### A Field Experiment on Antitrust Compliance

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#### Intro:

•In many policy areas, there is a trend towards delegating both monitoring and enforcement of regulations to regulated firms themselves.

•Reflects rapid growth in government regulations without commensurate growth in regulatory resources

Compliance functions within firms play an important role:
Compliance includes setting internal rules and procedures, monitoring, taking remedial action, etc.

•Regulators retain authority to investigate/intervene, but this is exercised when within-firm compliance is deemed ineffective.

### **Compliance in Antitrust**

•Even for policy areas such as antitrust, there is a trend towards more emphasis on compliance:

•Assistant AG of DOJ Baer, Sept 10, 2014:

"The division will consider seeking court-supervised probation as a means of assuring that the company devises and implements an effective compliance program"

#### In this paper...

We want to study empirically the effectiveness of compliance functions.
1) Prevention, 2) monitoring , 3) remedial action

•The paper focuses on the third aspect:

To what extent can firms take self-correcting measures when confronted with evidence of illegal activity?

•Firms can take steps to end wrongdoing, but other alternatives are possible:

•ignoring evidence and continue to engage in wrongdoing•actively seek to conceal incriminating evidence.

•How firms respond to evidence of incriminating evidence is important for designing enforcement policies.

# Field Experiment

•We conduct a field experiment to study whether firms can take corrective action:

We develop a method to identify bid-rigging in auctions.
Identify 240 firms (26 groups) whose bidding behavior is inconsistent with competition

Use bidding data on procurement auctions from Japan.Subject half of the groups to an informational treatment

- •Send out a letter explaining the results of the test we ran
- •Ask (among other things) whether screens can help with compliance

•Compare subsequent bidding behavior of treated and control firms.

# Literature

- Firm response to evidence of illegal behavior
  - Nasdaq collusion (Christie et. al. 1994)
  - LIBOR manipulation (Monticini and Thornton 2014)
- Studies on compliance/self-regulation: Braithwaite (1985), Ayes and Braithwaite (1995), Parker (2002)
  - Specific to antitrust: Sokol (2013, 2015)
- Economic analysis:
  - Gehrig and Jost (1995), Grajzl and Murrell (2007) Studies trade-off between better use of private-information and conflict of interest.
- Studies that document firm adaptation:
  - Wollman (2019), Cunningham et. al. (2021)
- Empirical Work on Screening for Collusion in Auctions

Hendricks and Porter (88), Porter and Zona (1993, 99), Bajari and Ye (1999), Kawai et.al. (2022)

#### Japanese Public Procurement Auctions

# **Auction Format**

- Our focus is on auctions for construction projects let by the Ministry of Land Infrastructure and Transportation.
  - Road paving, building bridges, landscaping, general civil engineering, etc.
  - About 8,500-10,000 auctions per year
  - Scoring auction with a secret reserve *price*
  - Bidders submit proposal and a price
    - Proposal receive a quality measure by the MLIT.
  - Score is defined as: *score* = *quality*/*price*.
  - Simultaneous, sealed bidding
  - Highest score bidder wins (subject to reserve price) and is paid own price

# An example:

- Auction for construction of bridge understructure
- Reserve is 192.1 million yen. (about \$1.9 mil)

Project Name	Bidder Name	Bid	Quality	Score	Winner
	開発建設(株)	170,200,000	144.7	8.50E-07	
	やまこう建設(株)	171,000,000	160.5	9.39E-07	Х
	(株)藤原組	171,500,000	156	9.10E-07	
	(株)栗山組	173,00,0000	155.3	8.98E-07	
	(株)興洋工務店	193,000,000			

- Second bidder won the auction
- If the bid is above the reserve price, the proposal is not examined, and quality is not recorded or assigned lowest possible quality of 100. (cf. 5<sup>th</sup> bidder).

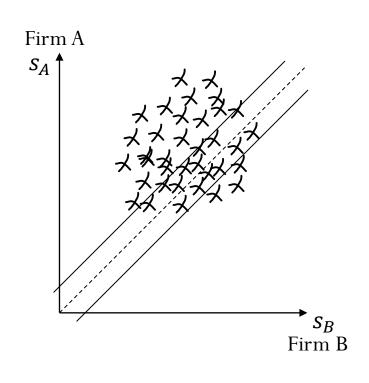
# Test of Collusion

# RD test of collusion (sketch)

- Our idea is to compare marginal winners and marginal losers (c.f. Kawai et. al. 2022)
- Under the null of competition, probability that bidder *i* wins or loses conditional on being a close auction is 0.5 regardless of its characteristic.

Winning and losing is "as-if-random".

# **Graphical illustration**



- In this example, Firm A has lower costs/higher quality
- Firm A wins more auctions than firm B.

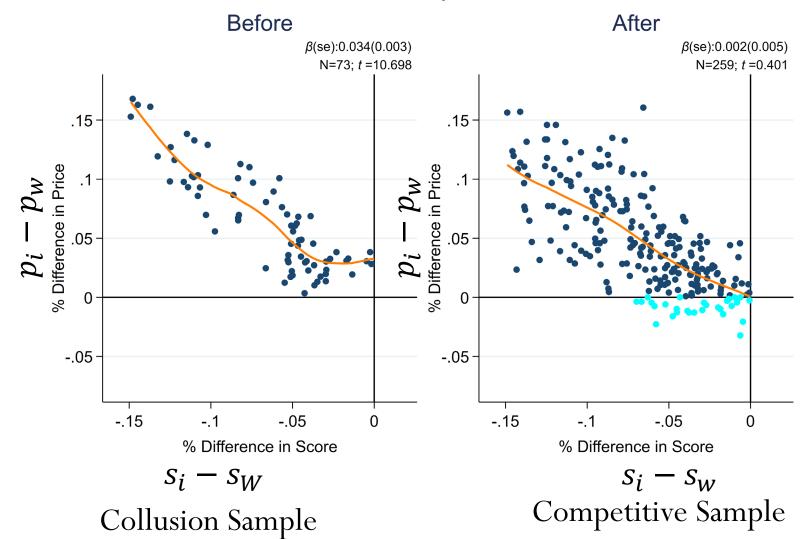
 If we condition on "close auctions" the winning proba approaches 0.5

# RD test of collusion (sketch)

- If winning and losing is "as-if-random", characteristic of marginal winners and marginal losers should be the same, in expectation.
  - Kawai et.al. (2022) compared backlog and incumbency status of marginal winners and losers to detect collusion.
    - Differences in backlog suggests bid rotation
    - Differences in incumbency suggests market division
- We are going to use a variant of this test

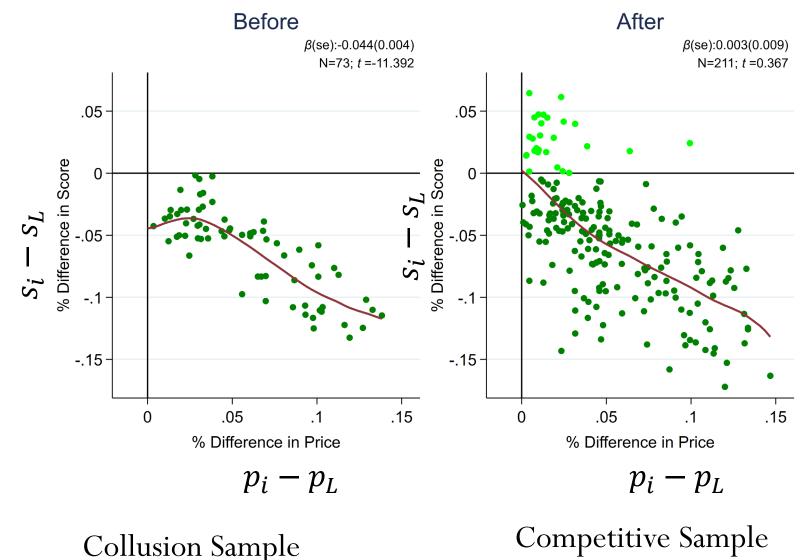
## Example from a known collusive case

**NIPPO Corporation** 



#### Example from a known collusive case

**NIPPO Corporation** 



# How to interpret these patterns

- When low quality firm is "supposed to win", high quality firm bids substantially high price to make sure allocation is as intended
  - These bids are often quite close in terms of score ( $\Delta^s \approx 0$ )
  - Marginal winner is low quality, low prices.
  - Marginal loser is high quality, high prices.
- When high quality firm is "supposed to win", low quality firm often bids marginally above high quality firm.
  - The losing bidders submit slightly higher prices ( $\Delta^p \approx 0$ )
  - The losing bidders are low quality, so  $S_i S_L$  tends to be substantially below 0.

# Field Experiment

# Treatment Design

- For each firm in our dataset, run the test using bidding data between 2015.4 -2017.3.
- We identify 240 firms whose bidding behavior is inconsistent with competition.
  - Test whether conditional expectation goes through the origin.
- Group them into clusters using a clustering algorithm
  - End up with 26 groups
- We made 13 pairs
- Letter sent out to 13 groups (i.e., one group randomly chosen from each pair) on 2019.2.

2019年2月1	2	日
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株式会社谷上組 御中 岐阜県飛騨市古川町貴船町14-29

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 公正取引委員会主任研究官
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 パークレー校助教授

「データによる入札談合の検知についてのアンケート調査」ご協力のお願い

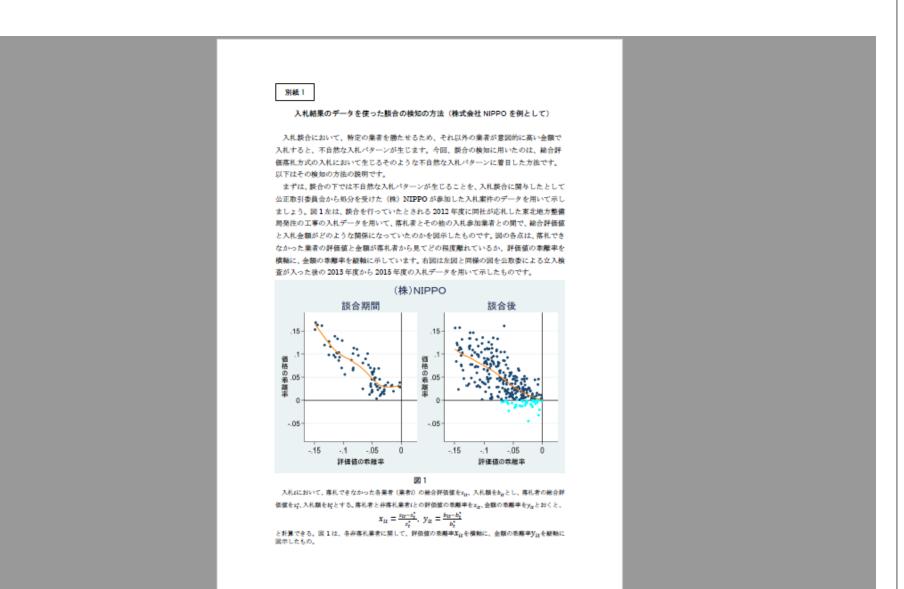
拝啓 立春の候 貴社におかれましては益々御清祥のこととお慶び申し上げます。

私たちの研究グループは入札データから談合を統計的に検知する手法を研究しています。 データから談合を検知する手法は、近年開発が進んでおり、イギリス、スイス、韓国等の規 制当局では既に実務的にも活用がされ始めているようです。このたび私たちは、こうしたデ ータによる談合の検知が日本でも有効かどうかを探るために、アンケート調査を実施する ことにいたしました。データによる談合の検知の方法がどの程度知られているのか、また検 知の結果をどのように活用できるかについて、アンケートを通じて探りたいと考えており ます。なお参考として、具体的な検知方法の説明(別紙1)と、貴社の応札した入札のデー タを用いた検知結果(別紙2)を添付してあります。

ご多忙の折まことに恐縮ですが、ご協力のほどよろしくお願いいたします。なお、締め切 りは3月15日(金)でお願いいたします。アンケートを通じて得られた知見は、研究論文 の執筆に活用するほか、新聞等のメディアでの発表にも活用することを予定しています。

敬具

②回答は同封された返信用封筒を使ってお願いいたします。 締め切り:3月15日(金)



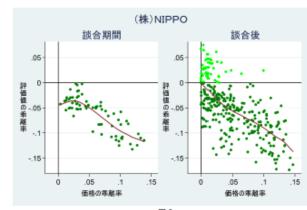


図 2

入礼はにおいて、入礼金類領位1位家を始く各業者(業者)の入礼類を知。総合評価値を起とし、金 類項位第一位者の入札類をは、総合評価値をなどする。金額領位1位者とその他の業者にとの金額の準 期半を44、総合評価値の考慮半を分点とおくと、

$$x_{it} = \frac{b_{it} - b_i}{b_i^*}, y_{it} = \frac{s_{it} - s_i}{s_i^*}$$

と計算できる。同1は、各非常礼業者に関して、評価値の乖離率を機軸に、金額の乖離率を凝軸に回示 したもの。

図2左では、原点付近で黄緑色の点がそもそも存在していません。これは、落札予定業者の 技術評価点が高い場合には、その他の業者は落札予定業者よりも少し高い金額で入札をす れば十分であるという事実に符合しています。平均的な点の高さの推移を示す赤線も図2左 では縦軸の・0.044 で交わっており、これはほぼ同じ金額を入札した業者間においても、入 札金額が僅差で高かった業者の総合評価値は入札金額が僅差で低かった企業と較ペ平均し て 4.4%程度低いことを意味しています。なお、この結果は統計的に 95%水準で有意となっ ています<sup>348</sup>。一方、図2右では赤線が縦軸とゼロあたりで交わっており、該合が無くなっ たと考えられている期間においては、入札金額が僅差だった 2 業者の間には、平均的に維 合評価値の差がないことを意味しています。

以上のように、評価値の赤離率もしくは価格の赤離率が僅差であった企業同士の入札結 果を軟べることによって、企業ごとに数合しているかどうかを統計的に検知できると考え ています。

別紙2 貴社が入札した工事の入札結果を用いた分析 参考として、実際に貴社が2015年度から17年度に応札した国土交通省中部地方整備局 発注の入札案件のデータを使った分析を行いました。以下はその結果です。なお、分析に使 った入札案件の一覧は P9 に記載されているとおりです。 (株)谷上組 .15 05 -.05-15 - 1 -.05 評価値の単離率 .05-.05 前法  $\sim 1^{-1}$ -.15 .05 -A .15 価格の単離率 図上段は貴社が応札した入札のデータを図1と同様な分析をしたもの、下段は図2と同 様な分析をしたものです。図上段のオレンジ色の線は縦軸と 0.08 で交わっています。統計 的には、下段の図は入札パターンが不自然だった図2左との類似性は見られませんが、上 段の図については、95%有意水準で、図1左との類似性が見受けられます。

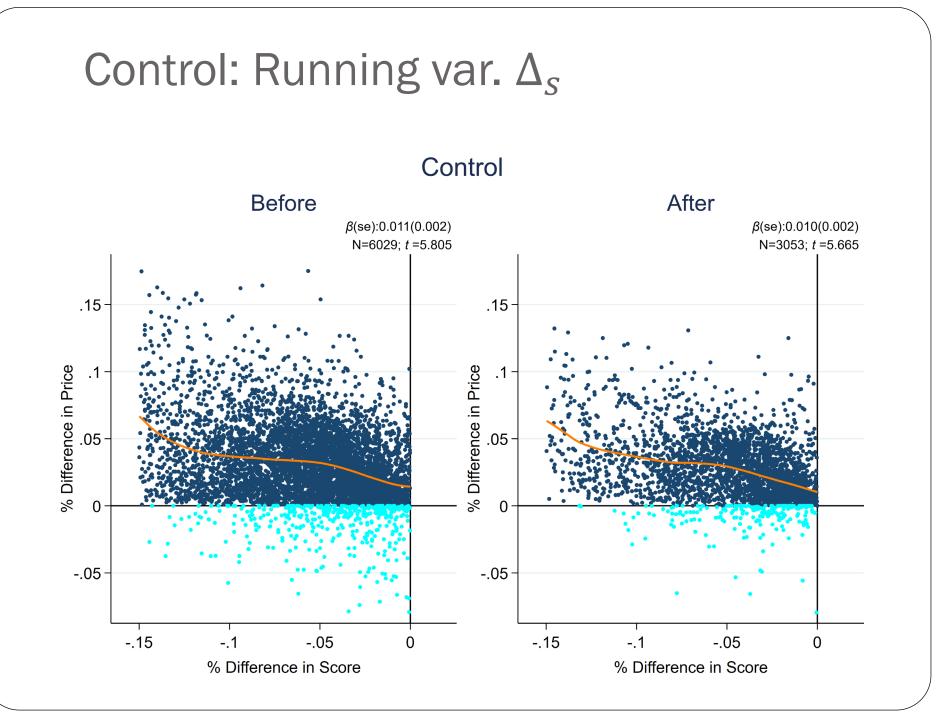
北陸線化株式会社 御中	※アンケート回答用紙※	
	い。別用紙に回答し、それを添付いただいても結構です。	
3)統計を使った数合の検知結果を競争当局 ンスを強化することができると思いますか?	から提供を受けることで、社内のコンプライア ?	
3) Would the firm be able		
	vere provided to your firm by	
the competition authority?	[	
4)別紙2には、責社が入札した工事の入札 あればお聞かせください。	結果を用いた分析を行っています。もしご意見	
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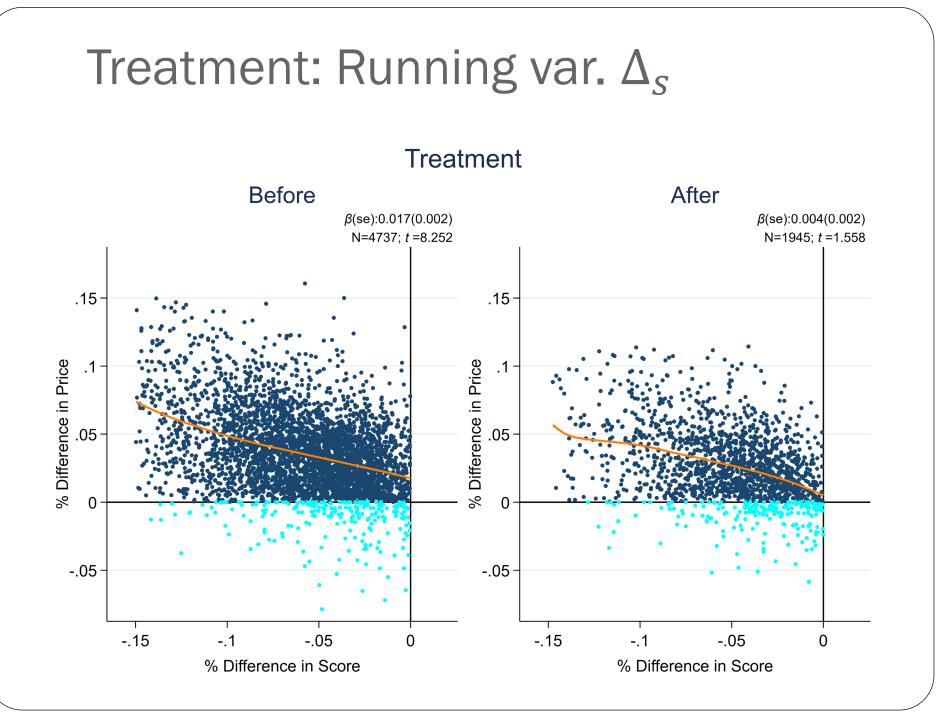
# Summary Statistics of firms

	Firms	
	Treatment	Control
Annual Sales	2,087.12	2,109.32
	(2,278.15)	(3, 612.07)
Annual Profits	146.52	136.87
	(192.54)	(296.93)
# Engineers	26.75	27.49
	(18.97)	(34.19)
t-value (Score)	3.45	3.55
t-value (Score)	(4.11)	(8.42)
t-value (Price)	-3.06	-3.52
t-value (1 filee)	(4.38)	(4.98)
N	106	133

Note: Sales and profits are reported in million Yens. There are 240 firms in our sample. We could not get the data for one firm in the control group.

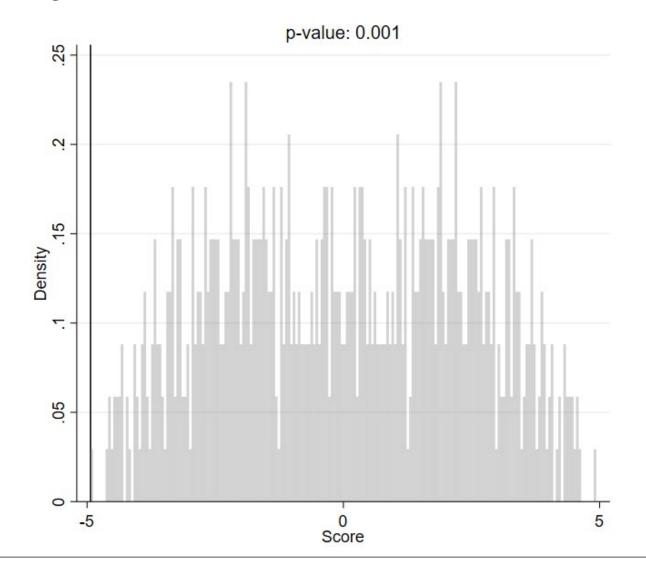
# Results: RD Test





Distribution of  $F_{\overline{\Delta}}$  and :  $\overline{\Delta}_{G_T} - \overline{\Delta}_{G_C}$ 

Running var. score

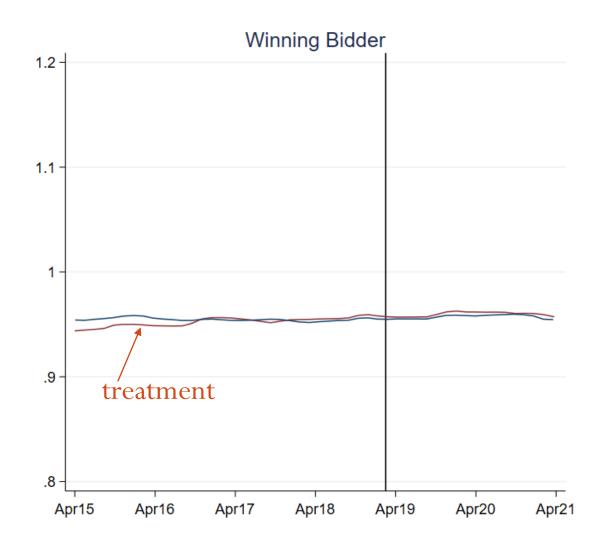


# Evidence of continued collusion

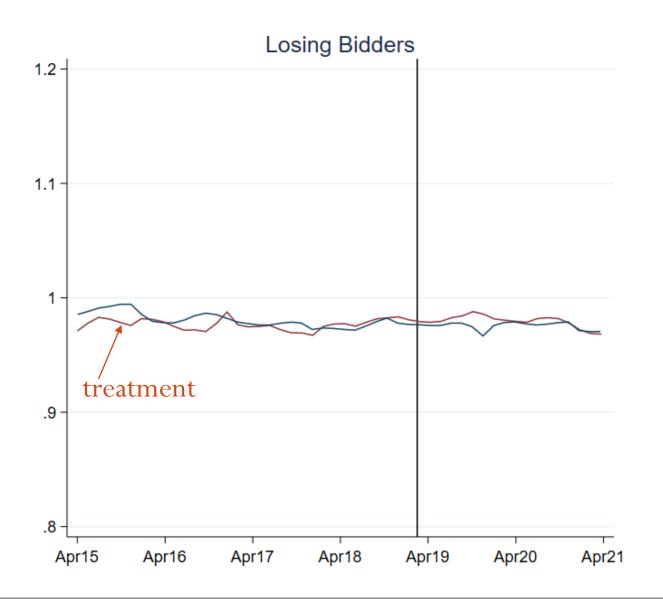
#### So far..

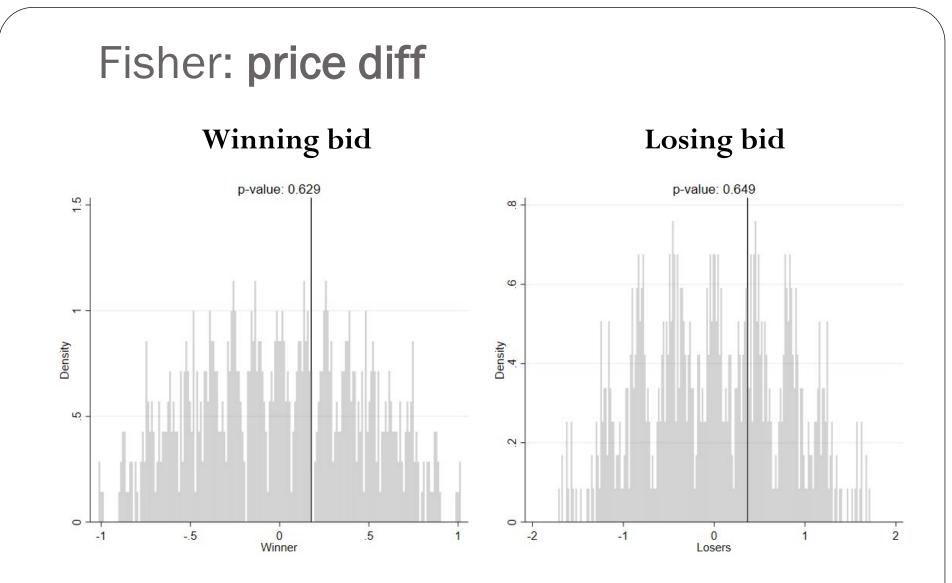
- Changes in test statistics is consistent with either...
  - Stopping collusion
  - Concealment of evidence/adaptation.
- Rest of the talk: show evidence of continued collusion
  - Changes in other outcome variables (prices, quality)
  - Direct evidence of continued collusion

## Winning bid (as % of reserve price)

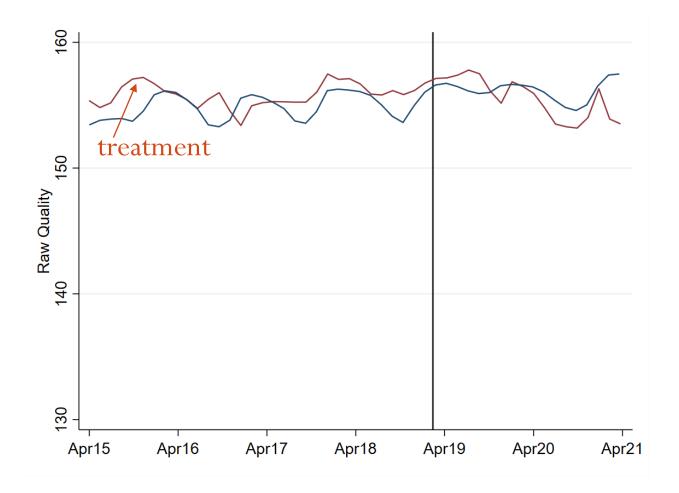


#### Losing bids (as % of reserve)

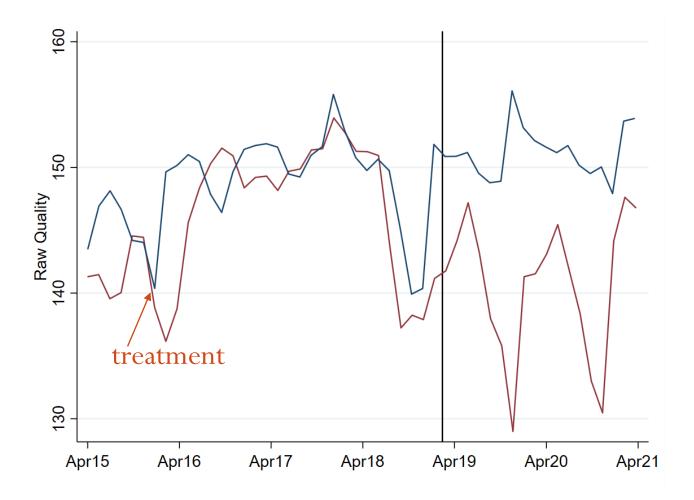








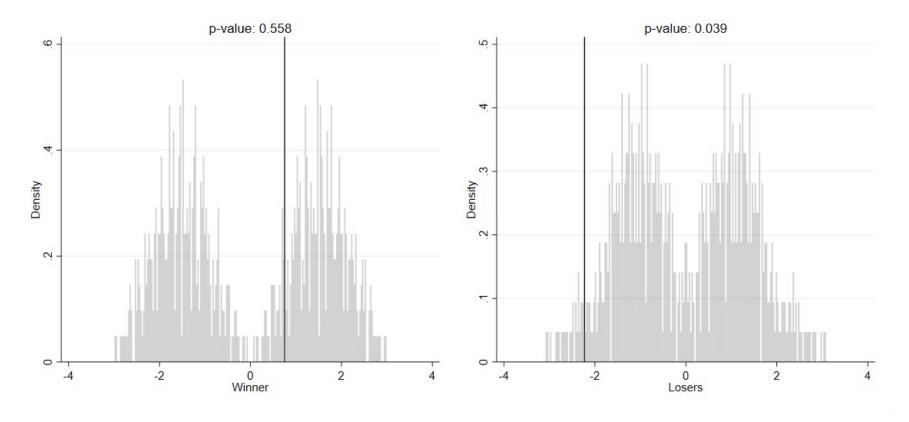
# Loser Quality (incl. invalid bids)

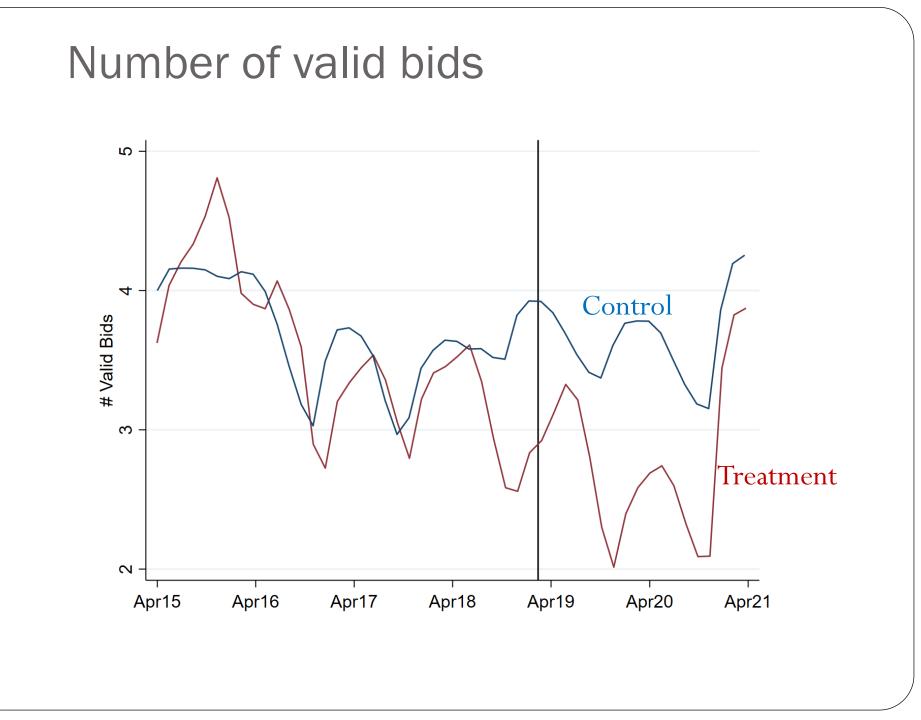


# Fisher: quality diff

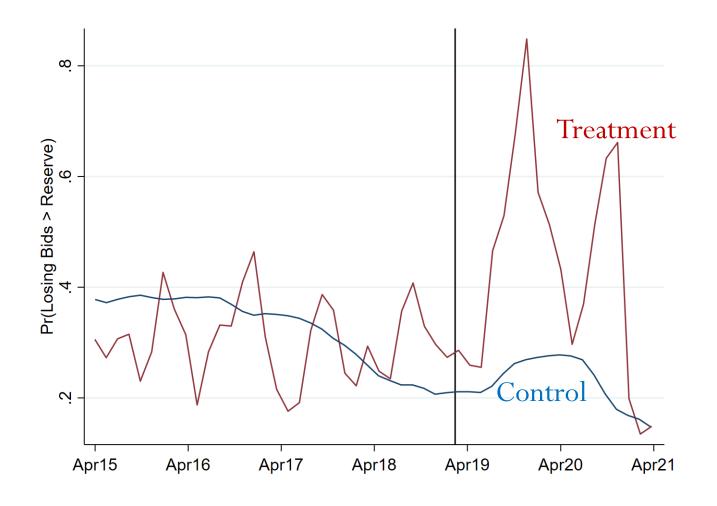
#### Winner's quality

#### Loser's quality

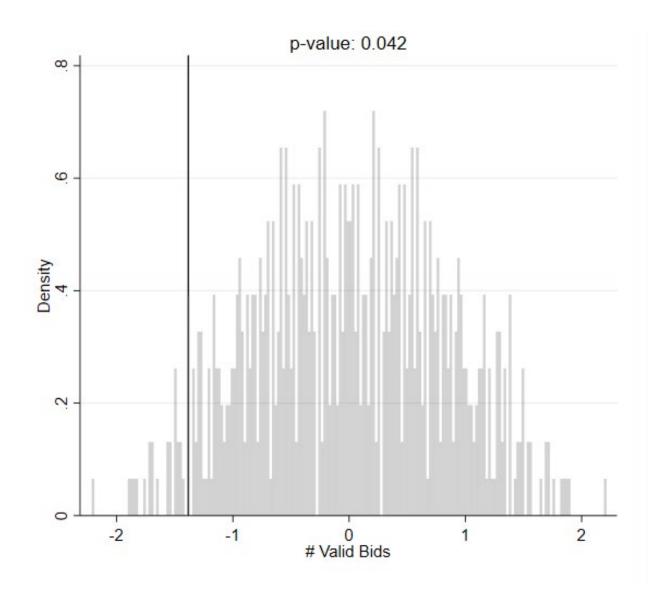




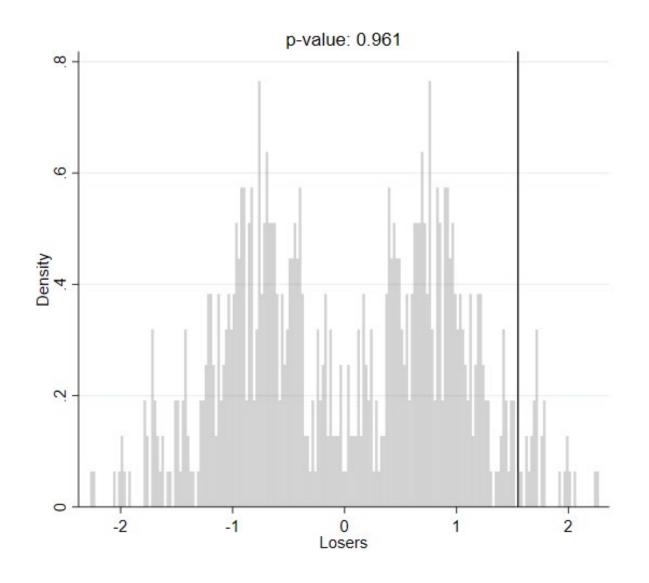
#### Prob. of Invalid Bids



#### Fisher: # of valid bids



## Fisher Prob. Invalid Bids



## Effect of treatment

• Effects on prices/quality/number of valid bids etc. do not suggest breakdown of cartel.

#### **Continued Collusion: Direct Evidence**

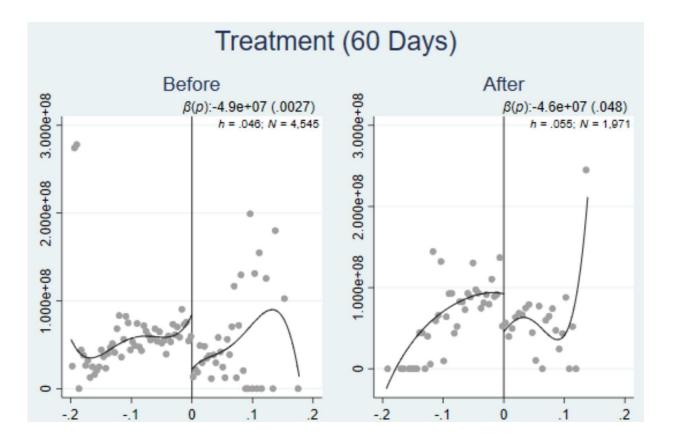
# Heuristic Argument

• Recall that,

Under the null of competition, for any bidder characteristic  $x_{it}$ , marginal winners and marginal losers should have the same average x.

- Take  $x_{it}$  to be various measures of backlog
  - Detects collusion via bid rotation
- The bidders are unaware of the version with outcome variable set to backlog.
- Focus on 75% of the sample with highest bids
  - (throw away 25% lowest sample)

# RDD of backlog



# Conclusion

- Firms seem to react to information about screens
  - Transparency of screens may backfire
- Price/Quality changes are not statistically significant
- Significant reduction in # of valid bids
- Evidence of firm adaptation with continued collusion.

# Thank you