

# PRACTICAL EXPERIENCE WITH DEVELOPING AND USING SCREENS

## The Italian experience

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EU-INDIA Competition week

Delhi, India

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International Affairs



## Reactive tools

- ✓ Substantiated complaints
- ✓ Leniency applications



## Proactive tools

- ✓ Industry monitoring and screens
- ✓ Market studies
- ✓ International cooperation





## **INDUSTRY MONITORING AND SCREENS**



## **MARKET STUDIES**



## **INTERNATIONAL COOPERATION**



**INDUSTRY  
MONITORING  
AND  
SCREENS**

## 1. SECURING IN-HOUSE SKILLS AND KNOWLEDGE

### Pure ex-officio investigations are rare at AGCM

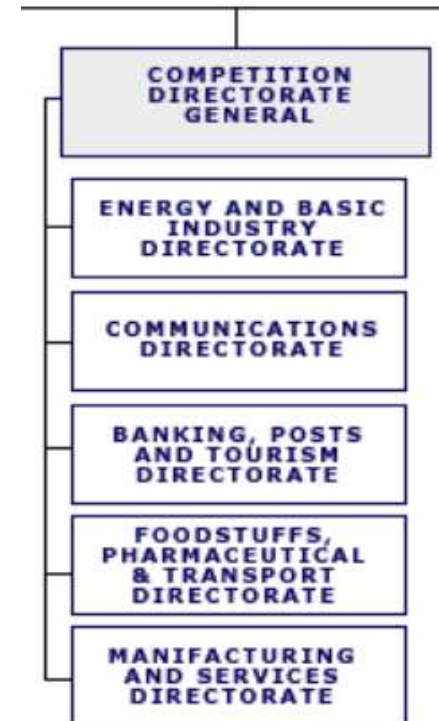
- no Cartel Unit or Intelligence Unit
- recent screening project on private procurement

### 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





**INDUSTRY  
MONITORING  
AND  
SCREENS**

**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



**INDUSTRY  
MONITORING  
AND  
SCREENS**

## **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**



**INDUSTRY  
MONITORING  
AND  
SCREENS**

**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**



**MARKET  
STUDIES**

- **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)



**INTERNATIONAL  
COOPERATION**

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



**INTERNATIONAL  
COOPERATION**

# SCREENING PROJECT

## IN COOPERATION WITH THE NATIONAL ANTICORRUPTION AUTHORITY

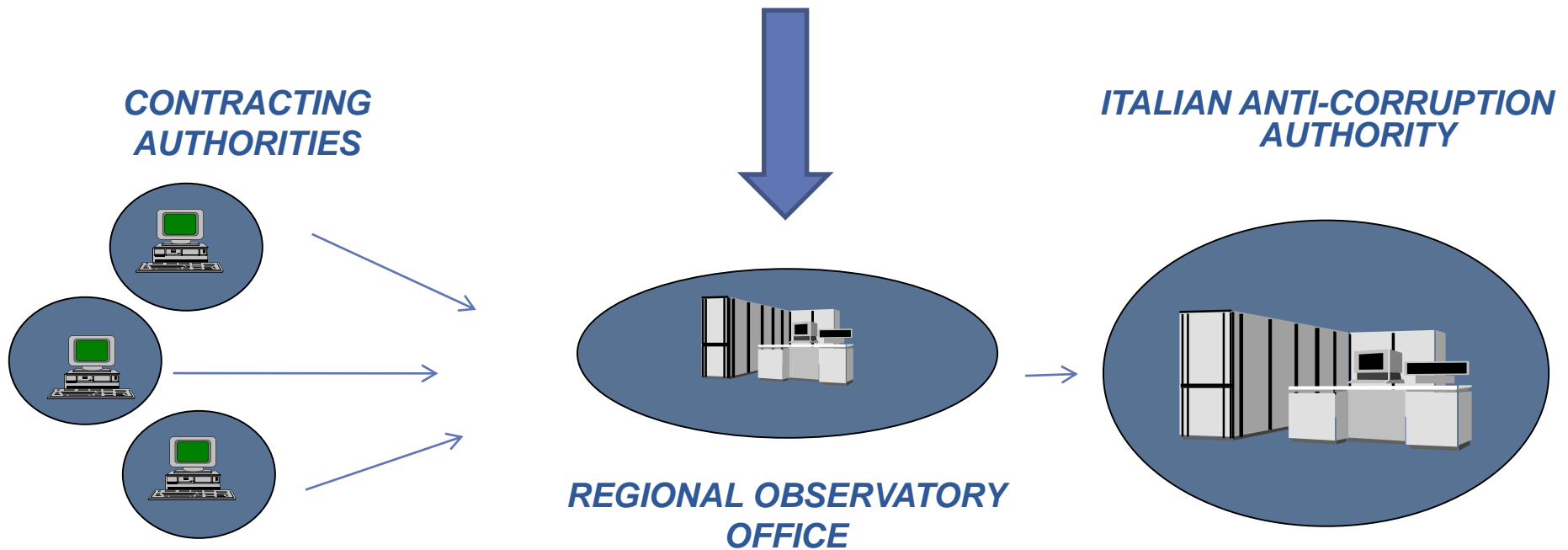
National Anticorruption Authority (ANAC) is an independent body created in 2012 in execution of Article 6 of the UN Convention against Corruption

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



# 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

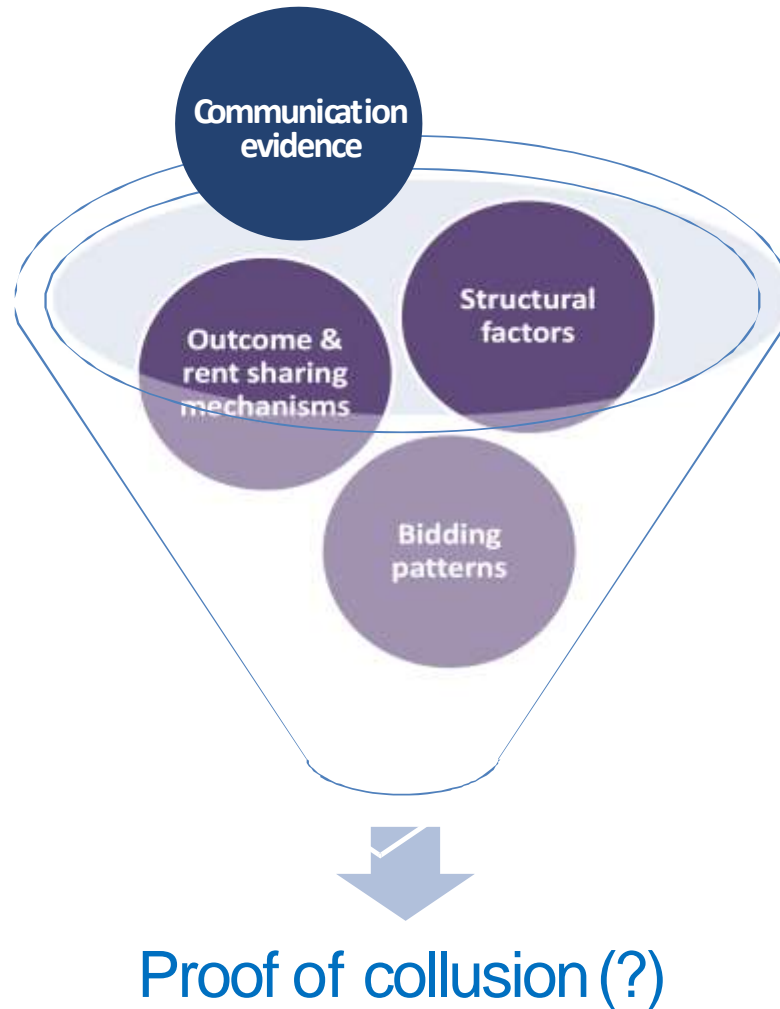


**Working Group** formed in 2017 to ensure a stream of data from ANAC to AGCM

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



# 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

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

# 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)



	<b>Cartel</b>	<b>Coordinated interaction</b>		<b>Conscious parallelism</b>
<b>Evidence</b>	Formal agreement	Qualified contacts/ info exchange	Circumstantial evidence	Mere rational reactions
<b>Assessment</b>	Infringement	Type of information, effects	Intrinsic oddity of the conduct	No infringement
<b>Burden of proof</b>	Parties	Agency/Parties	Agency	---



**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**



## THE CASE OF SCHOOL CLEARING SERVICES /1

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

## THE CASE OF SCHOOL CLEARING SERVICES /3

Lotto	Regioni e valore	Partecipazione ATI 1		Partecipazione MFM		Numero altri partecipanti	Vincitore
		sconto offerto	offerta tecnica	Sconto offerto	offerta tecnica		
1	Valle d'Aosta, Piemonte e Liguria - 110,6 mln	42,88%	60.00%	-	-	2	ATI 1
2	Emilia Romagna - 95,2 mln	-	-	48,81%	57,5250%	4	Manutencoop
3	Toscana - 83,8 mln	39,71%	58,9270%	48,81%	55,4420%	9	Manutencoop*
4	Sardegna e Lazio - 192,2 mln	46,06%	60.00%	-	-	1	ATI 1
5	Lazio - 95,1 mln	46,06%	60.00%	-	-	2	ATI 1**
8	Lombardia e Trentino - 105 mln	-	-	48,81%	57,18%	7	Manutencoop
9	Friuli Venezia Giulia e veneto 93,8 mln	39,71%	59,0750%	48,81%	55,6260%	8	Manutencoop
10	Umbria, Marche, Abruzzo e Molise - 112,5 mln	43,52%	59,6830%	-	-	3	ATI 1

- 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

## THE CASE OF SCHOOL CLEARING SERVICES /5

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!

