1. Legislative basis: taking into account the specifics of bid rigging as a special type of anticompetitive agreements, it is reasonable to link them with antimonopoly tenders requirements (Article 17 of the Law “On Protection of Competition).

2. Procedure of case on violation of the antimonopoly legislation: difficulty and duration of procedure of cases on violation of the antimonopoly legislation don’t allow to protect customers and participants of a tender effectively and efficiently (Law № 94-FZ «On placement of public procurement …» has some advantages in this respect).

3. Evidence gathering: as the antimonopoly authority has lack of powers to conduct investigation and research operations, it is impossible to use legally results of investigation and research operations conducted by police, which makes it more difficult to get direct evidence of a collusion.

4. Administrative liability: there is difficulty in calculation of a size of a turn-over fine (a fine must be calculated on the basis of proceeds “realization of goods in the market where the law infringement took place”; sometimes it is difficult to determine such a market at bid rigging case).

5. Criminal liability: there is difficulty in calculation of damage made or proceeds received that are qualifying indicators of components of a violation.
FAS RUSSIA’S MEASURE TO PREVENT BID RIGGING:

• Implementation of electronic auctions into public procurement system within the territory of the Russian Federation;

• Launch of the Russia-wide web-site on sale of the state property [www.torgi.gov.ru](http://www.torgi.gov.ru) in order to ensure fair and true principle of transfer of state property and also in the frameworks of anti-corruption activity;

• Advocacy of rules of placement of public procurement among government employees in order to prevent collusions (conduct of special workshops, conferences, round tables);

• Discussion in public of the amendments to the law on placement of public procurement.
Electronic auctions as a measure to prevent cartels in public procurement

Advantages of electronic auctions
• Price bids are made through electronic trading floor in the Internet.

• Each participant of an auction, after receiving an accreditation, can see the price bids of competitors on the Net-page of an electronic trading floor and place its own price bids through a special form.

• Public procurements are conducted only on the five federally authorized electronic trading floors, which makes it is easier the process of control over placement of public procurement.

• Confidentiality of participation that is kept until conclusion of results of an auction. It allows to avoid both the collusion among participants and the administrative pressure on participants form the side of customers.

• High degree of technical defense for participants of an auction.
LEGISLATIVE BASE
Prohibition of a collusion at tenders among economic entities (including a collusion among customers and participants of a tender) is envisaged by the point 2 of the part 1 of the Article 11, and also prohibition of bid rigging among customers of a tender (state authority) and a participant(s) of a tender is envisaged by the Article 16.
The following liabilities are foreseen for violation of the antimonopoly legislation:

- **Administrative liability**
- **Criminal liability**
LIABILITY OF LEGAL AND OFFICIAL (PRIVATE) PERSONS

Legal person

Administrative liability

Turn over
fine

Official (private) person

Administrative liability

fine
or
disqualification

Criminal liability

fine
or (and)
imprisonment
The Code of the Russian Federation on Administrative Violations, article 14.32 – on Concluding competition-restricting agreements, engaging in competition-restricting concerted actions, coordinating economic activities

For official persons:
- fine: 660 – 1660 US$;
- disqualification: up to three years,

For legal persons:
- fine:
  from 1 to 15 % of the size of the sum of proceeds gained by the violator.
  From 0,3 to 3 % of the size of the sum if proceeds gained by the violator, but no less than 3 330 US$ (if the proceeds, gained by the violator from selling goods (works, services) on the market where the administrative violation was committed, exceed 75% of the total proceeds gained by the violator).
CRIMINAL LIABILITY

Criminal Code of the Russian Federation, article 178 – Preventing, Restricting or Eliminating Competition.
- fine: up to 33 333 US$;
- fine: of size of proceeds of the violator for the period up to five years;
- Imprisonment for up to 7 years.

According to Notes to the Article 178 of the Criminal Code of the Russian Federation:

Heavy damage means damages exceeding one 33 333 US$, and «especially heavy damages» are damages exceeding 100 000 US$.

Heavy proceeds mean proceeds exceeding 170 000 US$.

N B: institution of a person to criminal liability excludes institution of this person to administrative liability for the same infringement.
### QUANTITY OF CASES CONSIDERED UNDER POINT 2 OF THE PART 1 OF THE ARTICLE 11 OF THE LAW "ON PROTECTION OF COMPETITION"

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AT PRESENT MORE THAN 50 CASES ARE UNDER CONSIDERATION
Cases № 1 11/125–09 и № 1 11/126–09 of July 2, 2009

BID RIGGING OF THE AUCTION PARTICIPANTS FOR THE RIGHT TO SIGN THE CONTRACT ON PROVIDING FISHING AREAS

Concerted actions of auctions participants on providing fishing areas as the result of which prevailed the participant who failed to offer the best conditions and the amount of payment for providing fishing areas was minimized and it negatively affected the budget.

As the evidence there were used: expert conclusions of Higher Educational Institutions on rating fair behavior of auctions participants with the use of mathematical methods, which confirmed highly contagious of bid riggings.
Case № 1 11/90–10 of June 29, 2010
AGREEMENTS THE AUCTION FOR THE RIGHT TO SIGN THE CONTRACT FOR REPAIR OF MOTORROAD

Agreement between Federal State Institution «Chernozemupravtodor» and LTD «DEP-36» during the auction for the right to sign the contract for repair a section of motor road which expressed in announcement during the procedure of envelopes opening by the principal of the information on value and terms of the work which was another than stated in an application of LTD «DEP-36» with further replacements of the sheets.

As the evidence there was used: video of the envelopes opening procedure
Case № 1 16/44 – 09 of March 31, 2009

BID RIGGING BETWEEN STATE AUTHORITIES AND ECONOMIC ENTITIES DURING THE PREPARATION AND HOLDING THE AUCTION

Concerted actions of SergiEv Posad city Administration and JSC «Ipotechnaya Corporatsiya Moscovskoy Oblasti», which resulted in restriction of competition in part of restriction of access of other economic entities during the auction for the right to sign the contract on a built-up territory development.

As the evidence there were used: materials received during the inspection.

In accordance with the FAS Russia materials Main Internal Affairs Directorate of Moscow Region initiated the case on part 4, article 159 of Criminal Code of the Russian Federation (fraud conducted by the group of people in an exceptionally large value).
Cases №№ 1 11/157-10, 1 11/158-10, 1 11/159-10, 1 11/160-10 of October 22, 2010 ГОДА

BID RIGGING OF THE AUCTIONS PARTICIPANTS ON THE MEDICINE DELIVERY WHICH IS REALIZED BU THE MINISTRY OF PUBLIC HEALTH AND SOCIAL DEVELOPMENT

Concerted action of the auction participants who incurred charges on the realization of their application and then they arrived at the auctions but refused the competition fighting by turns without making any offers or they failed to arrive at the auction procedure by one lot and after then they appeared to be the only one participant by another lots of the same auction.

At the same time, the auctions were held every 5 minutes, so that participants had a chance to take part in them.

As the evidence there was used: analysis of auctions’ protocols for 5 years.
1. When detecting bid riggings the antimonopoly authority realizes a «point» affect.

2. Investigation of bid riggings can not be run in an «emergency» regime.

3. The main goal is not to cancel the auctions but to punish (also the criminal punishment) offenders for violation of the antimonopoly legislation.
Thank you!