12th Session of the Intergovernmental Group of Experts on Competition Law and Policy
Geneva, 9 to 11 July 2012

Round Table
Competition Policy and Public Procurement

Presentation
By Ms. Anna Müller (WTO)

The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.
The GPA, international trade and competition

Anna Caroline Müller, Legal Affairs Officer, WTO

UNCTAD IGE Round Table on "Competition policy and public procurement"

Tuesday, 10 July 2012
Contents of the presentation

- Competition, international trade and procurement
- Nature and purpose of the GPA and its rules, recent developments
- Some remarks on transparency and competition
- Concluding remarks
Competition, international trade and procurement

- The GPA’s main objective is to open public procurement markets to international trade. (International) competition is the underlying principle and goal of the GPA.
- The transparency and non-discrimination obligations of the GPA put in place procurement procedures that favour (international) competition.
- Market opening, international trade, help against collusion!
- Domestic benefit: better value for money through transparent procurement system, resulting competition.
- However, GPA does not and cannot solve all problems!
A closer look at competition provisions in the GPA

- Competition law enforcement needs to complement GPA implementation.
- No outright requirement in the GPA to take preventative or remedial measures regarding collusive tendering.
- But: threat of collusive tendering and the right of countries to take remedial measures acknowledged in Article XIII, para. 1(a) of the revised text of the GPA.
- Possibility to exclude suppliers on the basis of final judgments in respect of serious offences; professional misconduct that adversely reflects on the commercial integrity of the supplier (Article VIII, para. 4 (d) and (e) of the revised text).
Basic nature of the Agreement (1)

- An internationally recognized tool to promote:
  - Access to other GPA Parties’ procurement markets (international trade in procurement);
  - Improved value for money in each participating Member’s procurements;
  - Good governance (transparency, fair competition and an absence of corruption)
  - Increased harmonization/complementarity of international instruments on government procurement.
Basic nature of the Agreement (2)

- A plurilateral agreement within the WTO system
  - Currently 42 WTO Members covered: Armenia, Canada; EU (including its member States); Hong Kong, China; Iceland; Israel; Japan; Korea; Liechtenstein; Netherlands w. respect to Aruba; Norway; Singapore; Switzerland; Chinese Taipei; US.
  - Accession initiated; substantive work pending or on-going: Albania, China, Georgia, the Kyrgyz Republic, Jordan, Moldova, Oman, Panama and Ukraine.
  - Commitments to accede: Croatia, the former Yugoslav Republic of Macedonia, Mongolia, Montenegro, Saudi Arabia and Russian Federation.
The recent conclusion of the GPA renegotiation

- “Political conclusion” to the negotiations reached by GPA Ministers on 15 December 2011, following intensive negotiations over almost a decade.
- Formal adoption of the results of the negotiations on 30 March 2012, following a verification process.
- Elements of the deal:
  - Market access enhancement package valued at $80-100 billion annually.
  - Agreement that the previously-negotiated revised GPA text may now come into effect (subject to instruments of acceptance) – important for accessions.
  - Package of Future Work Programmes.
Basic architecture of the GPA

Text
• Provisions on **national treatment and non-discrimination** (subject to limitations in coverage).
• **Procedural provisions** on aspects of the procurement process
• **Enforcement**: provisions on domestic review procedures and application of the WTO-DSU.
• **Special and differential treatment** for developing countries.

Appendix I: Coverage
Coverage defined through detailed schedules (Annexes):
• Annexes 1-3: Central, sub-central and other entities
• Annexes 4-6: Goods, services and construction services
• Annex 7: General notes

Appendixes II-IV: Transparency
• Electronic/paper media or website for publication of laws and regulations, notices, awards and statistics.
Some remarks on transparency and competition

- Generally, transparency reinforces and is complementary to competition-enhancing measures.
- Word of caution: too much transparency can facilitate collusion under certain circumstances (!), e.g.
  - information on mid- to longer term procurement planning (bid rotation),
  - public bid opening, post-award publications (cartel stability).
- Balancing of interests needed, no schematic solutions available.
- Need for agency vigilance/public education.
Concluding remarks

- GPA helps implement national reforms, enhances competition through international market-opening. But: The GPA is no panacea.
- No outright requirement in the GPA to take preventative or remedial measures regarding collusive tendering.
- But: threat of collusive tendering and the right of countries to take remedial measures are acknowledged.
- Competition laws, agency vigilance and cooperation needed to be able to counteract remaining problems.
Thank you!

Anna.Mueller@wto.org

+41 22 739 5514

For more information: www.wto.org