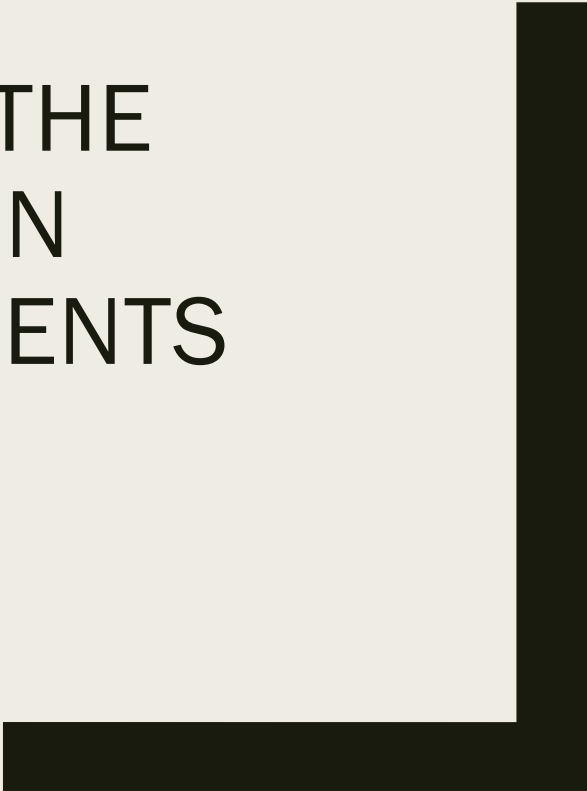




SHORTCOMINGS OF THE CURRENT RULES ON FRAMEWORK AGREEMENTS

Magdalena Socha



Agenda

- Rationale for regulating framework agreements at the EU level
- Shortcomings and gaps in Directive 2014/24/EU
- A way forward?
- Conclusion



Why regulating framework agreements at the EU level?

- Harmonise national practices
- Flexibility
- Efficiency

21
years!!



Definition of a framework agreement

Article 33, Directive 2014/24/EU

The purpose of [a framework agreement] is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, **where appropriate, the quantity envisaged.**

CJEU, Autorità, para. 64

The principles of transparency and equal treatment of economic operators with an interest in the conclusion of a framework agreement, (...) **would be affected if the contracting authority** that is an original party to the framework agreement **did not set out the total quantity which such an agreement covers.**

CJEU, Simonsen & Weel, para 62

Maximum quantity and/or value

CJEU, *Autorità*, para. 64

The principles of transparency and equal treatment of economic operators with an interest in the conclusion of a framework agreement, (...) would be affected if the contracting authority that is an original party to the framework agreement did not set out the total quantity which such an agreement covers.

CJEU, *Simonsen & Weel*, para 68

The contracting authority that is an original party to the framework agreement can make commitments (... only up to a maximum quantity and/or a maximum value and once that limit has been reached the agreement will no longer have any effect.

Directive 2014/24/EU

X

(Non-)exclusivity of framework agreements

Recital 61, Directive 2014/24/EU

Contracting authorities should not be obliged pursuant to this Directive to procure works, supplies or services that are covered by a framework agreement, under that framework agreement.

Article 33(2), Directive 2014/24/EU

Contracts based on a framework agreement shall be awarded in accordance with the procedures laid down (...) Those procedures may be applied **only between (...) those economic operators party to the framework agreement as concluded.**

Practice

- Parallel framework agreements
- Overlaps between framework agreements and DPS'
- Overlaps between framework agreements and in-house transactions (*CJEU, Irgita, C-285/18*)

Calling off a framework agreement under a framework agreement

Article 33(4)c, Directive 2014/24/EU

Where not all the terms governing the provision of the works, services and supplies are laid down in the framework agreement, **through reopening competition amongst the economic operators parties to the framework agreement.**

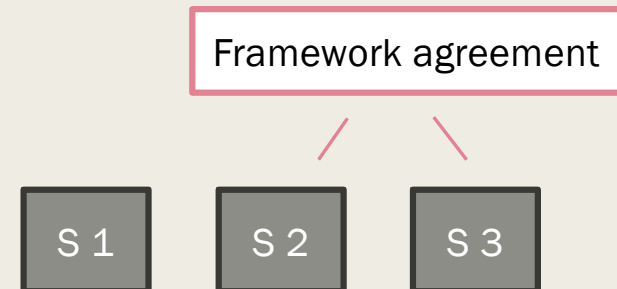
Framework agreement

Framework agreement

S 1

S 2

S 3



Modifications of framework agreements

Article 72(1), Directive 2014/24/EU

Contracts **and framework agreements** may be modified without a new procurement procedure in accordance with this Directive

Article 33(2), Directive 2014/24/EU

Contracts based on a framework agreement **may under no circumstances entail substantial modifications** to the terms laid down in that framework agreement, in particular in the case referred to in paragraph 3.

Practice:

- Article 72 designed for modifications of public contracts
- Are framework agreements public contracts?

Applicability of Directive 2014/24/EU to a single procurement procedure

Practice:

- Parallel procurement procedures for the same/overlapping type of purchase
- Rules on contract modifications: able to tackle modifications within one procedure

Directive 2014/24/EU

X

Competition and framework agreements

CJEU, *Autorità*, para. 69

Fourth, a requirement that the contracting authority that is an original party to the framework agreement indicate therein the quantity and amount of the services that that agreement will cover **is a manifestation of the prohibition on using framework agreements improperly or in such a way as to prevent, restrict or distort competition.**

CJEU, *Simonsen & Weel*, para 67

The contracting authority (...) indicate the maximum quantity or the maximum value of the services that that agreement will cover **is a manifestation of the prohibition on using framework agreements improperly or in such a way as to prevent, restrict or distort competition**

Recital 61, Directive 2014/24/EU

Framework agreements should not be used improperly or in such a way **as to prevent, restrict or distort competition.**



A way forward?

Conclusion

Definition of framework agreements

Maximum quantity and/or value

(Non-)exclusivity of framework agreements

Calling off a framework agreement under a framework agreement

Modifications of framework agreements

Applicability of Directive 2014/24/EU to a single procurement procedure

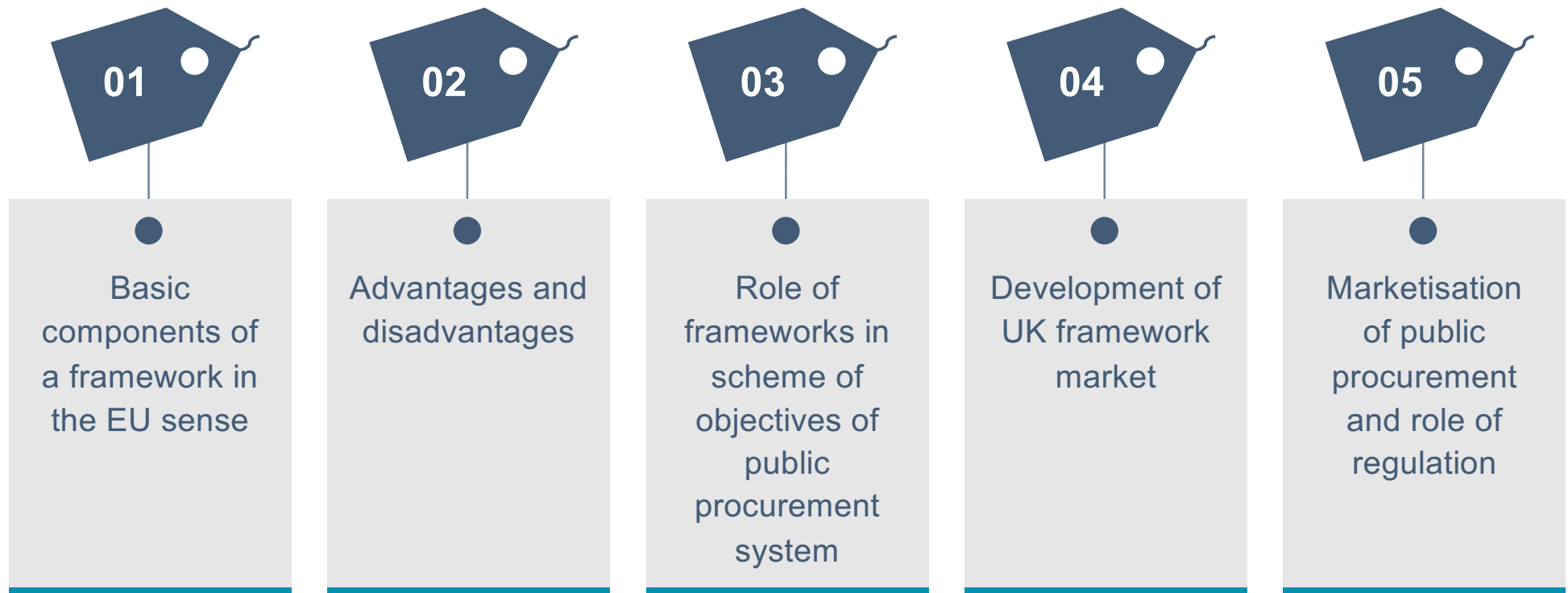
Framework agreements and competition

FRAMEWORK AGREEMENTS IN THE UK – MARKETISATION AND REFORM

Dr Steven Brunning



THE FRAMEWORK CONCEPT AND UK FRAMEWORK MARKET



EU AND UK REGULATION OF FRAMEWORKS

- Objectives of EU public procurement regulation
- Development of EU regulation on frameworks
- EU Regulation of centralised purchasing
- Status of CPBs in competition law
- Approach to regulation in the UK
- Objectives of UK public procurement legislation
- EU derived public procurement legislation
- Use of policy guidance
- Post-Brexit reform – Procurement Act 2023



INDICATORS OF MARKETISATION OF FRAMEWORKS IN THE UK

- Proliferation of increasingly generic pan-public sector frameworks

- Commercial revenue generating tools

- Framework-first policies and framework shopping

- Competition and collaboration between CPBs

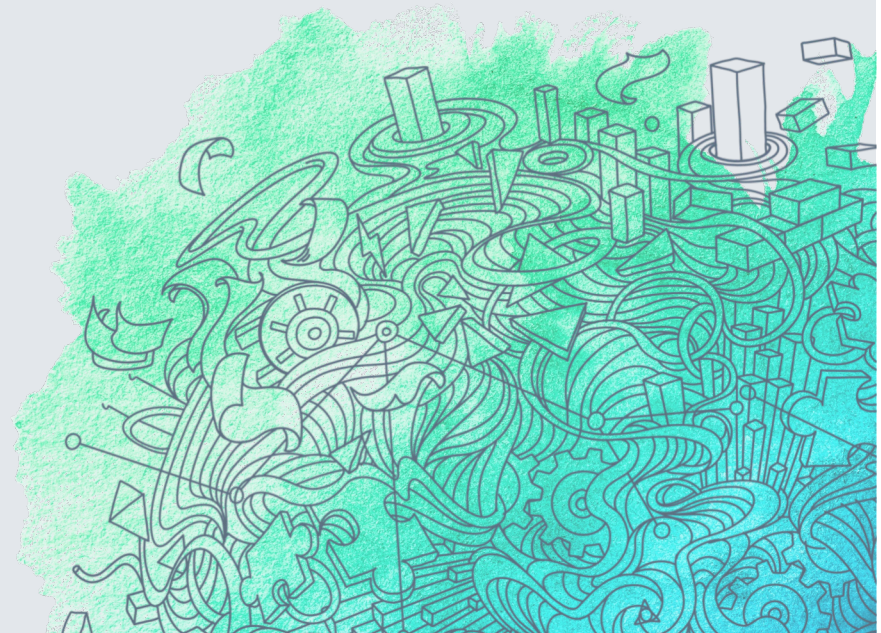
- Private sector framework operators in centralised purchasing and legal challenges

- CPB marketing strategies and professionalisation

- Optimising market appeal of frameworks

- Framework design to minimise risk of challenges from market

- Marketisation influencing regulatory reform



THE PROCUREMENT ACT 2023 AND FUTURE REFORM

Need to develop detailed understanding of the characteristics and economics of the UK framework market

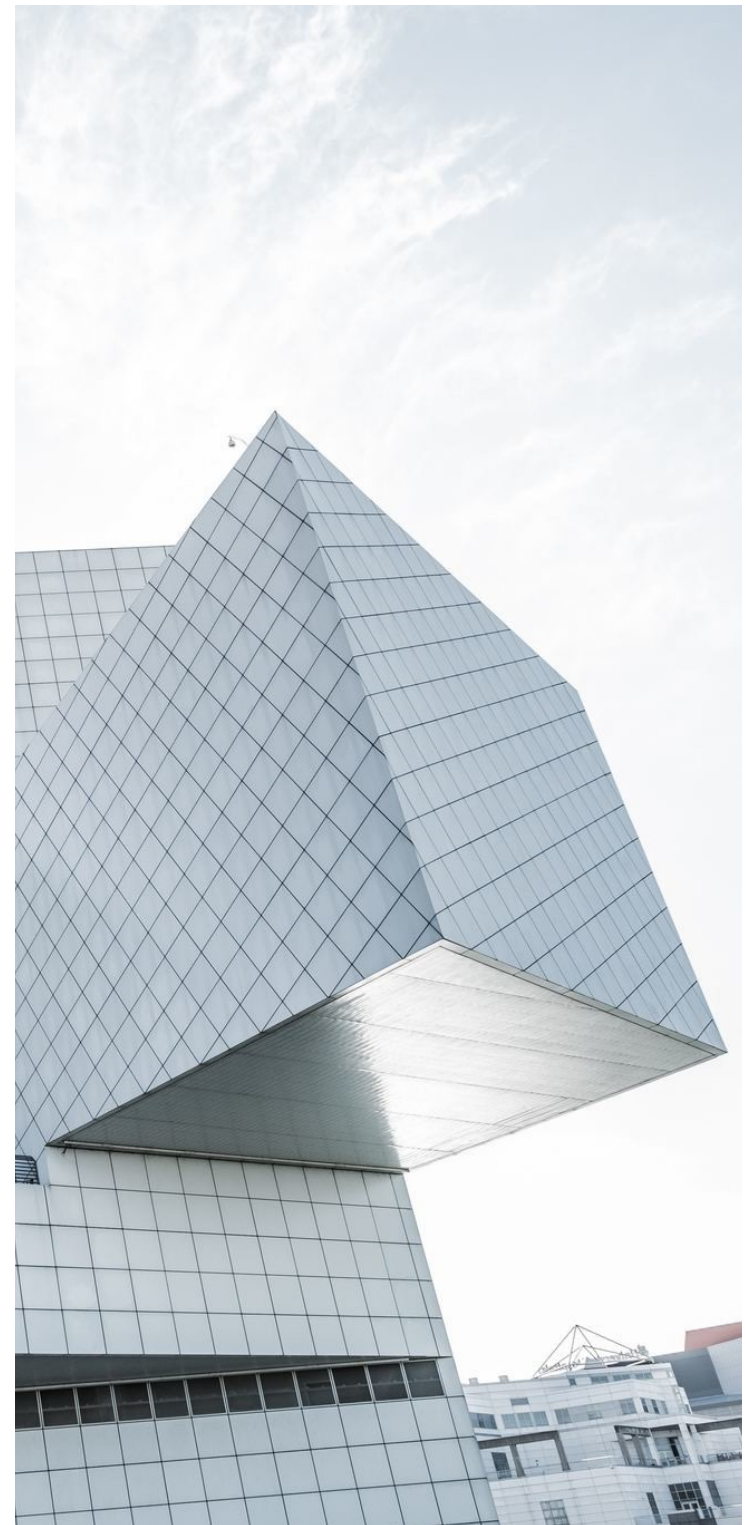
UK Government to articulate role it envisages for frameworks in terms of their aims and objectives within the wider public procurement system's goals

Substantive reforms of the Procurement Act 2023 required

Other regulatory reforms (to address wider commercial or market behaviours)

Institutional reforms

Better “self-regulation” by private sector



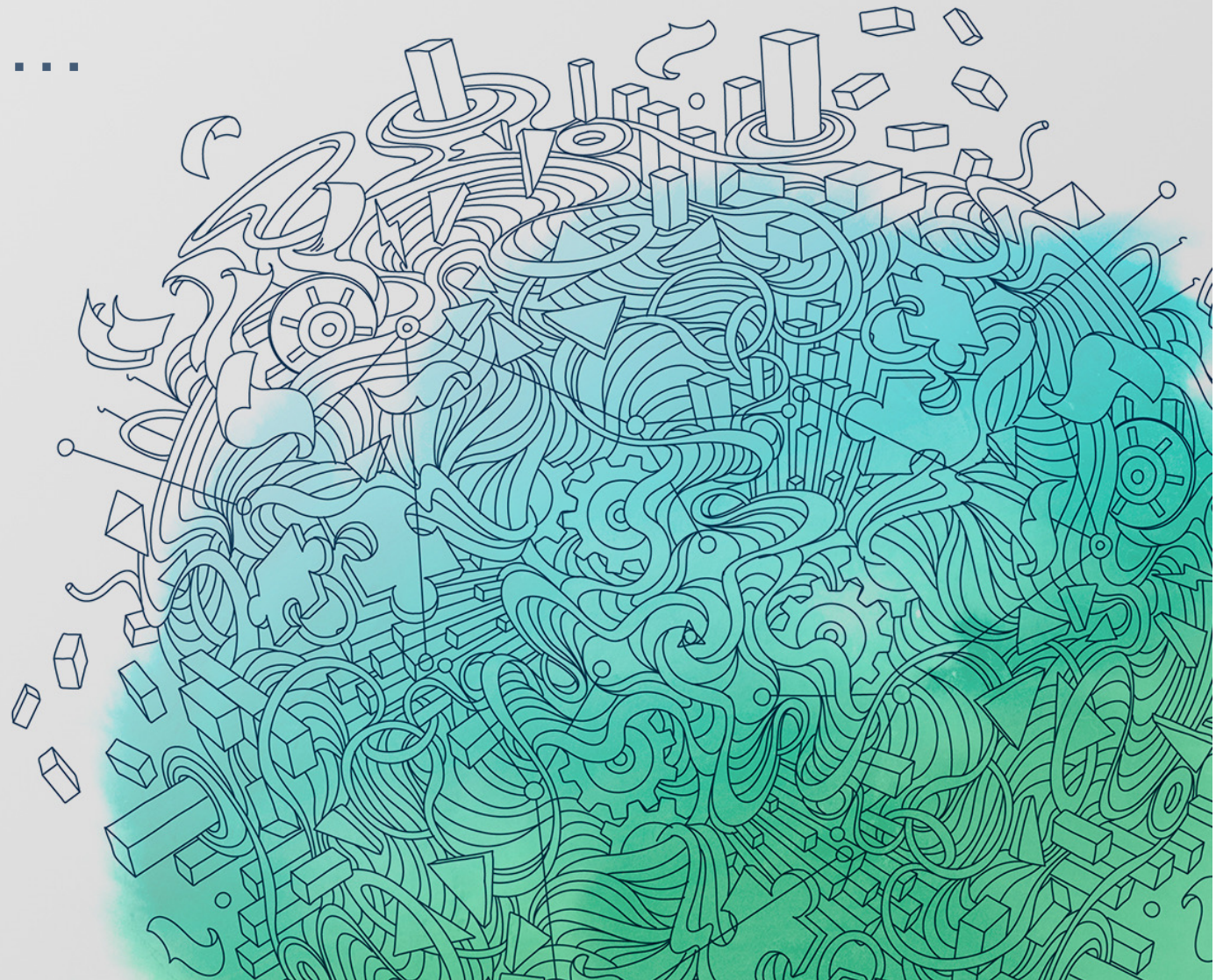
QUESTIONS AND DISCUSSION...



THE MARKETISATION OF FRAMEWORK AGREEMENTS IN THE UK

Practice, Regulation and Reform

STEVEN BRUNNING AND LUKE RA BUTLER





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THANK YOU!

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