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**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

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

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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!



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