

The policy of criminalizing collusive public procurement

سياسة التجريم في الصفقات التواطئية

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Abstract :

Collusive procurement is one of the most significant forms of anti-competitive practices that are widely spread in the world of bidding. Economic operators engage in secret agreements, away from the contracting party's will, to reduce competition and exclude competitors by rotating procurement contracts among themselves in a manner that violates the law. Pre-agreed candidates set the rules of the game. Various forms of collusion directly impact the economy. Legal loopholes and non-criminal texts regarding competitors' behaviors make it easy to manipulate public procurement contracts and award them to undeserving parties. Therefore, shedding light on all anti-competitive practices is necessary to criminalize actions leading to collusion. The findings of this study stress the necessity of dismantling entry barriers for new market players to invigorate competition and disband entrenched cartels. Additionally, the research capitalizes the efficacy of long-term supply contracts in mitigating recurrent interactions between firms, thereby discouraging collusive arrangements. Furthermore, strategic tender design emerges as an important mechanism wherein varying the number of contract items relative to potential bidders and accounting for disparities in market share, costs, and capabilities serve as critical deterrents against collusion. Ultimately, this study advocates for the imposition of stringent penalties as a robust legal deterrent against all manifestations of anti-competitive conduct in public procurement.

Keywords : Collusion - Public procurement - Competition – Criminalization.

ملخص:

تُعدّ المشتريات التواطئية من أخطر أشكال الممارسات المنافسة للمنافسة وأكثرها انتشارًا في عالم المناقصات، حيث ينخرط الفاعلون الاقتصاديون في اتفاقيات سرية بعيدًا عن إرادة الجهة المتعاقدة، بهدف تقليص المنافسة وإقصاء المنافسين من خلال تبادل عقود الشراء فيما بينهم بطريقة تنتهك القانون. ويتحكم المرشحون المتفق عليهم مسبقًا في قواعد اللعبة، مما ينعكس سلبيًا على الاقتصاد بشكل مباشر. كما أن الثغرات القانونية والنصوص غير التجريبية المتعلقة بسلوك المنافسين تتيح سهولة التلاعب بعقود المشتريات العمومية وإسنادها إلى جهات غير مستحقة. بناءً على ذلك، فإن تسليط الضوء على جميع الممارسات المناهضة للمنافسة يعد أمرًا ضروريًا لتجريم الأفعال التي تؤدي إلى التواطؤ. وتؤكد نتائج هذه الدراسة على ضرورة إزالة العوائق التي تحول دون دخول منافسين جدد إلى السوق، وذلك لتعزيز المنافسة وتفكيك الكارتلات الراسخة. كما يُبرز البحث فعالية عقود التوريد طويلة الأمد في الحد من التفاعلات المتكررة بين الشركات، مما يقلل من فرص التواطؤ. علاوة على ذلك، يظهر التصميم الاستراتيجي للمناقصات كألية محورية، حيث يساهم تنوع عدد بنود العقود مقارنة بعدد العارضين المحتملين، إلى جانب مراعاة الفروقات في الحصة السوقية والتكاليف والقدرات، في الحد من احتمالية التواطؤ بشكل كبير. وفي النهاية، تدعو هذه الدراسة إلى فرض عقوبات صارمة باعتبارها رادعًا قانونيًا فعالًا ضد جميع أشكال السلوكيات المنافسة للمنافسة في مجال الصفقات العمومية.

الكلمات المفتاحية: التواطؤ - المشتريات العمومية - المنافسة - التجريم

Introduction :

Competition in tenders is considered a fundamental means to rationalize the use of public funds as it contributes to enhancing the transparency and integrity of requests from governmental and private entities. Competition is also regarded as a vital determinant of the transparency of the business environment and a source of support and encouragement for investment.

Public procurement contracts ensure the selection of the best offer at the lowest cost and highest quality service, a goal pursued by all countries, especially Algeria, in all the regulations governing these contracts until the latest law, after the constitutional amendment of 2020, Law 23-12 ⁽¹⁾, which sets out the general rules for public procurement contracts. The basic principles in concluding all international and national contracts, as stated in all legislation and international agreements, include freedom of access to public requests, fairness in dealing with candidates, and transparency in procurement procedures, all of which serve the realm of competition and do not deviate from the principles outlined in the competition law.

However, participants in public procurement tenders do not always prefer fair competition; they often seek agreements among themselves to reduce the intensity of competition and increase their profit opportunities. These agreements, whether explicit or implicit, particularly concerning simple and repetitive operations related to works and supplies, remain fertile ground for the proliferation of prohibited practices, which are more attractive to corrupt businessmen. The Prevention and Combating of Corruption Law primarily addresses public officials as the presumed pillars in corruption crimes in general and procurement crimes in particular, as they are entrusted with these contracts and their legitimate conclusion in accordance with the applicable legislation. Nevertheless, these contracts remain a fertile ground for the spread of prohibited practices, attracting corrupt businessmen. Various forms of procurement crimes, including granting unjustified privileges, bribery in contracts, and the exploitation of public officials' influence and misuse of office, have been identified. While the legislator has criminalized all forms of manipulation in public procurement contracts, with public officials as the main presumed element, the legislator has overlooked the most prevalent form in contract procurement: collusion between economic operators to obtain contracts illegitimately, known in competition law as prohibited agreements, which are criminalized by legislation. However, in the criminal field, there must be a criminal provision for this form of procurement, respecting the principles of criminal legitimacy and not comparing one act to another. The legal framework and the restriction of criminalization to collusion are the focus of this study.

Economic operators have long known collusion in procurement, initially through what is known as bid rotation. This practice expanded further among foreign institutions in international contract bidding, as they sought to divide the Algerian market. The manipulation of procurement contracts has become as much a phenomenon as tax violations, known as tax evasion. Although the legislator criminalized all forms of manipulation in public procurement contracts, with public officials as the main presumed element, granting them full authority to prepare suspicious contracts and award them to undeserving parties for personal gain ⁽²⁾, it has not recognized collusion between economic operators, even though this phrase has a broad extension in competition law, which is the general law of competition. Hence, Act 03-03 dated July 19, 2003, amended and supplemented, regulates the general rules of free competition to drive economic development in an atmosphere characterized by transparency, equality, and integrity in relationships, especially in production, distribution, and services.

The Competition Law and the Public Procurement Law do not show any direct connection or reference between them ⁽³⁾, despite their overlapping nature. However, this does not imply that

they are not complementary; on the contrary, the practices contrary to competition have significant use in the field of public procurement. One of the most critical forms is collusion among economic operators. This economic offense lacks specific criminal framing in general penal laws and in the Law on Prevention and Combating of Corruption, especially considering its widespread use among competitors without any restraining text. One of its primary manifestations is when one of the bidders offers a lower price compared to the agreed-upon price among competitors, who prefer to keep their prices high and stable until the contract is awarded to the predetermined bidder. Alternatively, a participant may bring three bids on paper to participate in the tender, with the final award ending up in their favor.

From this perspective, the following question arises: **How can collusion in public procurement be framed, and what are its necessary manifestations to determine the appropriate penal provision?**

To address this question, the research can be divided into two sections:

The first section addresses the foundation of collusion and its extension to competition law under the title "**Collusive Procurements and Their Relationship with Competition Law.**" In **the second section**, we discuss **the obligation to criminalize collusion in public procurement, its forms**, and rely on the analytical method to study the phenomena recognized in the market of tenders, along with analyzing and commenting on legal texts.

Section I: Collusive Procurements and Their Relationship with Competition Law

Talking about the criminalization of collusion is essentially an inquiry into the violation of one of the most fundamental principles of competition — a principle that lies at the very foundation of market regulation and economic freedom. Collusion undermines the very notion of fair competition by distorting the balance of opportunities among economic actors and disrupting the mechanisms of transparency and efficiency that the law seeks to protect. Thus, any attempt to analyze collusive practices necessarily leads to revisiting the underlying philosophy of competition and its embodiment within both competition law and public procurement law.

Upon examining the texts of the Public Procurement Law and the Competition Law, no explicit reference or direct legal linkage is found between them (4). Despite this apparent separation, the very essence of public procurement law is founded on the idea of competition among bidders, which serves as the principal mechanism to ensure equality, transparency, and the optimal use of public funds. However, several practices tend to restrict or even neutralize this competitive dimension. Therefore, it becomes imperative to refer to the overarching framework of Competition Law, which institutionalizes competition through its substantive and procedural provisions, ensuring that market fairness is not only a theoretical aspiration but a practical reality.

A- Firstly: Delving Into Competition Law for Public Procurement Contracts

Competition has long been legally recognized, both at the domestic and international levels, as a fundamental condition for economic efficiency and sustainable development. The regulation of the market through competition rules constitutes the foundation upon which a country can achieve market integrity, consumer protection, and economic progress. In essence, competition ensures that prices reflect real market conditions, innovation is encouraged, and the quality of goods and services remains under constant improvement.

In Algeria, the concept of competition gained its true legislative and economic dimension after the country's gradual transition toward a market-oriented economy and the principles of economic liberalism. The promulgation of Law No. 89-12 (5) marked a historic turning point, signaling the end of the state's monopoly over domestic and international markets. This law represented a paradigm shift, introducing the notion that competition is not merely an economic choice but a legal necessity. It also identified several anti-competitive practices such as abuse of economic power, dominance, and prohibited agreements — thereby laying the groundwork for a more liberalized and transparent market system.

Later, Decree No. 95-06 of January 25, 1995, was enacted as the first comprehensive legal text to establish competition in its modern sense. It emphasized the guiding principles of transparency, equality, and fair competition among economic operators, while prohibiting all forms of anti-competitive behavior and unfair commercial conduct. This decree marked a significant evolution in Algeria's economic regulation, as it recognized that healthy competition is not self-sustaining; it requires vigilant legal supervision to prevent abuse and manipulation.

Subsequently, the legal framework was refined and divided into two separate instruments: Law 04-02, which governs commercial practices, and Order 03-03, which focuses specifically on competition. The latter significantly expanded the definition and scope of anti-competitive practices, moving beyond price-fixing to encompass agreements, abuses of dominance, and various forms of market control. This legislative evolution demonstrates the Algerian legislator's awareness that competition must be preserved not only in private market interactions but also in public economic activities.

Furthermore, Law No. 08-12 of June 2008 explicitly extended the application of competition principles to public procurement, recognizing it as an essential component of national economic development and public service delivery. By doing so, the legislator sought to integrate competition into the administrative framework, thereby ensuring that public contracts are awarded under conditions of equality and impartiality.

Upon a closer reading of competition law, one observes that it primarily targets economic operators and regulates their conduct within the market. Nevertheless, the principles it enshrines—transparency, equality, and market access—are equally vital in the sphere of public procurement, which is itself an economic activity with significant market implications. French administrative jurisprudence has clearly acknowledged this interrelation, famously declaring that “*Le droit de la commande publique est soluble dans le droit de la concurrence*” (6). This statement reflects the conceptual fusion between the two fields: public procurement cannot function effectively without adherence to the principles of competition law.

The relationship between competition law and public procurement law remains complex and, at times, ambiguous. As Professor Michel Bazex observes, the notion of competition in public procurement does not necessarily correspond to a perfectly competitive market environment (7). Instead, it is operationalized through the invitation to compete, a procedural guarantee ensuring fairness among bidders. Such procedures—public announcements, transparent selection criteria, and the right to contest awards—form the backbone of competitive equality.

Consequently, the principles of equality, transparency, and freedom of access to public demand, which underpin procurement law, effectively give life to the broader principle of free competition. This connection is clearly established in Article 02 of Law 08-12, which extends the application of competition law to public procurement from the moment of its announcement to the final awarding of the contract. This ensures that both substantive and procedural provisions of

competition law govern public procurement, except in cases where they conflict with public service obligations.

Nonetheless, practices that arise independently of public authority decisions—such as collusive agreements, concerted actions, or secondary arrangements—fall under the purview of Order 03-03, which provides the relevant legal remedies and enforcement mechanisms. The purpose of such a framework is to ensure that public procurement remains a competitive and transparent process, free from manipulation and favoritism.

B- Secondly: Restrictive Practices in Public Procurement from the Perspective of Competition Law

In practice, economic operators may attempt to enhance their market power in the public procurement sector through means that contravene the principles of free competition. These may include entering into collusive agreements, establishing dominant market positions, engaging in economic concentration, or exploiting economic dependence to the detriment of other competitors. Such behaviors undermine the spirit of fair bidding and distort the allocation of public resources. Hence, reference must be made to Order No. 03-03, which provides the legal foundation for addressing and penalizing these restrictive practices.

According to the provisions of this order, anti-competitive behaviors include not only overt conspiracies but also implicit understandings among competitors that aim to distort market conditions. These may manifest as agreements to fix prices, allocate markets, or coordinate bidding strategies. The legislator, drawing inspiration from French and European law, chose not to define restrictive agreements in a closed manner but rather to describe them functionally—by their purpose and effect on competition.

1- The Prohibition of Restrictive Agreements in Public Procurement

Restrictive agreements occupy a central position in the domain of economic law and, by extension, in competition law. Their prohibition serves to maintain market integrity, protect consumers, and ensure equal access to economic opportunities. The prohibition of such agreements is grounded in the broader objective of the state to safeguard the efficiency and transparency of its markets.

Article 06 of Order No. 03-03 clearly prohibits any “practices, acts, or agreements—explicit or implicit—whose object or effect is to hinder, restrict, or distort free competition within the same market or a substantial part of it.” This encompasses actions such as restricting market access, limiting production or investment, dividing markets, fixing prices, or imposing unequal trading conditions. Moreover, it prohibits granting public contracts to entities involved in such anti-competitive conduct.

This flexible and functional drafting mirrors the French approach, which defines collusion not by its form but by its economic purpose and effect. The focus, therefore, is not on the mere existence of an agreement, but on whether the agreement distorts competition and undermines public interest (8).

Among the most severe forms of collusion are those that occur during the bidding phase of public contracts, commonly known as bid-rigging. Such practices are deemed particularly grave by competition authorities due to the heightened sensitivity of public procurement markets, where the state acts as both regulator and buyer. Bid-rigging deceives the contracting authority, undermines the fairness of the process, and constitutes a direct attack on the principles of economic public order.

2- The Prohibition of Abuse of Dominance in the Market

Article 07 of the Competition Law stipulates that “any abuse arising from a dominant position in the market, or the monopolization of all or part of it, is prohibited.” This means that while dominance itself is not unlawful, its abuse is strictly forbidden. The law thus recognizes the legitimate success of efficient firms but seeks to prevent them from leveraging their market power to eliminate or marginalize competitors.

According to Article 03(c) of Order No. 03-03, a dominant position is defined as “the position that enables an entity to obtain sufficient economic power in the relevant market to impede effective competition and to act unilaterally with respect to its competitors, clients, or suppliers.” (9) This definition emphasizes the structural and behavioral aspects of dominance: it arises not from mere size or market share, but from the ability to behave independently of market constraints.

However, dominance may be legally tolerated in certain circumstances, particularly when it results from legislative or regulatory frameworks. Furthermore, Article 10 provides that practices which contribute to economic or technical progress, enhance employment, or improve the competitiveness of small and medium-sized enterprises may be exempted from prohibition if duly authorized by the Competition Council (10).

In the context of public procurement, dominance may occur when a bidder’s repeated success in obtaining contracts leads to the creation of a quasi-monopolistic position. In such cases, evaluation committees are entitled to recommend rejecting an offer if awarding the contract would result in market dominance or restrict competition within the relevant sector.

Moreover, anti-competitive behavior can manifest through alliances or consortiums formed among bidders. While such alliances are not inherently illegal, they must serve legitimate cooperative purposes—such as enabling smaller firms to compete effectively—rather than concealing collusive arrangements. These alliances are formalized through agreements to combine technical or financial capacities for the purpose of executing a project collectively.

In practice, contracting authorities may also engage with contractors who, in turn, subcontract portions of their work to other entities—so-called secondary dealings. Although this practice can enhance efficiency and specialization, it also creates potential risks of favoritism, exclusion, and indirect collusion. Public procurement regulations define secondary dealings as “the execution of part of the subject matter of the contract within the framework of contractual obligations directly linking the subcontractor to the main contractor.” Accordingly, contracting authorities must ensure that subcontractors meet all professional, technical, and legal requirements and are not subject to exclusion criteria established by public procurement law.

Through this system of layered contractual relations, public procurement embodies both opportunity and risk: it can stimulate competition and innovation when regulated transparently, or it can foster collusion and market distortion when left unchecked. The delicate balance between freedom of contract and public oversight thus remains the central challenge in aligning public procurement with the principles of competition law.

Section II: Criminalization of Collusion in Contracts and its Forms (Expanded Version)

Collusion, also known as *pre-agreement* or *concerted practice*, represents one of the most serious infringements of competition principles in public procurement. It is a coordinated behavior among a group of bidders who deliberately seek to distort the outcome of the tendering process in order to enhance their collective economic power, secure undue advantages, and manipulate the principles of transparency and equality that underlie public contracts. Such conduct directly

contradicts the objectives of free and fair competition, which aim to ensure efficiency in public spending and the optimal use of public resources.

Collusion manifests through various anti-competitive agreements such as dividing markets, fixing prices, and rotating contracts among participants. These agreements may occur overtly, through explicit arrangements, or covertly, through tacit understandings and exchanges of confidential information. The essential element remains the intentional coordination among independent entities that should otherwise compete. Hence, the criminalization of such conduct is justified by the need to safeguard both the public treasury and the integrity of market mechanisms.

Some of the factors that facilitate collusion include:

- Agreements on profit-sharing or market allocation, which ease coordination among bidders and eliminate uncertainty.
- A perception among participants that their chances of winning are higher through collusion than through genuine competition.
- Continuity of benefits for colluding firms through rotation and reciprocal arrangements.

Collusive tendering can therefore be defined as *an illegal practice where competitors agree to cooperate rather than compete, manipulating prices, dividing contracts, or interfering with the tendering process in a way that prejudices fair competition*. This practice—often referred to as bid-rigging—takes numerous forms, including price-fixing, bid suppression, and market allocation. It is criminalized not only because it breaches procurement law, but also because it undermines public trust and the efficient use of state resources.

The negative effects of collusive contracting are multifaceted. Economically, it reduces competitive pressure, inflates prices, lowers quality, and discourages innovation. Socially, it disadvantages honest bidders, particularly small and medium-sized enterprises, and erodes public confidence in the transparency of administrative processes. Legally, it triggers severe sanctions, both administrative and criminal, which may include exclusion from future tenders, fines, and imprisonment.

A – Firstly: Private Agreements for Collusion

Agreements between competitors are among the most insidious forms of anti-competitive behavior. They enable economic operators to secure illicit profits while draining public resources in secrecy. These arrangements violate the fundamental principle of competitive equality enshrined in both national and international competition frameworks.

Algerian legislation, while not explicitly enumerating all forms of such agreements, condemns them under the general prohibition of practices that restrict or distort competition. This is consistent with the approach adopted by the Competition Law (Ordinance No. 03-03), which prohibits “agreements, explicit or implicit, having as their object or effect the restriction or distortion of competition within the market.”

From a doctrinal perspective, jurists classically define an agreement as “*the meeting of wills between two or more independent undertakings to adopt a certain course of conduct intended to influence market conditions.*” Three essential conditions must typically be met to establish the existence of a restrictive agreement:

1. A prior arrangement between the parties, which may take the form of consultations, exchanges of sensitive information, or even informal understandings.
2. An impact—actual or potential—on the competitive structure of the market, even if the effects are not immediately visible.
3. A causal link between the agreement and the distortion of competition, demonstrable through harm to economic activity or to other market actors.

While agreements per se are not prohibited, it is their anti-competitive object or effect that brings them within the scope of prohibition. Article 06 of Ordinance 03-03 explicitly penalizes such conduct, mirroring the principles established in Article 101(1) of the Treaty on the Functioning of the European Union (TFEU), which prohibits concerted practices between undertakings that distort competition.

In the context of public procurement, collusive agreements take several practical forms, each designed to simulate competition while ensuring that the outcome is prearranged. Among these, three are particularly prominent:

1. Cover Bidding (Sham or Courtesy Bidding)

This is the most widespread method in public tenders. Competing firms agree in advance that one of them will submit the winning bid, while the others submit intentionally losing offers. These losing bids may be:

- Priced artificially high, ensuring the pre-selected firm wins;
- Non-compliant with tender specifications, leading to automatic rejection;
- Excessively low, designed to appear competitive but destined to fail upon technical or financial evaluation.

The essence of cover bidding is the creation of a false impression of competition. This deception misleads the contracting authority and undermines the fundamental principles of equality and transparency.

2. Bid Rigging

In this scheme, one or more bidders agree to withdraw or refrain from submitting a bid, allowing a pre-designated participant to win. Such manipulation is sometimes concealed under the guise of legitimate commercial decisions but is in reality a deliberate act of coordination. This practice has been criminalized under numerous jurisdictions—most notably in EU Directive 2014/24/EU and the OECD Guidelines on Fighting Bid Rigging in Public Procurement—due to its severe impact on public expenditure efficiency.

3. Bid Rotation

Also known as *contract rotation*, this occurs when a group of firms take turns winning successive contracts. Each participant agrees to allow others to win in subsequent tenders, ensuring continuous profitability for all. This practice is particularly harmful because it creates the appearance of competition over time while systematically excluding outsiders from the market.

B – Secondly: Prohibited Forms of Collusion in Public Contracts

1. Price Fixing

Perhaps the most recognizable and historically entrenched form of collusion, price fixing involves competitors agreeing on a uniform or coordinated pricing structure before the bidding process. Typically, a preferred bidder is pre-selected, and the others either submit inflated bids or non-conforming offers. Such conduct directly undermines the fairness of evaluation and contravenes the principle of free determination of prices, a cornerstone of both competition and procurement law.

Indicators of price fixing include repetitive patterns in bid amounts, uniform pricing differentials, or the recurring success of the same operator in successive tenders. Competition authorities often rely on economic evidence, such as bid dispersion analysis, to detect such coordination.

2. Exchange of Information among Competitors

This occurs when bidders unlawfully share sensitive information—such as pricing strategies, bid timing, or cost structures—prior to submission. The exchange may occur through informal meetings, trade associations, or digital communication. Even absent a formal agreement, the mere exchange of competitively sensitive data may suffice to constitute a concerted practice, as affirmed by the CJEU in the Suiker Unie case (1975). The underlying rationale is that transparency among competitors reduces uncertainty and replaces independent decision-making with coordinated conduct.

3. Market Allocation Agreements

These arrangements divide markets geographically or by client type. In public procurement, contractors may agree to submit bids favoring one another across regions—Algiers, Oran, Constantine, etc.—thereby ensuring mutual benefits without competition. Such conduct effectively fragments the national market into exclusive zones, a practice prohibited under Article 103 of the Algerian Competition Law, which mirrors Article 101 TFEU. Market allocation reduces consumer choice, hinders regional development, and entrenches monopolistic structures.

4. Violating Transparency Rules

Public procurement operates under strict procedural transparency to guarantee equality of opportunity. Tender specifications (*cahiers des charges*) define evaluation criteria—often the “lowest price” or the “most economically advantageous tender.” Collusive arrangements subvert these rules by manipulating evaluation criteria, for example by setting specifications that appear to value quality but in practice prioritize the lowest price, thereby favoring a pre-determined bidder. Such manipulation blurs the line between administrative discretion and corruption, threatening the credibility of public procurement systems.

5. Manipulation and Cartels

A cartel forms when independent undertakings coordinate their behavior as though they were a single entity, often through joint bidding or shared submissions. While joint ventures may be legitimate when aimed at achieving economies of scale, cartels differ in intent—they seek to restrict competition rather than enhance efficiency. In public procurement, cartels often involve mutual non-aggression pacts or exclusive consortiums that present a single bid to monopolize opportunities. Such conduct is per se illegal and subject to both administrative and criminal sanctions.

The criminalization of collusion in public procurement reflects the convergence between competition law and anti-corruption policy. Collusive behavior not only distorts markets but also undermines public trust, misuses taxpayer money, and weakens institutional legitimacy. The challenge for Algerian law, as for other jurisdictions, lies in balancing preventive mechanisms—such as transparency, open data, and cross-agency cooperation—with effective punitive measures. Only through coordinated enforcement between the Competition Council, judicial authorities, and procurement oversight bodies can the fight against collusion achieve real deterrence and preserve the integrity of the public procurement system.

(Expanded Version)

Collusive contracts represent one of the most challenging and damaging forms of market distortion within public procurement. The covert nature of collusion—often disguised under formal compliance with bidding procedures—makes its detection exceptionally complex. Economic operators engaging in collusion manipulate the appearance of fair competition while pursuing mutual enrichment at the expense of the contracting authority and the public interest. The consequences are significant: inflated project costs, market exclusion of honest competitors, inefficiency in resource allocation, and, ultimately, a loss of public trust in the integrity of the procurement system.

At its core, collusion in public contracts is a crime of concealment. The fraudulent coordination occurs behind the veil of legality, with bidders maintaining the outward form of lawful competition. This makes detection and enforcement highly dependent on circumstantial indicators and patterns rather than direct evidence. As international experience demonstrates, effective detection mechanisms must rely on a combination of investigative vigilance, market intelligence, and analytical tools.

International organizations such as the OECD, the World Bank, and the European Commission have long emphasized the importance of early detection of bid rigging schemes, viewing it as the cornerstone of safeguarding competition in procurement markets. These institutions recommend that contracting authorities develop systematic approaches to identify irregularities, enhance inter-agency cooperation, and use both legal and technological tools to expose collusive behavior.

The detection process generally proceeds through several interrelated stages:

1 – Seeking Patterns and Indications of Collusion

One of the most effective ways to detect collusion is through the careful examination of patterns of bidding behavior. Authorities should analyze the frequency of submissions, the sequence of winners, and recurring partnerships between the same firms. Indicators may include:

- Identical or very similar bid prices, suggesting a coordinated pricing strategy.
- Bids submitted in a specific order or within narrow margins of difference.
- Competitors taking turns winning contracts (*bid rotation*).
- Bidders who frequently withdraw their bids at the last moment, allowing a specific firm to win.

Such patterns rarely occur by chance in a competitive market. Statistical and forensic analysis of tender results—sometimes referred to as “screening tests”—can help authorities identify unusual

consistencies that signal possible collusion. The OECD's 2016 *Guidelines for Fighting Bid Rigging in Public Procurement* recommend cross-tender analysis over time to identify these anomalies.

2 – Investigating Submitted Bids

Beyond numerical data, the content and form of the bids themselves may reveal collusion. A detailed examination of all submitted documents can expose telltale signs such as:

- Identical wording, handwriting, or formatting across multiple bids.
- Use of the same language errors, fonts, or document templates.
- Similar tender justifications or identical cost breakdowns, implying shared preparation.
- Last-minute modifications, erasures, or corrections that suggest coordinated revision.

Forensic document analysis, combined with digital forensics (e.g., IP address tracing of electronic submissions), can reveal whether multiple bids originated from a common source. In Algeria, such investigative techniques are increasingly recognized under Decree No. 15-247 as legitimate tools to ensure the authenticity and independence of bids. Comparative experiences from France and Italy show that even minor technical similarities in documentation have served as compelling evidence of collusion before administrative courts.

3 – Market Research

Effective detection cannot rely solely on tender-specific data. Broader market intelligence is crucial to contextualize suspicious patterns. By studying market structures, contracting authorities can identify whether a small number of firms dominate bids, whether new entrants are systematically excluded, and whether subcontracting arrangements conceal informal alliances.

Market research involves analyzing:

- The historical bidding behavior of firms.
- Their ownership structures and potential interlocking directorships.
- Their previous collaborations or joint ventures.

For example, if the same group of companies consistently wins contracts within a given region, or if firms share common shareholders, such indicators may justify a deeper investigation. In line with OECD and UNCITRAL recommendations, market research also enables authorities to understand whether price variations are due to legitimate market factors (e.g., material costs) or to artificial manipulation.

4 – Implementing Anti-Collusion Clauses

Incorporating anti-collusion clauses into tender documents represents a preventive and deterrent measure. These clauses typically require bidders to submit a sworn declaration affirming that they have not engaged in any anti-competitive conduct, directly or indirectly. They may also include provisions allowing the contracting authority to terminate the contract or impose financial penalties if collusion is subsequently discovered.

Although the enforceability of such clauses can be challenging, they play an essential role in reinforcing bidders' awareness of legal risks and in supporting subsequent investigations. The World Bank's Standard Bidding Documents and European procurement directives both include anti-collusion affidavits as part of the eligibility criteria. However, experts warn that such clauses

are not self-sufficient—they must be supported by active verification and cross-checking of bidder declarations.

5 – Increasing Transparency

Transparency is a cornerstone of both competition and good governance. Making tender procedures more open and traceable reduces opportunities for secret coordination. This can be achieved by:

- Publishing detailed tender results, including evaluation criteria and scoring;
- Allowing public access to procurement data through open portals;
- Providing opportunities for civil society and the media to monitor tenders.

Enhanced transparency discourages collusive actors, who depend on secrecy and information asymmetry. Furthermore, transparency enables whistleblower participation, allowing insiders to report collusion with reduced fear of retaliation. Algeria's recent administrative reforms emphasize digital transparency through the Public Procurement Portal, which could serve as a deterrent to collusion if effectively monitored.

6 – Rotating Bid Evaluators

Human factors play a significant role in enabling or preventing collusion. When the same officials evaluate bids repeatedly, they may develop familiarity with certain contractors, consciously or not. Regularly rotating evaluators and including external observers—such as members from audit bodies or civil society—helps preserve impartiality.

This measure also mitigates the risk of institutional capture, whereby colluding firms cultivate relationships with procurement officials over time. The OECD Integrity Framework for Public Procurement encourages institutional rotation as a key tool to prevent both collusion and corruption.

7 – Utilizing Technology and Data Analytics

Modern technology has transformed the landscape of competition enforcement. Advanced data analytics, machine learning algorithms, and AI-based screening systems are now capable of identifying anomalies across thousands of tenders. For instance, e-procurement platforms can flag:

- Unusually close bid values between competitors;
- Repetitive patterns of bidding and winning;
- Coordinated timing in bid submissions.

The European Commission's *Big Data Analytics for Competition Enforcement (2021)* and the World Bank's *Procurement Data Analytics Toolkit* both highlight the potential of digital systems in exposing bid rigging. Algeria's gradual adoption of e-procurement systems can greatly enhance detection capacity, provided data integrity and access are ensured.

Technology, however, is not a substitute for legal judgment. Automated detection must be coupled with human expertise capable of interpreting patterns, contextualizing anomalies, and distinguishing between legitimate coincidences and deliberate collusion.

Detecting and preventing collusive practices in public procurement is a multifaceted challenge that requires a combination of legal, economic, and technological strategies. No single measure

guarantees success. Instead, an integrated framework—combining transparency, institutional rotation, anti-collusion clauses, data analytics, and strong enforcement—is essential.

In the Algerian context, reinforcing coordination between the Competition Council, the Public Procurement Regulatory Authority, and the judiciary is crucial for building a proactive detection system. Training procurement officials to recognize collusive indicators, encouraging whistleblowing, and promoting data sharing across institutions can transform detection from a reactive to a preventive endeavor.

Ultimately, the detection of collusion is not merely a technical process; it is a moral and institutional commitment to ensuring that public procurement serves its intended purpose: the efficient, transparent, and equitable allocation of public resources in the service of the common good.

competitive conduct in public procurement systems. It fundamentally undermines the objectives of public contracting — efficiency, transparency, and fairness — while simultaneously eroding public trust and economic integrity. This practice must therefore be rigorously identified, prevented, and punished at all costs due to its multifaceted negative consequences on the economy, public finances, and social welfare.

Conclusion:

Collusive bidding, by its very nature, distorts market mechanisms. It replaces open competition — which is the cornerstone of economic efficiency — with artificial coordination between bidders who manipulate prices and market outcomes. The most immediate consequence of this conduct is the inflation of contract prices, as colluding firms agree to submit complementary or cover bids to ensure that a pre-determined bidder wins the contract. As a result, contracting authorities end up paying excessive amounts for goods or services that could have been obtained at significantly lower prices through genuine competition. Such inflated pricing drains public resources, restricts investment in development projects, and ultimately undermines public confidence in state institutions.

Moreover, collusion has a profound impact on the quality of public works and services. When contractors are shielded from competition, they lack any incentive to innovate, improve quality, or adhere to deadlines. The absence of competitive pressure encourages mediocrity, inefficiency, and, in many instances, the delivery of substandard projects. Empirical studies in the European Union and OECD countries have demonstrated that collusive arrangements often result in cost overruns, project delays, and frequent contractual disputes. Thus, collusion not only damages the financial interests of the State but also compromises the quality and sustainability of public infrastructure.

From a broader perspective, collusive practices suppress innovation and technological progress. In a healthy competitive environment, firms strive to differentiate themselves by offering improved techniques, materials, and project management strategies. However, when collusion takes hold, such motivation disappears. Companies no longer compete on quality or creativity but rather rely on mutual agreements to secure predictable profits. This stagnation in innovation slows national economic growth and weakens the competitiveness of local industries on regional and global scales.

Collusive agreements also give rise to unjust advantages and deep inequities in the market. When a small group of bidders secretly divides contracts among themselves, honest and capable competitors are effectively excluded from participation. This exclusionary behavior contravenes the principle of equal access to public procurement opportunities, which is enshrined in both national

laws and international trade agreements. Furthermore, it breeds a culture of corruption, as collusion often overlaps with bribery and influence-peddling within contracting authorities. Bid-rigging cartels frequently resort to illicit payments to ensure that officials overlook irregularities or manipulate evaluation procedures in their favor, thus creating a vicious cycle of corruption that corrodes the rule of law.

Given the gravity of these consequences, collusion in public contracts must be addressed as both an economic and a criminal offense. In many jurisdictions, including France, Canada, and the European Union, collusive tendering is prosecuted under both competition law and criminal law frameworks. Financial penalties, while necessary, are not sufficient to deter such conduct. Sanctions must include blacklisting of offending companies, exclusion from future tenders, and, where appropriate, temporary or permanent closure of enterprises that repeatedly engage in collusive conduct. This approach sends a strong deterrent message to market participants and restores integrity to the procurement system.

From a legislative perspective, the Algerian legal framework should evolve to reflect these global standards. It is imperative for the Algerian Criminal Code — and more specifically, laws governing public procurement and competition — to incorporate a distinct and explicit penal provision criminalizing all forms of collusive behavior in public contracts. This provision should clearly define the material and moral elements of the offense, as well as corresponding sanctions comparable to those imposed for corruption-related crimes committed by public officials. The existence of general criminal intent, manifested through deliberate coordination among bidders to undermine competition, must be sufficient to trigger liability.

Additionally, the role of Competition Councils and regulatory authorities must be strengthened. These institutions should be empowered not only to investigate and sanction anti-competitive agreements but also to pursue civil compensation for public entities and competitors harmed by collusive practices. Moreover, collaboration between the Competition Council, public procurement authorities, and judicial bodies is essential to ensure coherent enforcement of competition law and to avoid jurisdictional overlaps that could hinder effective prosecution.

It is equally vital to consider preventive and structural measures to reduce the risks of collusion. The Algerian legislator should focus on eliminating barriers to market entry, as such barriers facilitate cartel formation by limiting the number of active competitors. Encouraging the entry of new firms increases market dynamism and makes it difficult for existing operators to maintain stable collusive agreements. Likewise, adopting long-term supply contracts, particularly in sectors prone to repeated tendering (such as construction or public utilities), can help disrupt repeated collusive interactions and promote deviation from cartel arrangements.

In the design of tenders, public buyers must apply strategic measures to hinder collusion. The number of lots or items to be awarded should not mirror the number of potential bidders, as this facilitates perfect market division — each bidder taking one lot. Instead, structuring tenders so that the number of items differs from the number of bidders introduces uncertainty and makes collusive coordination significantly more difficult. Moreover, recognizing heterogeneity among bidders — in terms of cost structures, market share, or technological capabilities — helps weaken cartel stability. When firms are asymmetrical, reaching and sustaining collusion becomes much more complex.

Finally, deterrence must be matched by effective enforcement. The judiciary must adopt a strict interpretation of anti-collusion provisions, ensuring that offenders face not only administrative penalties but also criminal consequences proportionate to the gravity of their actions. Public awareness campaigns and professional ethics training for procurement officials can further strengthen integrity within the system.

In summary, collusive bidding is not merely a technical irregularity; it is a deliberate assault on public trust, economic justice, and the principle of equal opportunity. To combat this phenomenon, the Algerian legislator must adopt a holistic approach that combines criminal prosecution, administrative sanctions, structural reforms, and market liberalization. Only through such a comprehensive and coherent legal framework can Algeria ensure transparency, competitiveness, and sustainable development in its public procurement system.

Citations:

(¹) Law No. 23-12 dated August 5, 2023, Official Gazette No. 51.

(²) Boudali, Mohamed. "Parliamentary Oversight Systems, Financial and Administrative Control over Public Contracts," Intervention at the International Conference on "Prevention and Combating Corruption in Public Contracts," Faculty of Law and Political Science, University of Sidi Bel Abbès, April 24-25, 2013, Unpublished.

(³) Zakaria Rqraqi / Previous reference, p. 140.

(⁵) Dated July 5, 1989.

(⁶) French Association of Legal Advisors to Local Authorities, Study Day organized on October 5, 2006.

(⁷) Zakaria Rqraqi, Previous reference, p. 99.

(⁸) Touati, Mahfoud Sherif, Previous reference, p. 17.

(⁹) Naceri, Nabil, Previous reference, p. 80, and Kato, Mohamed Sherif. "Consumer Protection from Anti-competitive Practices," Administration Magazine, Issue 23, 2002, p. 52.

(¹⁰) Article 08 of Order No. 03/03 regarding competition.

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