PRACTICAL EXPERIENCE WITH DEVELOPING AND USING SCREENS
The Italian experience

EU-INDIA Competition week
Delhi, India
10-13 December 2018

The views expressed are personal and do not necessarily reflect those of the Authority.
Reactive tools

- Substantiated complaints
- Leniency applications

Proactive tools

- Industry monitoring and screens
- Market studies
- International cooperation
INDUSTRY MONITORING AND SCREENS

MARKET STUDIES

INTERNATIONAL COOPERATION
1. SECURING IN-HOUSE SKILLS AND KNOWLEDGE

Pure ex-officio investigations are rare at AGCM
- no Cartel Unit or Intelligence Unit
- recent screening project on private procurement

Often a combination of different hints
- inaccurate complaints
- information from media
- industry discussion

Good understanding of the sector is key to select and combine relevant information
- sectorial specialization
Keep updated about novel issues (e.g., use of algorithms by online platforms)

- Recruiting IT experts (including an expert in algorithms)

- Investigations on unfair practices (like incomplete and non-transparent information by online comparison websites) gave us first understanding on the functioning and the implications of the use of algorithms by online platforms
2. COOPERATION WITH OTHER NATIONAL AGENCIES

Ensures a fruitful flow of information from well-documented and trustworthy sources

With sector regulators
- Memorandum of Understanding to foster information exchange and cooperation
- Joint market studies

With the Anti Corruption Authority
- Memorandum of Understanding
- ANAC manages the National Database on Public Contracts, extensive amount of data on major tenders
  provides data for our screening project for private procurement
With procurement agencies
Handbook based on the OECD Guidelines for Fighting Bid Rigging in Public Procurement (2013)
http://www.oecd.org/competition/guidelinesforfightingbidrigginginpublicprocurement.htm

With the Fiscal Police
Sensitivity for possible antitrust infringements

With the judiciary in case of parallel criminal investigations
- Some cases started following a criminal investigation
- Exchange of documents with Public Prosecutors
- Transmission of our decision to the competent Prosecutor (obligation to report alleged criminal offences)
Provide an in-depth analysis of the sector

Help to identify anomalies and substantiate competition concerns

- **5 market studies** in 2016: solid waste management, local public transport, milk supply chain, vaccines for human use and audio-visuals

- On-going market study on **Big Data**, in cooperation with the Communication Regulator and the Italian Data Protection Authority
Cooperation with other competition authorities may provide important information on same or similar conducts

- Informal cooperation (non-confidential, agency-confidential information sharing)

- Formal cooperation (exchange of documents and case evidence)
Crucial in case of novel antitrust issues and innovative detection tools

• Experience sharing (OECD Roundtables, ICN Checklist for efficient and effective leniency, ECN new Digital Working Group)

• Workshop “Screening collusion in procurement auctions” (Rome, November 2016), in cooperation with the Dutch competition authority
National Anticorruption Authority (ANAC) is an independent body created in 2012 in execution of Article 6 of the UN Convention against Corruption

Pursuant to the new Public Procurement Code adopted in 2016, ANAC’s tasks include:

- Soft regulation – guidelines and templates for contracting authorities
- Supervision – grants and revokes qualification certificates, conducts inspections
- Monitoring – collects, stores and analyzes data
PUBLIC CONTRACTS OBSERVATORY

PUBLIC CONTRACTS DATA FLOW

CONTRACTING AUTHORITIES

REGIONAL OBSERVATORY OFFICE

ITALIAN ANTI-CORRUPTION AUTHORITY
ANAC COLLECTS, ANALYSES AND PUBLISHES ALL RELEVANT PUBLIC PROCUREMENT INFORMATION

1. INFORMATION COLLECTED

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

- Object of Contract
- Contract amount
- Awarding procedure
- Contract notice deadline
Awarding process

- Contracting Authority
- Object of Contract
- Economic and financial data
- Awarding procedure
- Awarded amount
- Abnormally low tenders
- Number of bidders
- Winning bid
Contract execution

- Professionals involved
- Steps of Works, services and supplies
- Variants
- Early resolution of contract
- Contract conclusion
- Final test of works, services and supplies
- Final contract amount and unexpected expenses
- Claims and remedies
- Lasting time
- Subcontracting
**Working Group** formed in 2017 to ensure a stream of data from ANAC to AGCM

Focus on:
- Tenders on **good and services** (not works)
- Starting **from 2013**
- Only tenders with value **higher than €150,000**
- Analysis of **awarding discount, subcontracting and temporary joint ventures**
Economic evidence in bid rigging cases

- Communication evidence
- Structural factors
- Outcome & rent sharing mechanisms
- Bidding patterns

Proof of collusion (?)
Structural factors

The market/industry
- Market structure
- Barriers to entry
- New entrants/mavericks
- Capacity constraints
- Firms’ heterogeneity
- Geographical coverage (transport costs)
- Incumbency advantages

Auction design
- Ability and incentives to collude (e.g. lots, participation requirements)
- Intensity of (unilateral) competition (e.g., reserve price, auction design conducive to tacit collusion)
# Bidding patterns

<table>
<thead>
<tr>
<th>Potential index of collusion</th>
<th>Potential alternative explanations</th>
<th>Relevant evidence</th>
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</thead>
<tbody>
<tr>
<td><strong>No bids</strong></td>
<td>Agreement to avoid tender procedure, maintain <em>status quo</em>, or improve tender conditions</td>
<td>Benchmarking: across-auction anomalies</td>
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<td>(No “duty to bid” by individual companies)</td>
<td>Firms’ heterogeneity</td>
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<tr>
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<td>Tender design (reserve price, bidding costs)</td>
<td>Economic models</td>
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<td>Opportunity cost</td>
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<td><strong>Selective bids</strong></td>
<td>Allocation of lots/tenders resulting in market sharing</td>
<td>Economic models</td>
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<td>Lack of resources/capacity constraints</td>
<td>Bidding costs</td>
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<td></td>
<td>Firms’ heterogeneity</td>
<td>Heterogeneity (lots, tenders, firms)</td>
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<td>(incumbency advantages)</td>
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<td>Bidding costs</td>
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<td>Opportunity cost</td>
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<tr>
<td><strong>Cover bids</strong></td>
<td>Add legitimacy to a market sharing collusive agreement</td>
<td>Economic models</td>
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<td>Can strategically affect the outcome</td>
<td>Within-auction (or across-auction) anomalies</td>
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<td>Firms’ heterogeneity</td>
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<td>Cost differences</td>
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<td>Incumbency advantages</td>
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Outcome and rent sharing mechanisms

Outcome

- Distribution of lots/tenders among market players
- Historical market positions
- Geographical market-segmentation or time-based allocation of tenders
- Contract value

Profit/rent sharing mechanisms

- Consortia/joint bidding
- Common ownership
- Sub-contracting
- Side payments
Joint bidding

- **Pro-competitive use**: it increases the number of competitors, allowing the (joint) participation of undertakings. Joint bidding may lead to substantial economic benefits (by combining activities, skills or assets, saving costs and sharing investments) and increase competition.

- **Anti-competitive use**: joint bidding can be used to avoid competition. Antitrust infringements may be committed through the distorted use of rights which are formally legitimate, but exercised in a reprehensible manner for a purpose different from that meant by the laws conferring such rights.

→ **Case by case analysis**

- Joint bidding between companies which would be able to individually participate in the tender is not anti-competitive as such
- Assess if aims at excluding competition between operators
- Assess economic rationale of the agreement
CHALLENGES FOR SCREENING

- **Data** – comprehensiveness and quality
- **Data** – not conceived for screening purposes
- **Expertise** – complex, time consuming and resource intensive
- **Overview** – focuses on single tenders, but often collusion is broader (and might also involve other sales/products)
- **Use** – rights of defense and confidentiality
- **Use** – circumstantial evidence alone rarely builds a solid case (direct evidence or quid pluris to exclude alternative explanations)
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<th>Cartel</th>
<th>Coordinated interaction</th>
<th>Conscious parallelism</th>
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<tr>
<td><strong>Evidence</strong></td>
<td>Formal agreement</td>
<td>Qualified contacts/</td>
<td>Circumstantial</td>
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<td><strong>Assessment</strong></td>
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<td><strong>Burden of proof</strong></td>
<td>Parties</td>
<td>Agency/Parties</td>
<td>Agency</td>
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**CONCERTED PRACTICE?**
OPPORTUNITIES FOR SCREENING

- **Prioritization** – screening is a powerful tool to refine prioritization, by flagging suspicious pattern and orienting enforcement.
- Screening criteria may strengthen “narrative consistency” of the allegations.
- **Deterrence** (reactive tools) and post-decision monitoring.
- Results from screening process may support advocacy initiatives.
- **Self-assessment** by contracting agencies (CMA).
- **Simple screening** may be very effective.
In 2015 advice provided to the Central Public Procurement Agency
Data collection to verify degree of implementation
Screening exercise – suspicious pattern for a key tender on school
cleaning services (worth €1.6 billion)

Features:
• 13 regional lots, threshold of 3 lots for each bidder
• Main players: consortium CNS (including Manutencoop), Kuadra,
  Roma Multiservizi (very strong in Lazio)
THE CASE OF SCHOOL CLEARING SERVICES /2

- CNS and Kuadra bided together through a temporary joint venture (ATI 1)
- Manutencoop bided separately despite being member of CNS
- Roma Multiservizi did not bid
ATI1 and Manutencoop bided in 8 lots only
No overlapping on 6 lots
Low discount by ATI1 in the 2 overlapping lots
THE CASE OF SCHOOL CLEARING SERVICES /4

➢ ATI1 assigned lots on the basis of previous market positions

➢ Subcontracting of one lot from Manutencoop to Multiservizi
AGCM opened a formal investigation and conducted dawn raids

Evidence of information exchange to coordinate the bidding strategy

Objectives: obtain higher prices and more contracts than allowed, preserve market positions in Regions

**Fine: €110 million**
Thank you!