

# **Cooperation Between Competition Agencies and Public Procurement Authorities**

## **The Italian experience**

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# Why to engage with procurement authorities?

## Prevention

- General recommendations on use and design of tenders
- Advocacy on specific tenders

## Detection and substantiation

- Hints on possible infringements (Handbook project)
- Screening (Screening project)
- Exchange of evidence and information

## Examples of fruitful cooperation

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## General recommendations on use and design of tenders

Underlying principle: **well-designed tenders** foster competition

Further general objectives

- **Transparency** by the PA: indirect way to prevent or detect corruption
- State budget **savings**
- **Opening** of sectors to competition, i.e., liberalization

## **General report on the state of administrative concessions in Italy, sent to the Government and Parliament in December 2018**

- Reiterated that tenders should be the rule for granting concessions
- Scope and duration should be limited and justified by technical and economic needs and the characteristics of the investments
- Automatic renewals and extensions, as well as preference for incumbents, should be eliminated

Sectors-specific analysis (from motorways and airports to gas distribution and mobile telecom) with proposals for each sector

## Advocacy on specific tenders

**Opinions** on tenders to Consip (Central Public Procurement Agency) and local PA

- Lack of tendering procedures
- Contract design: definition of the object; technical requirements; allotment criteria
- Tender design: participation/selection criteria; awarding mechanisms; assessment criteria of technical and economic requirements

Often upon request (Art. 22 of the Competition Act)

Legal basis	2016-2017	2016	2017
<b>Art. 21</b>	<b>35</b>	<b>13</b>	<b>22</b>
<b>Art. 22 (total, without PCM)</b>	<b>112</b>	<b>61</b>	<b>51</b>
<i>Art. 22 requested by central PA</i>	<i>54 (41 Consip)</i>	<i>28 (19 Consip)</i>	<i>26 (22 Consip)</i>
<i>Art. 22 requested by local PA</i>	<i>21</i>	<i>12</i>	<i>9</i>
<i>Art. 22 ex officio to central PA</i>	<i>23</i>	<i>14</i>	<i>9</i>
<i>Art. 22 ex officio to local PA</i>	<i>14</i>	<i>7</i>	<i>7</i>
<b>Art. 22 PCM</b>	<b>30</b>	<b>17</b>	<b>13</b>
<b>Art. 21-bis</b>	<b>56</b>	<b>14</b>	<b>42</b>
<i>Art. 21-bis* TUSP</i>	<i>18</i>	<i>1</i>	<i>17</i>
<b>Sectorial laws</b>	<b>3</b>	<b>1</b>	<b>2</b>
<b>Total</b>	<b>236</b>	<b>106</b>	<b>130</b>

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## Hints on possible infringements

### Handbook project

Handbook in Italian based on the OECD Guidelines for Fighting Bid Rigging in Public Procurement (2013)

<http://www.oecd.org/competition/guidelinesforfightingbidrigginginpublicprocurement.htm>

Sent to procurement authorities and published on AGCM's website

Identifies characteristics of markets more prone to collusion and highlights suspicious conducts

Increased sensitivity on bid-rigging

- 2015 a record year for agreements and bid rigging
- 14 agreement cases
- out of which 8 bid rigging

# Screening

## Screening project

In cooperation with the Anti Corruption Authority (ANAC)

ANAC manages the National Database on Public Contracts, extensive amount of data on major tenders:

- Tender and contract notices
- Awarding procedures
- Awarded contracts
- Economic operators taking part in public contracts
- Contract execution

Memorandum of Understanding signed in 2014

Working Group formed in 2017 to collect data

## Exchange of evidence and information

Procurement authorities may be key to

- Report **suspicious conducts**
- Provide **information and evidence**
- Share sector-specific **knowledge**
- Collect evidence on tenders over time and/or in neighbouring areas (**bigger picture**)

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### **The case of school clearing services (I785)**

- AGCM provided advice to Consip on a set of tenders
- Afterwards, AGCM requested documents and data to verify degree of implementation
- Suspicious pattern in a key tender on school cleaning services (worth €1.6 billion)
- Formal investigation with dawn raids
- Evidence of information exchange to coordinate the bidding strategy
- Outcome: fine of €110 million (December 2015)

## **The case of technical assistance for audit of EU funds (I796)**

- Consip carried out a tender for technical assistance to PA for certification and audit of EU funds
- Consip reported to AGCM a suspicious pattern: in each lot one highly discounted bid from one of the four bidders
- Formal investigation with dawn raids
- Evidence of contacts and simulations of lot allocation prior to the tender
- Outcome: fine of €23 million to Ernst&Young, KPMG, PWC and Deloitte (October 2017)

*Thank you for your kind attention!*

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