

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
Art. 21	35	13	22
Art. 22 (total, without PCM)	112	61	51
<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>
Art. 22 PCM	30	17	13
Art. 21-bis	56	14	42
<i>Art. 21-bis* TUSP</i>	<i>18</i>	<i>1</i>	<i>17</i>
Sectorial laws	3	1	2
Total	236	106	130

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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 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 cleaning 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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