

Institution: University of Hull
Unit of Assessment: C19: Business and Management Studies
Title of case study: The Application of Public Procurement as a Policy Instrument in the EU and its Member States
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Research into public procurement in the EU and its Member States undertaken by Professor Bovis has made a significant impact on the application of public procurement as a policy instrument in the UK. The impact of Professor Bovis' research is threefold: it has influenced parliamentary debate and legislative scrutiny in the UK by demonstrating the socio-economic and industrial policy dimension of public procurement; it has shaped change in the UK regulatory and legal environment of public procurement through advice to the UK government on procurement legal reforms; and it has affected a paradigm shift by extensive media engagement.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>Research undertaken by Professor Bovis at the University of Hull between 2005 and 2012 has investigated outcomes of EU public procurement regulation upon the Member States [1]. It has revealed the economic importance of public procurement regulation by analysing its features, which introduce competitiveness in the market, resulting in significant price convergence, and finally acting as the catalyst for rationalisation and industrial restructuring of the European industrial base [2]. It has established the rationale of public procurement regulation by linking its outcomes with fundamental principles of EU integration, such as the free movement of goods and services, the right of establishment, the prohibition of discrimination, and the imperative to eliminate preferential and discriminatory purchasing patterns by the public sector [2].</p> <p>The research body which underpins the case study exposed the strong influence of neo-liberal theory in public procurement regulation by reflecting upon the trend of policy makers to establish market conditions based on price competition, which would result in production and distribution efficiencies and optimal allocation of resources [3]. It also demonstrated the public policy implications for the Member States arising from EU public procurement regulation. It exposed the influence of <i>ordo-liberal</i> theories in public administrations of EU Member States by revealing emerging trends of a type of "national public policy", which carries with it common policies, such as environmental policy, employment policy, social policy and industrial policy. It takes into account a narrower view of national priorities within the overall regulatory process of the integration of public markets, in contrast to the wider view of EU market integration [5].</p> <p>Professor Bovis' research established two competing conceptual themes: one reflecting on public procurement regulation as an economic instrument of the European Integration process; the other, reflecting on public procurement regulation as a policy choice for national governments [4].</p>
<p>3. References to the research (indicative maximum of six references)</p> <ol style="list-style-type: none"> 1. Bovis C, EU Public Procurement Law 2nd Edition, <u>Edward Elgar</u>, 2012, pp xxi +557 ISBN 972 2 34494 405 7. 2. Bovis C, Public Procurement in the EU: Jurisprudence and Conceptual Directions, 49 <u>Common Market Law Review</u> p.p. 1–44, 2012. ISSN: 0165-0750 3. Bovis C, Public Procurement: Case Law and Regulation, <u>Oxford University Press</u>, 2006, pp xxv + 736, ISBN 0-19-927792-3. 4. Bovis C, Financing services of general interest, public procurement and state aid: The delineation between market forces and protection, <u>European Law Journal</u>, Vol.11, No1, 2005, pp. 79–109. ISSN: 1351-5993. 5. Bovis C, "Public Procurement and the Internal Market of the 21st Century: Economic Exercise versus Policy Choice", Chapter 17 in EU Law for the 21st Century: Rethinking the

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New Legal Order, Nebia and Tridimas (eds) Hart Publishing, 2005, ISBN 1-84113-460-0, pp. 290-310.

The quality of Professor Bovis' research is evidenced by publication in outlets of high impact. Common Market Law Review, SRJ 0.89, Citations per doc 0.88, Total Citations 157; European Law Journal, SRJ 1.01, Citations per doc 0.88, Total citations 107.

It is also demonstrated by the extensive citation of his work by the European Court of Justice in leading cases to determine the correct interpretation of public procurement law in EU Member States. See, for example, Case C-324/07, *Coditel Brabant SPRL v Commune d'Uccle and Région de Bruxelles – Capital*, OPINION OF ADVOCATE GENERAL TRSTENJAK delivered on 4 June 2008; Case C-536/07, *Commission of the European Communities v Federal Republic of Germany* OPINION OF ADVOCATE GENERAL TRSTENJAK delivered on 4 June 2009.

Due to the reputation of his research, Professor Bovis has appeared as chairman and/or keynote speaker in training and continuous professional development events by professional/policy maker and training bodies, such as the European Law Academy (ERA), European Institute of Public Administration (EIPA), Nordic Communications (NorhCOM), QED Communications, and Inside Government.

Professor Bovis was commissioned by the UK Office of Fair Trading (OFT) to assess the impact of public procurement regulation on the future of Post Office Ltd in 2012. The engagement entailed a £15,000 research project to determine whether the UK could move to a new public procurement model from the existing focus on pure value-for-money, towards focusing on a blend of value-for-money and socio-economic characteristics, and evaluating the manner in which this could benefit the UK Post Office.

Professor Bovis was commissioned by the Trades Union Congress (TUC) in 2012 in a £2,000 research project to undertake a strategic review of the legal and policy parameters in the UK, which might be conducive to: demand structures on railway rolling stock procurement; the nature of project requirements; and the way the above interact with contracting authorities' intentions in the delivery of public services.

4. Details of the impact (indicative maximum 750 words)

Professor Bovis' research focused academic debate and influenced discourse on the socio-economic and industrial policy dimensions of public procurement in the EU and its Member States.

Statement of impact: The underpinning research has had significant organisational impact upon the UK Government and the UK legislator by shaping change in the regulatory environment of public procurement and influencing parliamentary debate and scrutiny respectively.

Details of impact and justification:

In 2011, Professor Bovis was appointed as lead counsel to the UK Cabinet Office to advise on public procurement reform. The UK Government sought to investigate the potential of economic growth through public procurement. Research outputs 3 and 5 provided Professor Bovis with the variables needed to ascertain whether EU Member States (such as France and Germany) apply the EU Public Procurement rules in an advantageous way for domestically-based suppliers. The research found that there is a striking difference in policy application of public procurement between the UK and the leading EU Member States, which promote country-based employment through public procurement.

As a result of this study, the UK Government aligned UK policy with other EU Member States and adopted a more strategic perspective on public procurement. His recommendations were fully accepted by the UK Cabinet Office and have been acknowledged by that Government department as "particularly valuable for reforming public procurement in the UK" as a result of the amendments of the EU Public Procurement regime during 2011-2013. The UK Government has sought

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Professor Bovis' continuous engagement to implement and affect public procurement policy change [6].

Statement of impact: The underpinning research has had an impact on public policy, law and services by influencing the scrutiny of the application of public procurement in the EU and in the UK, and reflecting on public procurement regulation as a policy choice for national governments.

Details of impact and justification:

In 2011, Professor Bovis appeared before the House of Commons Select Committee on Transport and provided written and oral evidence on public procurement application in EU Member States and the UK. In his testimony, recourse to research outputs 1 and 2 allowed Professor Bovis to provide the parameters of the public policy implications for the Member States arising from EU public procurement regulation. The outcome of the parliamentary enquiry was that it published its report and drew attention to the need for the UK Government to link economic growth, employment and manufacturing policies with its public procurement strategy [7]. The result of the parliamentary enquiry also led the House of Commons Select Committee on Transport to ask the UK National Audit Office (NAO) to investigate the decision by the UK Secretary of State for Transport to award the £1.4bn Thameslink project to Siemens AG instead of the UK-based Bombardier train manufacturer [8]. The NAO published its report in June 2013 and criticised the UK Government over considerable delays to the project and questioned its value-for-money objectives [8].

In addition, Professor Bovis appeared before the House of Commons Select Committee on Public Administration and provided written and oral evidence on defence procurement and industrial policy in the UK in 2013 [9]. In his testimony, Professor Bovis drew on research outputs 3 and 5 and provided evidence on emerging trends in industrial policy, which allow for national priorities to be met within the overall regulatory process of the integration of public markets. This led to the House of Commons Select Committee on Public Administration publishing its Report to the UK Government on Defence and Government Procurement in July 2013, which contains Professor Bovis' full findings and recommendations, and advises that the UK Government apply defence procurement policy in line with industrial policy [10].

In 2012, Professor Bovis was commissioned by the UK Office of Fair Trading (OFT) to assess the impact of public procurement regulation on the future of Post Office Ltd. The outcomes of the research were underpinned by Professor Bovis' research outputs 2 and 4 and confirmed the influence of ordo-liberal theories in public administrations of EU Member States. The Office of Fair Trading, which is the ultimate regulator of the Post Office Ltd, has utilised Professor Bovis' recommendations to influence the UK Public Service Bill in 2012 [15].

Statement of impact: The research has had significant impact on society through media engagement, citations in policy consultations and strategy documents, which shaped public debate for responsible public procurement.

Details of impact and justification:

Professor Bovis has actively engaged with the UK media in disseminating his research to influence public debate for supporting national industry and for promoting employment through public procurement.

His appearances on the BBC Newsnight programme on 14 July 2011 and on BBC Radio 4 on 12 July 2011, together with extensive coverage in the national press during 2011-12, received UK-wide recognition. This is because Professor Bovis urged the UK government and its agencies to use socio-economic award criteria in public procurement instead of the cheapest offer. As a result, in 2012 he was invited by the Royal Academy of Engineering to make representations to the UK Government based on his research on the issue of UK manufacturing capacity and its links with public procurement. The outcome has been the saviour of the Derby-based UK train manufacturer, Bombardier, as it was awarded the £1bn Crossrail contract using criteria that went beyond price, thus safeguarding in excess of 1,400 jobs [13].

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His appearance on BBC File on 4 (20 March 2012) provided a critique of the Scottish Government's decision to procure foreign components and supplies for the Forth Bridge replacement, one of the most important infrastructure projects in the UK for the last 50 years, and offered an informed debate on opportunities for British industry arising from the UK Government Procurement Review [12].

Professor Bovis was commissioned by the Trades Union Congress (TUC) in 2012 to investigate the relation of demand structures on railway rolling stock procurement with the application of public procurement rules in the UK. As a result of his recommendations, which were made with reference to research outputs 4 and 5, the TUC successfully instigated the 2012 campaign, Save British Train Manufacturing [11].

Professor Bovis' learned expertise, which is underpinned by his research on public procurement in the EU (especially research outputs 1-5), has been used by and in a range of other public hearings, such as in the EU Committee of the Regions, the EU Parliament, and the Hungarian National Procurement Council [14].

5. Sources to corroborate the impact (indicative maximum of 10 references)

[6] Cabinet Office: Classified Letter of Engagement of review on UK, French and German interpretation and application of the Procurement Directives; Cabinet Office: Letter of Acknowledgement from Executive Director of Cabinet Office.

[7] <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/writev/proc/proc31.htm>
House of Commons, Select Committee on Transport Eleventh Report of Session 2010–12, Thameslink rolling stock procurement (HC 1453).

[8] House of Commons, Select Committee on Transport, 14 December 2011 SCA 115/2010–12 REPORT: Thameslink rolling stock procurement - NAO should review the Thameslink procurement process; <http://www.nao.org.uk/wp-content/uploads/2013/06/10164-001-Thameslink-Full-Report.pdf>

[9] <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/writev/proc/proc31.htm>

[10] <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/123/123.pdf>

[11] Trades Union Congress: Strategic Procurement Capability in the UK Rolling Stock Industry <http://www.thisisderbyshire.co.uk/Derby-Telegraph-featured-plight-Bombardier/story-15188378-detail/story.html#>

<http://www.theguardian.com/commentisfree/2011/jul/05/bombardier-rail-policy-buffers>

<http://www.mirror.co.uk/news/uk-news/siemens-fined-for-worldwide-corruption-144519>

<http://www.mirror.co.uk/news/uk-news/lawyer-bombardier-can-be-saved-if-government-149144>

[12] http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/20_03_12_fo4_abridgetoofar.pdf

<http://www.supplymanagement.com/news/2011/vote-for-change/>

[13] <http://www.thisisderbyshire.co.uk/Minister-signals-Derby-train-maker-fair-shot/story-15351497-detail/story.html#axzz2qhTwnytx>

[14] http://www.peppol.eu/news/news_repository/The_Single_Market_Act-brochure.pdf/at_download/file;

<http://www.europarl.europa.eu/document/activities/cont/201203/20120309ATT40380/20120309ATT40380EN.pdf>; <https://www.etenders.gov.mt/epps/cft/downloadInfoltem.do?documentId=2208>

[15] OFT and Consumer Focus - Building Social Value in Public Procurement

<http://services.parliament.uk/bills/2010-11/publicservicessocialvalue.html>