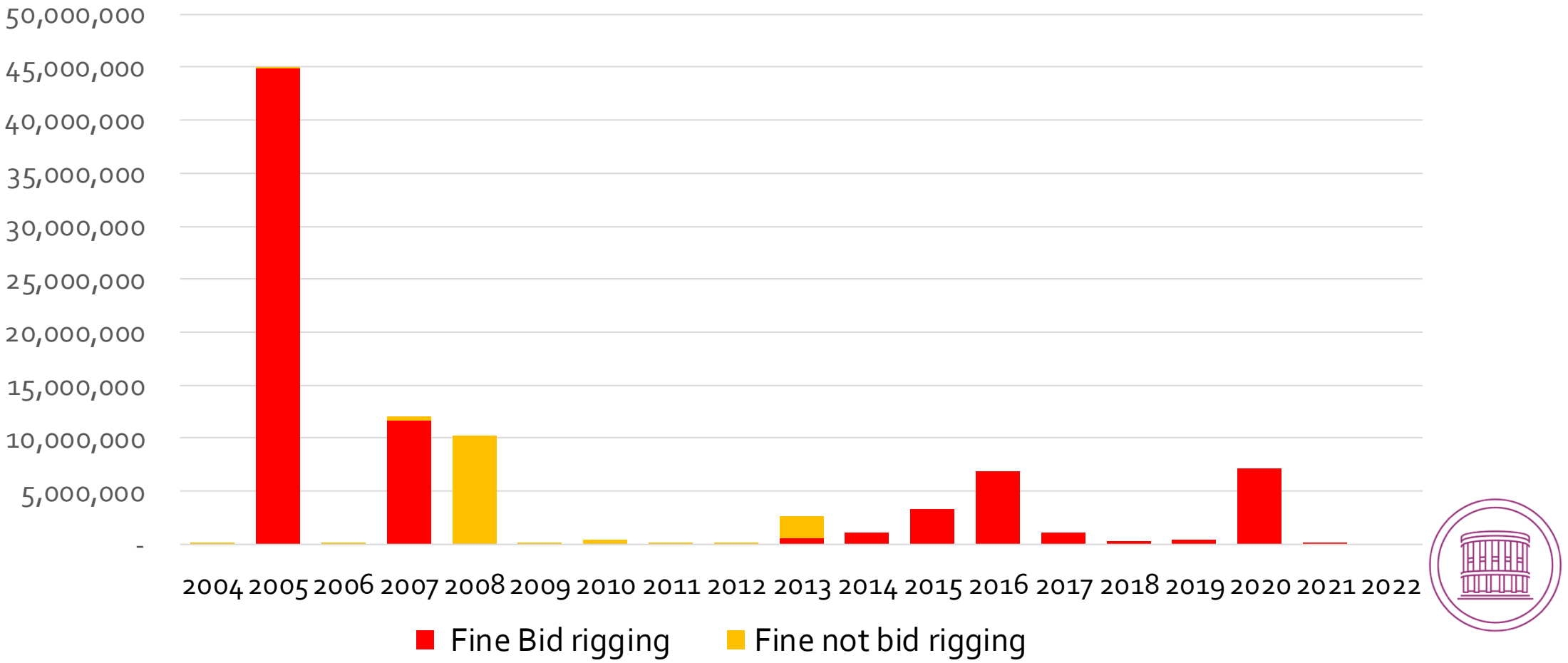


…But Still Too Many Shadows

Number of cases started

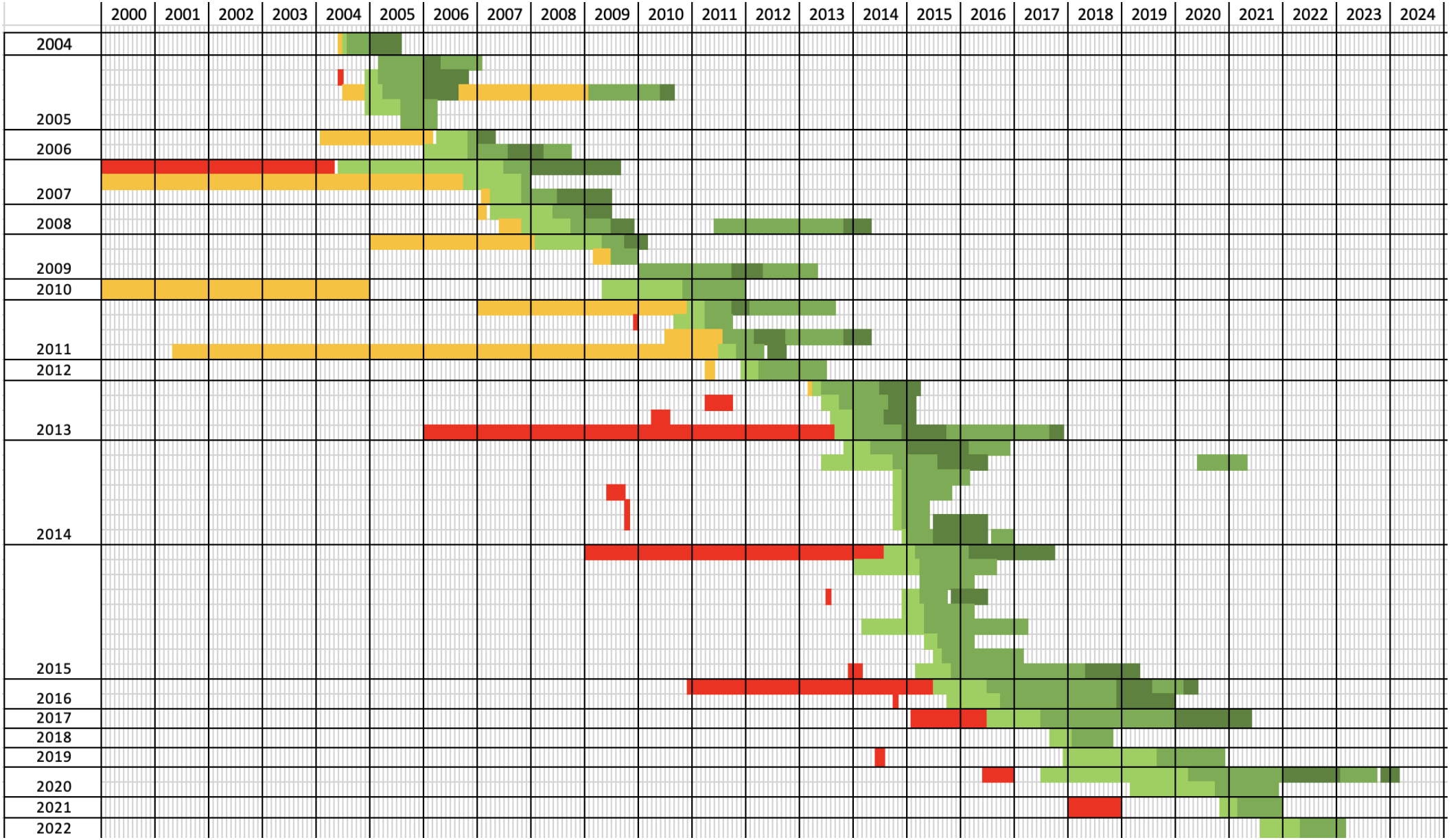


Fines related to launched proceeding



Protection of competition and trade-offs

- Protection of national economy
  - Socially and ecologically oriented market economy
  - Constitutional basis for protection of competition
- Protection individual "micro-competitions"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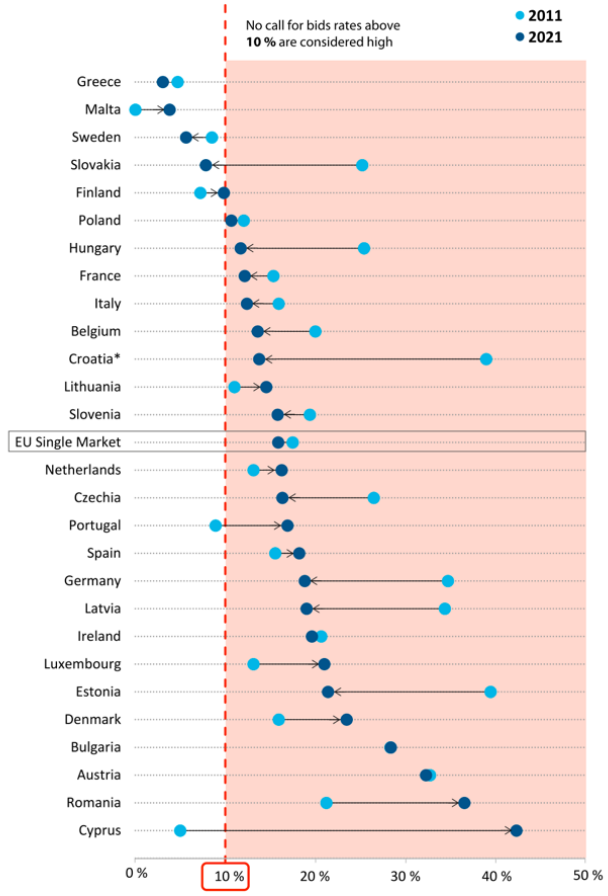
Prioritization policy

- By 2025
  - Prioritization criteria
    - Very serious infringements: … bid rigging…
  - Short-term priorities: …bid rigging…
- Prioritization policy 2025-2029
  - Impact-based evaluation
  - No reference to bid rigging

Carrying the Torch Alone…

European Court of Auditors report 2025

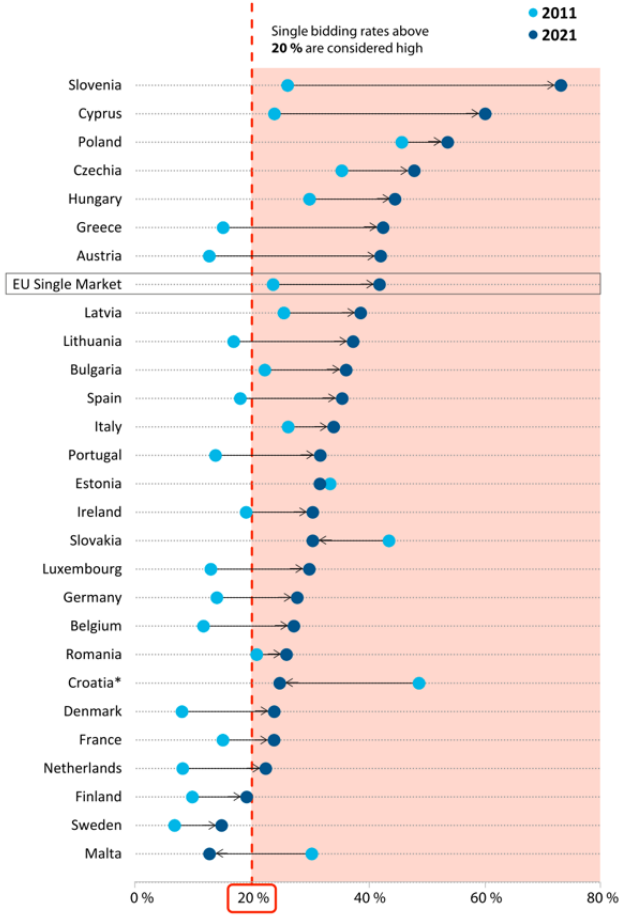
Figure 3 – No call for bids – share by member state (2011 and 2021)



* Data is available for Croatia as of the time of its accession in 2013.

Source: ECA Dashboard's "Tendering Practices" tab.

Figure 6 – Single bidding – share by member state (2011 and 2021)



* Data is available for Croatia as of the time of its accession in 2013.

Source: ECA Dashboard's "Competition indicators" tab.

Public procurement directive

- Article 18
  - The design of the procurement **shall not be made with the intention** of excluding it from the scope of this Directive or **of artificially narrowing competition**. Competition shall be considered to be artificially narrowed where the design of the procurement is made with the intention of unduly favouring or disadvantaging certain economic operators.

Public procurement directive

- Article 57 PPD
  - (1) Contracting authorities **shall exclude** an economic operator….
  - (4) Contracting authorities **may exclude** or **may be required** by Member States to exclude
    - (d) where the contracting authority has sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition;
  - (5) At any time during the procedure, contracting **authorities may exclude** or **may be required** by Member States to exclude an economic operator where it turns out that the economic operator is, in view of acts committed or omitted either before or during the procedure, in one of the situations referred to in paragraph 4

Competition principle in public procurement

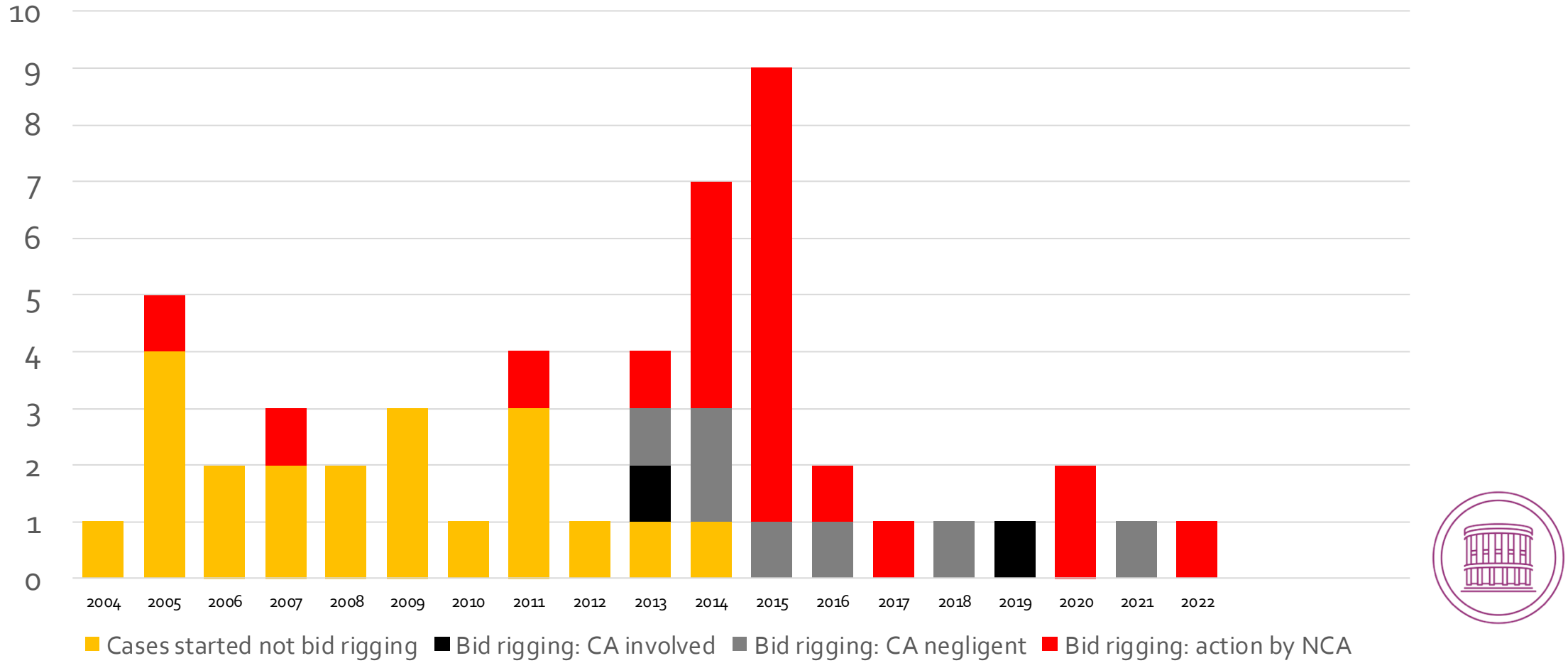
- C-376/21 *Obshtina Razlog*
  - competition principle materialized in PPD

- *C-578/23 Česká republika - Generální finanční ředitelství*
  - duty to avoid "lock-in"

Public procurement directive vs competition law

- PPD
  - Pro
    - "Opening up to competition"
    - Taking benefits of competition
    - Prohibition of "artificially narrow competition"
    - "Allowing" protection of competition
  - Limited relationship
    - Self-cleaning mechanism
    - Proportionality of exclusion (C-538/07 *Assitur*)

Detecting bid rigging and NCAs investigation powers



Slovak Act on Public Procurement (by 2024)

- The contracting authority and the contracting entity **shall exclude** a tenderer or candidate from the procurement if
  - on the basis of reliable information, it has reasonable grounds to suspect that the tenderer or candidate has entered into an anti-competitive agreement with another economic operator in that procurement, **where that condition is mentioned in the contract notice or in the notice used as a call for competition**,

Slovak Act on Public Procurement (from 2024)

- § 40 (8)(c) The contracting authority and the contracting entity **may exclude** a tenderer or candidate at any time during the procurement if
  - on the basis of reliable information, without the need for a prior decision by any public authority, has reasonable grounds to suspect that a tenderer or candidate has concluded an agreement with another economic operator which distorts or restricts competition, irrespective of any property, contractual or personal relationship between that tenderer or candidate and the economic operator concerned

“Private enforcement” of exclusion

- Decision of the Office for Public Procurement: 12080-6000/2020-OD
  - The contracting authority should have noticed links between undertakings
  - Order to re-assess tenders

- Problem
  - Provision on mandatory exclusion deleted from law
  - Anti “gold-plating” purge in 2024

By-passing relaxed format of the PPD

- Agreements/regularions/decisions on EU funds
- Requests for financial corrections

- *The Slovak Republic/STM POWER* case

Carrying the Torch Alone: A Bright Flame, But Still Too Many Shadows:

Bid rigging and small NCAs

- Prioritization policy
  - NCA cannot be "forced" to go after "micro" bid riggings
  - Too much love (to bid rigging) will kill (competition enforcement)
- Blind spots
  - Is it responsibility of competition authorities?
  - Gaps shall be filled on PP part
  - Competition law
    - structural problems of economy including bid rigging
  - Reform of PPD
    - Little prospects

Thank you for your attention

"Power of truth is invincible if it is armed with the light of knowledge"

Johannes Amos Comenius

prof. JUDr. Ing. Ondrej BLAŽO, PhD.
Comenius University Bratislava
Faculty of Law
Institute of European Law
Jean Monnet Chair "Solidarity as a Value of the European Union"
ondrej.blazo@flaw.uniba.sk