

Criminal infiltration of the public sector

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Criminal firms in a managerial view

We adopt a managerial perspective in order to investigate how “criminal” firms design their strategies to control the market

Compared to the traditional disciplines (criminology, sociology, political science,...) our main focus is on the firm and not on the criminal organizations.

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Criminal firms and the dark side of business (1)

According to our perspective, the concept of dark side of business is related to that “so called” **grey area** where legal players (such as private and public firms, banks, public institutions, white collars, etc) meet and collaborate with illegal players (criminal organizations).

It is an area where it is more and more **difficult to distinguish** what it is illegal from what it is not, where we can find legitimate firms or consultants work for the interests of illegal organizations and where illegal organizations operate according to a perfect legal conduct.

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Criminal firms and the dark side of business (2)

In this context legal firms could set up alliances and partnerships with criminal organizations

These kind of firms are (in a sense) criminal firms, they could be interpreted as a tool to carry out organized crime' interests.

At a very general level, **there are three different ways to control firms:**

- 1) in some cases criminal organizations directly create or acquire a firm;
- 2) in other circumstances, firms and criminal organizations collaborate through specific relationships in order to gain a reciprocal advantage;
- 3) in other cases criminal organizations use violence, intimidation or just their "brand" to influence firms choices and behaviours.

Methodology

We present two case studies

Our empirical scrutiny was affected by three major constraints:

- 1) there is a clear difficulty in gathering data and information directly from the people involved (usually they are not available to disclose information for research purposes).
- 2) in many cases public prosecutors may be sworn to secrecy and cannot disclose all the information they have available;
- 3) the Italian judiciary system is very slow, due to the complexity and long time required by many trials.

The basic consequence of such constraints is that we were obliged to collect our data from two main sources: official documents analysis (judiciary acts, police forces reports, Italian Antimafia Commission's reports), and interviews with a panel composed of distinguished experts.

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Public tenderings as a promising business occasion

The relationship between legitimate firms and criminal organizations is centered around the **control of the different steps of tendering procedure**.

Through our analysis we intended to show how the ability of criminal organizations of **influencing such procedures** may depend on issues such as the availability of actors like legitimate firms, public administration, white collars, professionals, offering their help in a more or less spontaneous way.

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Steps of the procurement process

To understand this aspect we want to analyse the ability of criminal firms to control different steps of the procurement process, whose main steps are as follows:

1. defining the resources to be allocated by the public administration;
2. defining the method for awarding the service (tendering procedure, untendered contracts);
3. drawing up the specification;
4. defining the participation of other firms to the tendering procedure;
5. awarding the contract;
6. awarding the subcontracts;
7. determining procurement details (materials, products, services);
8. stipulating the workforce to be hired;
9. deciding the governance methods to be used by the awarding institution;
10. setting payment methods.

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Case 1: Eco4 (1)

Market	Waste collection business (facts take place in the 1990's)
Area	Caserta province
The awarding institution	Consorzio CE4
Type of procurement	European procurement to select a private partner to set up the public private firm ECO4. The procedure was awarded to a temporary association of enterprises (ATI) named Flora Ambiente, owned by two local entrepreneurs (Sergio and Michele Orsi) connected with Casalesi clan

The business of waste collection and removal traditionally attracts criminal organizations for a variety of reasons:

- a strong and concentrated public demand;
- a very localized service;
- a low added value business (waste logistics and burial);
- the importance of this industry in a context in which local service providers may impose a strong pressure on politicians and institutions.

In order to choose the private partner the local consortium of the Caserta province proceeded with a public tendering procedure following EU rules.

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Case 1: Eco4 (2)

In order to encourage more private operators, while at the same time preserving public oversight, Italian law stipulates that this public service should be managed by public-private partnerships, 51% owned by a public institution (municipality, province, local consortia, or region), with the participation of a private operator endowed with the technical and managerial competence needed to run the service.

The public institution controls the company and transfers the service to the public-private partnership without any tendering procedure. The private partner is usually chosen following a competitive tendering aimed at selecting the firm with the strongest managerial and commercial skills.

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Case 1: Eco4 (3)

Subjective capacity of the criminal firm (features of the firm)

Subjective capacity of the criminal firm	How
Dimensional features (revenues, experience, ecc.)	Partnership with other firms
Financial credibility	The role (and the possibility to influence) of banks
Certification (antimafia, ecc.)	Capacity to influence public servants (corruption)

Objective capacity of the criminal firm (required by the bid)

Objective capacity of the criminal firm	How
Technical features (infrastructures, equipment, etc.)	Partnership with other firms
Economical features	Not really important
Professional features (legal, administration, ..)	Management and external consultants

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Evidences from the Eco 4 case

As judiciary acts and witnesses point out, Flora Ambiente needed to exert a strong influence on a number of steps of the tendering process managed by the Eco4 consortium in order to win the contract (from the drawing up of the book of specifications, to the management of the competitive procedure, to the collection of the bids).

The Eco4 consortium, once established, used intimidation and corruption in order to be awarded the service of waste collection and removal by the municipalities involved in the consortium.

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The ability to influence the procurement process

Steps of the procurement process	Eco4
Ability to control the amount of resources allocated by the public administration	No
Ability to influence the definition of the ways in which the service is awarded	No
Ability to influence the writing up of the book of specifications	Yes
Ability to influence the participation of other firms to the tendering procedure (number of offerings and amount of offerings)	Yes
Ability to influence the awarding of the contract	Yes
Ability to influence the awarding of subcontracts	Yes
Ability to influence the choices about procurement details (materials, products, services)	Yes
Ability to influence the choices of workforce to be hired	Yes
Ability to influence the control activities of the awarding institution	Yes
Ability to influence the payment methods of the awarding institution	No

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Case 2: High Speed Trains construction sites in northern Italy : scenario of earth moving works

Over the last 20 years, 'Ndrangheta families have tightened their grip on large areas of northern Italy, aiming for more control over the economy of this relatively rich region

According to the head of the public prosecutor office in Milan, “*in Lombardia region we cannot only speak about mafia infiltration in legitimate industries, but criminal organizations (especially 'ndrangheta) are more and more rooted in the economic and social context;... in the earth moving business 'ndrangheta operates as a real monopolist*” (E. Bruti Liberati, 2012).

Case 2: High Speed Trains construction sites in northern Italy: the case study

Market	Earth moving public works
Area	High speed rail segment Milano-Venezia
Main awarding firm	De Lieto (legitimate)
Main contractor	Locatelli (legitimate, with an history of cooperation with local earth moving firms infiltrated or run by criminal organizations)
Criminal firm	P & P (run by a member of Paparo 'ndrina)
Infiltration mechanisms	Manipulated the later stages of the tendering procedure, and in particular the subcontracting activities assigned by the main contractor to small and medium-sized enterprises

Case 2: High Speed Trains construction sites in northern Italy: the case study

Apart from Locatelli, P&P needed **no other intermediaries** in order to enter the business of earthmoving.

In particular, there were no links with civil servants, banking institutions, or other firms: the only actors who had to be contacted were the other criminal firms active in the same business.

In this case, the strategy of the criminal firm consisted in focusing attention on the **execution of the works**, attempting to alter choices related to the procurement of materials and subcontracting, and neglecting the initial steps of the tendering procedure.

P&P made use of **intimidation and criminal reputation**.

Case 2: High Speed Trains construction sites in northern Italy: analysis

As stated in the official document of the Court of Justice of Milan: “*A centralized management system of public procurement processes is at the heart of the relationship between the 'Ndrangheta system and the entrepreneurial world. When clans form a whole system, any infringement of the agreements in such businesses becomes a violation of the 'Ndrangheta system, which no one can do with impunity*”.

Legitimate firms receive benefits when sourcing services from criminal firms, which may appear more efficient or offer lower prices.

In the official document of the Court of Justice of Milan, a magistrate claims that “*the goal of the Locatelli firm is not to favor the Paparo clan, but rather to cover themselves while continuing to take part in the economy via the illicit system*.”

The ability to influence the procurement process

Steps of the procurement process	Eco4	High Speed Trains
Ability to control the amount of resources allocated by the public administration	No	No
Ability to influence the definition of the ways in which the service is awarded	No	No
Ability to influence the writing up of the book of specifications	Yes	No
Ability to influence the participation of other firms to the tendering procedure (number of offerings and amount of offerings)	Yes	No
Ability to influence the awarding of the contract	Yes	No
Ability to influence the awarding of subcontracts	Yes	Yes
Ability to influence the choices about procurement details (materials, products, services)	Yes	Yes
Ability to influence the choices of workforce to be hired	Yes	No
Ability to influence the control activities of the awarding institution	Yes	No
Ability to influence the payment methods of the awarding institution	No	No 17

Beyond traditional models of the relationship criminal firms-legal economy (1)

Traditionally two different models of the strategies used by criminal firms to manage their relationship with the legal economy may be depicted.

In the **predatory** model, criminal organizations control the later phases of the procurement process. They tend to have fewer actors under their control and also to use more traditional criminal levers (intimidation, environmental pressure). Their presence is more peripheral and they are able to exert less effective control of the economic activities involved.

Hence their sphere of **influence is restricted to marginal**, low-value-added activities (for instance, subcontracting in earthmoving works)

Beyond traditional models of the relationship criminal firms-legal economy (2)

The predatory model is characterized by a dual relationship between the firm that receives the right to carry out public works through competitive tendering procedures or the possibility of managing a public good or service, and the criminal clans.

The relationship between these two typologies of actors developed due to mutual interest, as a tacit agreement.

The criminal reputation of clans also plays a vital role. In this model, criminal clans do not try to alter the public procurement process, but rather aim to develop a relationship with the firm that is awarded the service.

This implies that the relational ability of the criminal clans is only active with the winning firm. In this kind of situation the main levers adopted by clans are criminal reputation, intimidation, and corruption.

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Beyond traditional models of the relationship criminal firms-legal economy (3)

In the **entrepreneurial** model, criminal organizations enter directly into the business system and control more actors and resources directly. Traditional criminal levers (such as violence or physical intimidation) play a more marginal role.

The entrepreneurial model opens up more potential outcomes to criminal organizations, since it may increase their ability to penetrate the legal economy or control jobs and electoral votes. It may also increase their options for infiltrating the public administration and altering the market access enjoyed by competing businesses.

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Beyond traditional models of the relationship criminal firms-legal economy (4)

The two models are potentially converging towards an **hybrid model**, in which:

- there is an overlap between situations in which the firm is directly threatened by criminal organizations and situations in which they have clear advantages from this relationship, in terms of reduction of competition, more simple industrial relations, increased bargaining with politicians and public administration
- the legitimate firms become proactive and are engaged in seeking fruitful relationships with criminal organizations