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**NETWORK ETHICS AND GOVERNMENT TO BUSINESS
RELATIONSHIPS IN PORTUGAL: AN OVERVIEW OF PUBLIC E-
PROCUREMENT POLICIES AND PRACTICE**

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Abstract

The analysis of ethical issues in Internet-enabled marketplaces remains generally under-explored and this gap is even more prominent in practices associated with G2B networks. This paper argues that the application of Network Ethics to G2B relationships requires a focus on specific questions that arise from the evolution of the way government has come to interact with business. To this purpose, the paper starts by outlining the relevance of universal values to Network Ethics. The next section draws out and briefly discusses the most relevant ethical issues that arise in the rapidly changing context of G2B relationships. To provide an application and substantiate the claims of the paper, the development of public e-procurement in Portugal is presented and analysed in the scope of the background public policies for information society and e-government development in Portugal. It is shown that use of the Internet for e-procurement purposes is growing in Portugal and the main constraints and risks associated with further developments are laid out and discussed. Overall the theoretical analysis and the empirical case point to the growing importance of developing interoperability standards and promoting greater transparency and competition in public e-procurement. It is further argued that reliable analysis in terms of Internet-enabled marketplaces requires both a solid ethical framework and its application in conjunction with empirical knowledge of the situations being studied, and that only in this way can network ethics effectively contribute to the promotion of greater accountability and ethical behaviour on the ground.

Keywords: Network Ethics; Public Administration, e-Government, e-Procurement, Portugal.

Introduction

The challenges that arise from Network Ethics are particularly prominent in areas that require a renewed application of universal values to pre-existing practices and relationships that have taken new shapes due to the emergence of networks. This is particularly striking in the changing nature of government to business (G2B) relationships associated with the diffusion of networks and e-government applications.

Whereas in the operation of business and government through traditional channels, the importance of an ethical framework is widely acknowledged (even if its implications are not always put into practice), the analysis of ethical issues in Internet-enabled marketplaces remains generally under-explored and this gap is even more prominent in practices associated with G2B networks. In fact, it's possible to claim that this is a salient example of the phenomenon usually designated as 'ethical lag' (Marshall 1999; Kracher and Corritore 2004), due to the rapid pace of technological change and the complexity of the empirical issues that are necessarily involved in any proper account of Network Ethics.

Assessing the implications of Network Ethics on business practices is particularly important in relationships in which government is directly involved because the requirements and expectations imposed on G2B relationships are partly of a different nature than those that apply to 'regular' business relationships. Furthermore, the identification of relevant stakeholders and the associated ethical implications on G2B relationships also contain important particularities and there are well known specific organizational and implementation challenges associated with technological change that involves the government sector (Fountain 2001). This is therefore a promising field for the joint application of ethical and social network analysis. Nevertheless, the fact that 'e-procurement does not have a unitary identity or discrete associations but rather consists of multiple stakeholders and representations that manifest differently in varying situations and contexts' (Hardy and Williams 2008, 177) poses a challenge for the development of an appropriate ethical framework. In order to allow a more rigorous and complete reflection on the issues involved it is therefore desirable that the insights

derived from ethics and social network theory be complemented by applied knowledge to the specific field being surveyed. In order to accomplish that, this paper combines a more general outlook on the ethical issues that arise in the changing context of G2B interactions with an application of that framework to the analysis of public e-procurement policies and practice in Portugal.

This paper argues that the application of Network Ethics to G2B relationships requires a focus on specific questions that arise from the evolution of the way government has come to interact with business. To this purpose, the paper starts by outlining the relevance of universal values to Network Ethics and suggesting how they can be applied to social network analysis that deals with business practices. The next section draws out and briefly discusses the most relevant ethical issues that arise in the rapidly changing context of G2B relationships. To provide an application and substantiate the claims of the paper, the development of public e-procurement in Portugal is then presented and analysed in the scope of the background public policies for information society and e-government development in Portugal. The analysis of the Portuguese case builds upon earlier work on models and architectures for e-government (Dias and Rafael 2007), the implementation of e-government in the country (Alves and Moreira 2005), the specificities of Portuguese public administration and its modernization agenda (Tavares and Alves 2006), and the issue of trust in Portuguese public authorities (Rego, Sarrico and Moreira 2006).

The case of Portugal is particularly interesting because the country had an impressive evolution in terms of e-government development as measured by international rankings in the last few years, and because ethics concerns are not traditionally perceived as being well established in the daily public procurement practice (Dias and Moreira 2008). In this context, the policies that sustain and the communities built around public e-procurement initiatives will be analysed with a special focus on the conclusions that can be drawn in terms of the implications of Network Ethics for the standards under which public e-procurement relationships develop.

Universal values in the context of Network Ethics

The first step towards addressing the ethical lag (Marshall 1999; Kracher and Corritore 2004) in the analysis of the interactions between government and in business Internet-enabled marketplaces should be that of understanding the relevance of universal values to network ethics.

At first glance, it may seem that in areas characterised by a rapid pace of technological innovation and by radically new forms of interaction between stakeholders universal values are of little use for devising an appropriate ethical framework. However, a deeper and more considerate reflection over the issues involved suggests otherwise. The relevance of having an appropriate ethical framework is largely consensual in transactions and relationships that take place over traditional channels. Notwithstanding differences over the analysis of specific controversial issues, few would question the importance of values and ethics for traditional business practices as well as for traditional patterns of government activity. And it is precisely universal values – despite the many undeniable difficulties that exist in identifying and applying them – that are most relevant for the purpose of establishing a well adjusted ethical framework. As noted by Sternberg (2000, p. 76) in the context of discussing the relevance of universal values for business ethics:

That which is not universal may be a useful rule of thumb, or a practical guideline, or a summary of common practice, but it cannot be a principle. It is precisely the point of principles, including moral principles, that they should identify the unvarying, essential features of diverse situations. Only then can they provide a unifying framework that can make sense of actual problems as they arise in all their unpredictable variety and complexity.

When the rate of technological innovation is high – as is indisputably the case in the matters to which Network Ethics applies – it is often extremely difficult for ethical analysis to keep up in an adequate manner. This is because the process of technological development tends to move based primarily on immediate material goals whereas the ethical framework must take into account broader social and normative concerns and necessarily has a slower rate of adjustment. Given the speed at which Internet-enabled marketplaces have been developing and the complexity of many of the related issues it is hardly surprising that we are now faced with an ethical lag which can have serious consequences both for the agents directly involved and for society in general. But in

circumstances such as these, the importance of universal values becomes more – not less – salient. In fact, it is precisely in areas that experience high levels of complexity and an accelerated rate of change that considering universal values and devising how they can be applied in new settings is more important. It is universal values that allow agents to find a common ethical platform to address issues and guide their conduct in changing environments. Assessing complex and rapidly changing circumstances makes it even more crucial to have solid points of ethical reference and this is the essence of the relevance of universal values for network ethics.

Failure to consciously address the existing ethical lag can have serious consequences both in terms of the breakdown of the shared norms and trust between the agents directly involved in Internet-enabled marketplaces and of a possible deterioration of social standards motivated by the rapid change towards modes of operation where an ethical framework is not sufficiently developed. Even though that is not always acknowledged, the sustained development of Internet-enabled markets (and quasi-markets as some G2B operations may be more aptly described) is critically dependent on the existence of mechanisms that foster the establishment of both online and offline trust between buyers, sellers and relevant stakeholders. And this in turns is a task that requires a solid grasp of the relevance and applicability of universal values to these rapidly evolving forms of interaction. In the long run, the success of Internet-enabled marketplaces depends at least as much on the technical advantages they provide as on their ability to embody and enforce the rules and ethical framework that are essential for the successful operation of markets – all markets – in both their traditional and online forms (Butler 2008). There is therefore a need to catch-up by focusing on the specific application of Network Ethics to G2B relationships.

Ethical issues in G2B relationships

The application of Network Ethics to G2B relationships requires an understanding of the more pertinent ethical issues that arise in the rapidly changing context of G2B activity in Internet-enabled Marketplaces. The fact that e-procurement lacks a unified identity (Hardy and Williams 2008), reinforces the need for ethical analysis to both focus in general principles and bear in consideration how they should be applied to the

relevant specificities of each case. With the necessary adaptations, the analysis of ethical issues in Internet-enabled G2B relationships may be said to require the same overall approach as the one laid out by Kracher and Corritore (2004, 90) concerning the analysis of e-commerce ethical issues when compared with traditional commercial practices as:

We have shown that e-commerce ethical issues are, in fact, not unique but that the ethical issues in e-commerce are different from those in brick-and-mortar commerce with respect to manifestation and scope. We have used levels of ethical abstractions to show that the ethical rules in e-commerce are not fundamentally different from those in brick and mortar business. But the instantiations of moral principles, ideals, rules, and standards in the specific e-commerce environment can be different than the moral recommendations and injunctions in the brick-and-mortar arena.

All activities where government is involved pose a specific set of additional ethical issues to the public interest and funding implications and the particular mode of operation of government bureaucracies.

First of all, there are good reasons for the public sector to be relatively conservative in its approach to implementing new technologies in G2B relationships. As noted by Shafritz and Russel (2003, 283), public sector organizations hold an important fiduciary responsibility (both legal and ethical) of managing common resources and programmes in a prudent fashion. This means one should not expect (or in fact recommend) that – other than for careful circumscribed research and experimentation purposes – government have a significant exposure to the risks associated with emerging technologies in the domain of G2B relationships. The demands of prudent and ethical public managements demand that preference be given to consolidated and proven methods of interaction of government with business. While this should not be taken as a general argument against change, it does recommend that gradual evolution is to be preferred and that careful examination of introduced changes should be a priority.

A second ethical issue is related with the specific organisational challenges posed by public sector bureaucracies. While procurement poses complex conflict of interest issues in all large bureaucracies, in public sector organisations these problems are increased by the specific characteristics of government bureaucracies (Alves and

Moreira 2004). The fact that most income of public sector organisations is usually obtained through political allocation (and thus outside the market) and that it is extremely difficult to make public managers accountable in any meaningful and reliable manner for the results of these organisations means that there is a large scope for unethical practices in G2B relationships.

The high risk of unethical practices in G2B relationships – as well as the general desirability of promoting public scrutiny of government activities – leads to a third ethical issue that is particularly important for promoting accountability and effective competition: transparency. Internet-enabled marketplaces have a tremendous potential for generating publicly accessible information using low cost resources and thus foster a more level playing field and more adequate standards of ethical scrutiny. The transparency of G2B relationships requires not only that procedures be clear and public, but also that, as much as possible, records of all transactions be available in searchable databases, so that all competitors, the media, the research community and the general public may scrutinize and generate beneficial pressure towards ethical behaviour and legal compliance.

Since the empirical application in this paper is focused on the Portuguese e-procurement experience, the specificities of Portuguese public administration and its most salient ethical issues should also be taken into consideration. As in other Southern European countries, the culture of Portuguese public administration is firmly rooted in the administrative law tradition (Tavares and Alves 2006). This has led to a strong emphasis on the legalistic aspects of public administration and to a frequent prioritization of formal issues over material ones. The emphasis on the jurisdictional framework of the state means that the introduction of new procedures for G2B relationships is highly dependent on legal reforms and that administrative law is the prime instrument in shaping the environment within which network ethics issues arise. The administrative law framework has traditionally provided for relative stability in public administration – even during periods of political unrest – but it also has the drawbacks of rigidity, excess of bureaucratic requirements, and of overemphasising formal compliance, which often coexists with bureaucratic capture by special interests, patronage of politically favoured stakeholders and cases of flagrant disrespect for basic ethical standards. Thus one of the main issues in considering ethical issues in G2B

relationships in Portugal is that of devoting attention to actual empirical outcomes (as done in the next section of this paper). While this is harder than merely synthesising the legal framework, it is the only way to obtain a reliable analysis of the actual (and not merely formal) performance and ethical standards associated with the organisational procedures and incentive structures put in place by public e-procurement policies and reforms in Portugal.

The case of e-procurement in Portugal

The first official references to the development of public e-procurement in Portugal were made during the two Guterres's governments (1995–1999 and 1999–2002). Specifically, the Electronic Commerce Initiative included references to the adoption of e-commerce practices by the public administration (RCM 94/99, August 25) and the Internet Initiative included references to the 'development of a system for public acquisition through the internet' and to the 'reform of the State Procurement Office to boost the acquisition of goods and services by electronic means' (RCM 110/2000, August 22, 4221). Both initiatives were launched after the Green Paper for the Information Society in Portugal (MSI, 1997). This paper established the first strategic framework for public policies in the field of information society development in Portugal.

Despite these earlier references, it was only in the Barroso's government (2002–2004) that the first relevant public e-procurement initiatives were launched, with the National Program for Electronic Procurement (PNCP – *Programa Nacional de Compras Públicas*). This program was developed under the scope of the Action Plan for Information Society (UMIC, 2003a) and the Action Plan for the Electronic Government (UMIC, 2003b) and included pilot projects to implement e-procurement in eight ministries. The main objectives of the program were 'to promote efficiency of public procurement by generating gains and structural savings, facilitating and widen the access of private companies to the public procurement market, and improving the transparency and the quality of the service provided' and to 'contribute to the modernization of economic agents, promoting their competitiveness and productivity and inducing the adoption of new e-commerce practices at the national level' (UMIC,

2003c, 5). The inclusion of transparency as an objective reveals that ethical concerns were already present, at least at the level of the political discourse. Nevertheless, the main focus was clearly in increasing the efficiency of the procurement process. At the beginning of 2005, the PNCP contracting platform had involved eight ministries, 27 aggregation and negotiation processes, 19 public bodies and 4 categories of products (CNEL, 2008, 46).

Under the Socrates's government (2005–2009), the development of public electronic procurement was included under a new strategic framework: the Lisbon Strategy and the National Action Plan for Growth and Employment. This plan included a measure to expand the PNCP to “optimize state acquisitions, aiming structural savings and the transparency of public acquisition procedures” (CNEL, 2005, 15). By the end of 2006 the PNCP platform had involved all the 16 ministries, 94 aggregation and negotiation procedures, 918 public bodies and 12 categories of products. The final contracts involved the total amount of 41 million Euros, with estimated savings of 20% (CNEL, 2008, 46).

In 2007, the government created the National Agency for Public Procurement (ANCP – *Agência Nacional de Compras Públicas*). This agency is a public company responsible for coordinating public e-procurement at the central level, in coordination with procurement units in each ministry and other mandatory and voluntary public buyers. Since May 2007 this entity has also been responsible for the management of the PNCP. The agency runs three relevant tools on the web: a platform for public contracting, the national catalog for public acquisitions and a tool that supports the aggregation of demand for selected categories of products.

In 2008, 48% of the central administration bodies and 28% of the municipalities used the Internet for the acquisition of goods and services. The total amount of acquisitions using the internet was equal or greater than 10% of the total acquisitions for 24% of the central administration bodies and for 9% of the municipalities that made acquisitions using the internet. Online payment was used by 27% of those central administration bodies and 33% of those municipalities. The main platforms used by the central administration bodies were supplier catalogs (41%); e-mail (40%); e-marketplaces (36%); and online auctions (22%). For the municipalities the main platforms used were

e-mail (69%); supplier catalogs (56%); e-marketplaces (22%); and online auctions (8%). Figure 1 shows the evolution of the percentage of central bodies and municipalities that used the Internet for procurement purposes in the universe of entities with internet access, between 2004 and 2008. In 2008 all the central administration bodies and municipalities in Portugal had internet access (UMIC, 2008).

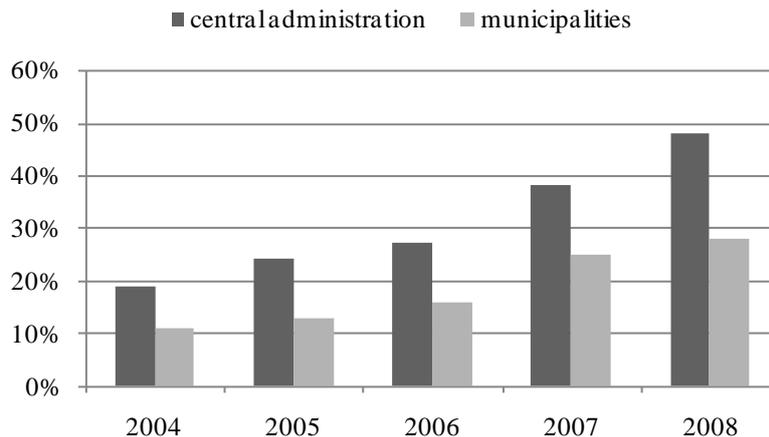


Figure 1 – Percentage of central administration bodies and municipalities that used the internet for e-procurement purposes, between 2004 and 2008 (UMIC, 2008).

In 2008, the main constraints pointed out by the potential buyers in central administration to the development of e-procurement were related to the lack of legal support (43%); payment methods (37%); and security (35%) (UMIC, 2008). For municipalities, in 2005, the most cited constraints were related to the lack of legal support (37%); security (37%); contracts, delivery terms and guaranty (31%); payment methods (30%); and privacy (20%) (UMIC, 2006).

The question of the legal support for e-procurement was addressed in the new public procurement law published in 2008 (DL 18/2008, January 29). Besides systematizing the acquisition procedures and transposing the relevant European directives, the new law favors the usage of electronic communications in the public procurement process. More important, it establishes the legal background for the development of fully dematerialized acquisition procedures through e-procurement platforms. It also introduces the usage of electronic auctions for the acquisition of services and movables and of fully automated dynamic systems for the acquisition of standardized goods and services.

The general interoperability and security rules that apply to e-procurement platforms were also defined by law in 2008 (DL 143A/2008, July 25). This law by decree establishes the principles that must be followed in the development of e-procurement platforms: availability; non-discrimination; unrestricted access; interoperability; integrity; confidentiality; non-repudiation (digital signatures); time stamping; and preservation of data. It also establishes the need to protect the platforms against system failures, virus and other risks and to support electronic signatures, electronic invoices and electronic payments. The concrete security and interoperability standards to be used were also defined in 2008 by means of a ministerial decree (Portaria 701-G/2008, July 29). Amongst other details, this decree imposes the need and defines the norms to be used to automatically advertise every acquisition procedure in the National Procurement Portal.

Besides allowing the development of the ANCP platform, the new public procurement law also fueled the development of platforms operated by private companies. Amongst those, the VortalGOV platform has had an impressive growth. It created a community that, at the end of April 2009, comprehended 16,191 registered users from 12,125 sellers and 286 public buyers. All suppliers are subject of an accreditation process and all users are authenticated using digital certificates. Figure 2 depicts the distribution of the public buyers registered in the VortalGOV platform according to their nature in April 2009. Figure 3 depicts the distribution of registered suppliers according to their sector of activity.

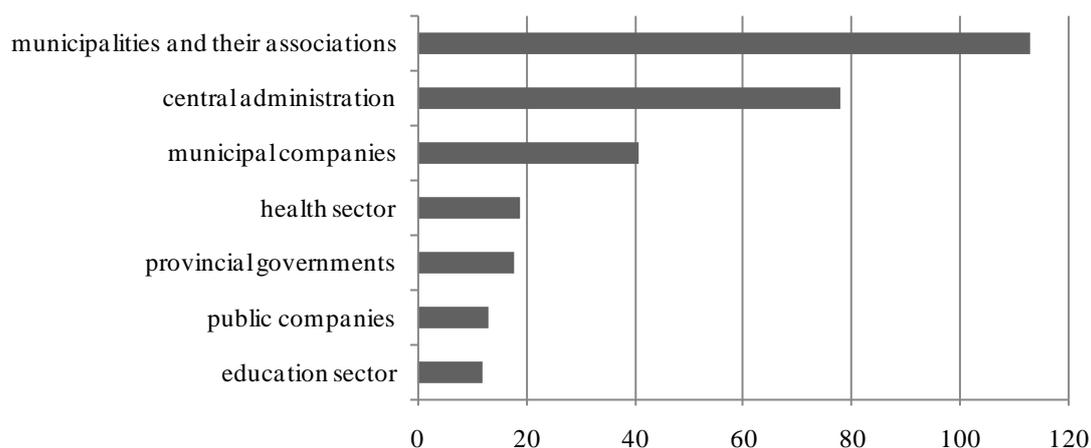


Figure 2 – Number of public buyers registered in the VortalGOV platform in April 2009 according to their nature (Source: Vortal).

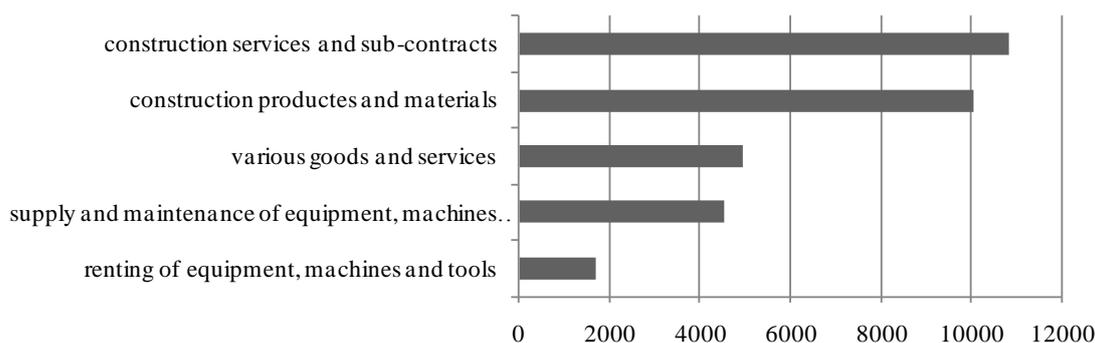


Figure 3 – Number of suppliers registered in the VortalGOV platform in April 2009 according to their sector of activity (Source: Vortal).

A typical acquisition procedure in the VortalGOV platforms includes the following steps: online publication of the announcement and other documents of the procedure by the contracting entity; on-line access and download of the announcement and related documents by the suppliers; submission of questions by the suppliers; relevant explanations and possible rectifications of the announcement and related documents by the contracting entity; preparation of the proposals and companion documents by the suppliers; online submission of the proposals by the suppliers and emission of the corresponding electronic receipts by the platform; online opening of the proposals; electronic submission of all legally mandatory communications and notifications to the competitors by the platform; electronic notification of the result of the procedure to the

several competitors; and electronic signing of the contract. Digital signature, electronic time stamps and communication encryption are used whenever applicable.

Since it was launched in 2004, the VortalGOV platform has accumulated a total of 4,550 acquisition procedures with a total value of over 366 million Euros. The main success factors of this platform include the previous experience of the company in operating e-procurement platforms for the private sector; the development of partnerships with the suppliers of the main ERP (Enterprise Resource Planning) systems, including the two main players in the market for local government software; and the operation of an academy that, until April 2009, gave training to more than 9,200 users in the fields of public contracting and e-procurement.

Construction industry suppliers are dominant in the VortalGOV platform: they represent over 65% of the suppliers registered in the platform. Municipalities, their associations and municipal companies, on the other hand, represent over 54% of the public contracting entities registered. This is a relevant issue, as ‘a significant part of the corruption investigations in Portugal relate to existent links between the municipalities and the construction industry’ (Dias and Moreira 2008). This fact does not mean that this concrete platform – or e-procurement platforms in general – constitute a means of corruption. However, it is important to notice that the existence and growth of such platforms also does not by itself eliminate that risk. The problematic nature and the numerous moral hazards that characterise G2B relationships in the case of municipalities and the construction industry are in no way eliminated by the existence of public e-procurement platforms but – within a proper ethical framework – they may be a useful tool to promote greater transparency, more open competition and more effective accountability.

Another important concern relates to the potential development of *de facto* monopolies in the market of e-procurement platforms. The benefits from having a single integrated e-marketplace for public acquisitions should not imply the existence of a single e-procurement platform. This reinforces the need to develop interoperability standards to support the communication between different platforms but also between e-procurement platforms and ERP solutions.

Conclusions

Public e-procurement policies constitute an important domain for the application of network ethics in Internet-enabled marketplaces. This paper has started by arguing in defence of the relevance of universal values for analysing network ethics issues and by suggesting that the rapid pace of technological change makes the area particularly prone to developing an ethical lag. In the context of this approach, it was then shown that G2B activity in Internet-enabled Marketplaces poses a set of specific ethical issues. These include the special requirements of prudence associated with ethical public management, the specific control and conflict of interest problems associated with government bureaucracies, and the particular importance of transparency as a means of promoting both more open competition and wider accountability. It was also stressed that it is important to take into account local circumstances and particular national cultural and legal traditions when analysing network ethics, with the case of public e-procurement policies in Portugal used as an empirical illustration and application.

It was shown that use of the Internet for e-procurement purposes both by the Portuguese national public administration and by Portuguese municipalities has been growing even though its total share of total procurement activity is still relatively small. The main constraints to the further development of e-procurement were also identified, with the legal framework being identified as a key factor. In this context, the interoperability and security standards set by new public procurement legislation are expected to assume a particularly critical role. Initial evidence about the impressive growth of transactions in a platform operated by a private company suggests that the new settings provide a significant growth potential for public e-procurement but also involve relevant risks. First, because existing ethical shortcomings in traditional G2B relationships will not be instantly resolved by Internet-enabled platforms and may in fact be transposed to the new technological platforms. Second, because there are significant risks for the development of *de facto* monopolies in the market of e-procurement platforms, particularly if dominant players are able to impose structural and legal barriers to entry by new competitors.

The overall conclusions of the analysis point to the growing importance of developing interoperability standards and promoting greater transparency and competition. The case also shows that reliable analysis in terms of Internet-enabled marketplaces requires both a

solid ethical framework and its application in conjunction with empirical knowledge of the situations being studied. Only through this type of analysis can network ethics effectively contribute to the promotion of greater accountability and ethical behaviour on the ground.

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