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**Tesi in Public Economics**

**“Reducing Transparency in Public Auctions: a  
Tool to Fight Collusion in International Public  
Procurement”**

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# Executive Summary

Public procurement of goods, works and services is an important tool of public expenditure in most States.<sup>1</sup> Due to this substantive importance, the Contracting Authorities are subjected to specific policies, regulations and code of conduct's frameworks. They are obliged at international and national level to use a range of tools with the aim of incentivizing suppliers to provide the best possible proposal. Nevertheless, an important concern in regulated procurement might arise: corruption practices. Public procurement is, in fact, considered the government's activity most exposed to corruption, fraud and waste (OECD, 2017). The reason behind it is usually the difficulty to understand and follow the procurement procedures, due to complexity and the close interaction between the public and the private sectors.<sup>2</sup>

For the above reasons, in order to address the issue, public Contracting Authorities began to implement, over the last few years, enhanced transparency and numerous transparency requirements in their tender processes to ensure efficiency (De Silva et al., 2008; Ohashi, 2009), visibility and accountability of their disbursements. Many scholars backed up the policy, confirming that increase the level of transparency is the most effective way to fight and eradicate corruption behaviour in public procurement. (Bergot et al., 2010) Due to the above approach, information about key stages of procurement processes, decisions and outcomes are generally publicly available to numerous public and concerned parties, arising from mandatory law requirements.<sup>3</sup>

By the way, not all economic theories go in the direction of an indistinctly increase level of transparency. For many scholars, the principle has been stretched to the point of that is applied for every step of public procurement procedure becoming an obsession in nowadays processes (Balsevich et al., 2011). Some academics, in facts, think that the

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<sup>1</sup> UN General Assembly Resolution 66/95 of 9 December 2011.

<sup>2</sup> The firms in the private sector rationally aim to profit maximisation to generate income, whereas the public sector aim to increase the citizens' welfare. And right when those conflicting interests merge together by means of corruptive practices, we should deepen the issue.

<sup>3</sup> Unless there are valid legal reason for not doing so, keeping information confidential.

nowadays transparency policies may enhance and incentive procurement players to collusively agree on their offers and enjoy extra profit from the collusive behaviour (Morozov and Podkolzina, 2013). In fact, those transparency requirements are i) increasing firms' foreseeability, providing them *focal points*, ii) reducing cost of monitoring and iii) allowing for effective retaliation against cartel's deviators since the principle of transparency consents the sustainability and enforcement of collusion (i.e. it permits possible deviators to be readily spotted and be punished by the cartel).

Given the above, the standpoint of this thesis is to present how transparency requirements are fighting corruption behaviour in the nowadays society, but, at the same time, they are exposing public Authorities to the risk of collusion behaviours among public procurement stakeholders. In facts, we focus our attention on *ex ante-ex post* disclosure policies and information (scoring rules, thresholds, bids, outcomes, etc.) that affect positively the competitive tendering in terms of risk of collusion among bidders.

The goal of this dissertation is to disrupt this trade-off and to show how the transparency requirements might be used in our favour to fight corruption practices and discourage collusion. Modelling the *ex post* level of transparency during the public procurement process, namely delaying winner's public announcement, i.e. reducing transparency, a Contracting Authority can challenge collusive behaviours and render sustainability of illegal agreements tougher in equilibrium. The objective is reached building a simple, but effective, model of repeated game. We are able to check the impact of a change in transparency legislation on collusive tenders, starting from a benchmark case of complete information. At this stage, we will tune the level of transparency from a completely *ex ante-ex post* opaque framework to a softened condition. We demonstrate how the latter will challenge the sustainability of a cartel in the case in which the Contracting Authority delays the disclosure of tender's winner, and its relative payment, in the successive rounds of the same procurement process.

## Policy Implications and Conclusions

From the regulation perspective, the thesis sheds some precautions that legislative-procurement rulers might adopt to reduce the scope for collusion. We examined, in fact, how detection of cartel's deviations is a crucial ingredient of collusion and collusive agreements would break down because of secret and unspotted bid cuts. However, we also understood that the lack of transparency about winner's names does not necessarily prevent collusion completely, nonetheless, makes it more difficult to sustain.<sup>4</sup>

Since the public buyer is often bound by transparency requirements, it will not be able to fight collusive behaviour wiping out every information disclosure. By the way, the CA could still make collusion harder by delaying the timing of disclosure. Delaying disclosure of key's information at the maximum extent possible, thereby hiding as long as possible the identity of possible deviant, increases gains from deviating from cartel's agreements and, therefore, destabilizes some of them *ex ante*.<sup>5</sup>

With this thesis, we understood how might be useful to create an environment that discourages collusion in the first place instead of proving unlawful behaviours afterwards. This objective might be achieved tuning the auction process regulation to the Contracting Authorities' needs. The advantage of procurement processes is that the tender environment could be affected directly since "the rules of the game" are specified at the beginning by the buyer. In other words, the effectiveness of a central purchasing body's work lies in the ability to design its own tender initiatives finding the right balance between primary objectives of transparency of purchasing processes, and the fight against the rampant collusive phenomena. We demonstrated how the Contracting Authority is able to undermine collusive agreements and their enforcement by delaying publication of winner's names as much as possible. Doing so, it hides a possible deviant's identity from cartel's participants,

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<sup>4</sup> The thesis is also confirmed by Green and Porter (1984).

<sup>5</sup> Case in which the collusive outcome might be different adopting these information restrictions is f.e. the one published on March 19, 2015 by CONSIP, in the Official Journal of the Italian Republic, 5° Serie Speciale-Contratti Pubblici n.35, 23-3-2015. AGCM's action n.26815 (I796) Servizi di Supporto e Assistenza Tecnica alla PA nei Programmi Cofinanziati Dall'UE, 18/10/2017.

increasing the overall gains from defecting upfront, i.e. destabilizing them from the beginning.

Unfortunately, our results are far from being “the” solution to collusion. The reason why is that collusion is, on one side, facilitated from a transparent process environment, being more sustainable, on the other, is more likely to emerge in crystallize and predictable environment. Public Procurement and collusion are dynamic processes, where every change in the framework specifications triggers a strategic reaction of all tender participants. In other words, our policy advice to delay tender outcomes in order to destabilise the collusive agreements, does not take into consideration that cartel members might adapt their behaviour and find other ways to sustain and enforce collusion, punishing deviants even if the Contracting Authority delays the disclosure of information.

It means that predictability of procurement rules, once set by the CA, helps the overall stability of collusive agreements, even when there are meant to fight it. Therefore, whatever the procurer’s *ex ante* and/or *ex post* strategies to hinder collusion, they should be paired with a continuous reshape in the design of procurement’s auctions in order to create uncertainty that undermine existing collusive agreements, making the enforcement problems less feasible. After all, someone said: “*To improve is to change; to be perfect is to change often*”.