Classification of Government Procurement Regulations and Administrative Procedures – Challenges and Proposals

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Outline

- Objective
- Challenge 1: Modalities
- Challenge 2: Entities
- Challenge 3: Level of Aggregation
- Challenge 4: Sources
- Proposal 1 for Government Regulations
- Proposal 2 for Administrative Procedures
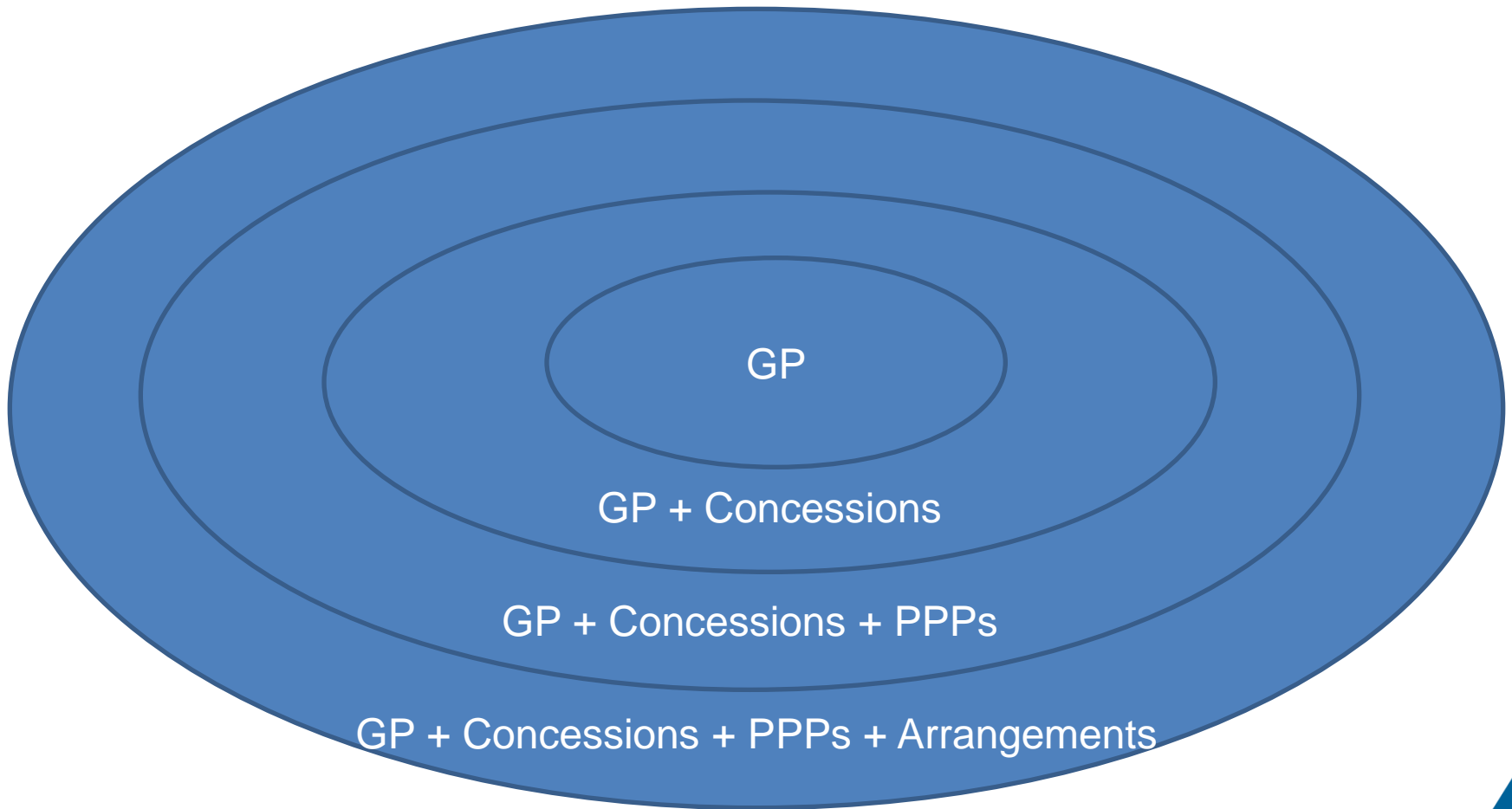- Existing OECD work on GP

Objectives

- MAST is not about legitimacy or discrimination
- Chapter M : Government Procurement Restrictions
- "*Collect measures controlling the purchase of goods by government agency, generally by preferring national providers*":

  – Government Regulations: when it clearly state a preference for national providers

  – Administrative Procedures: when it will give preference (intentionally or not) to national providers plus it informs on exemptions and applications of law
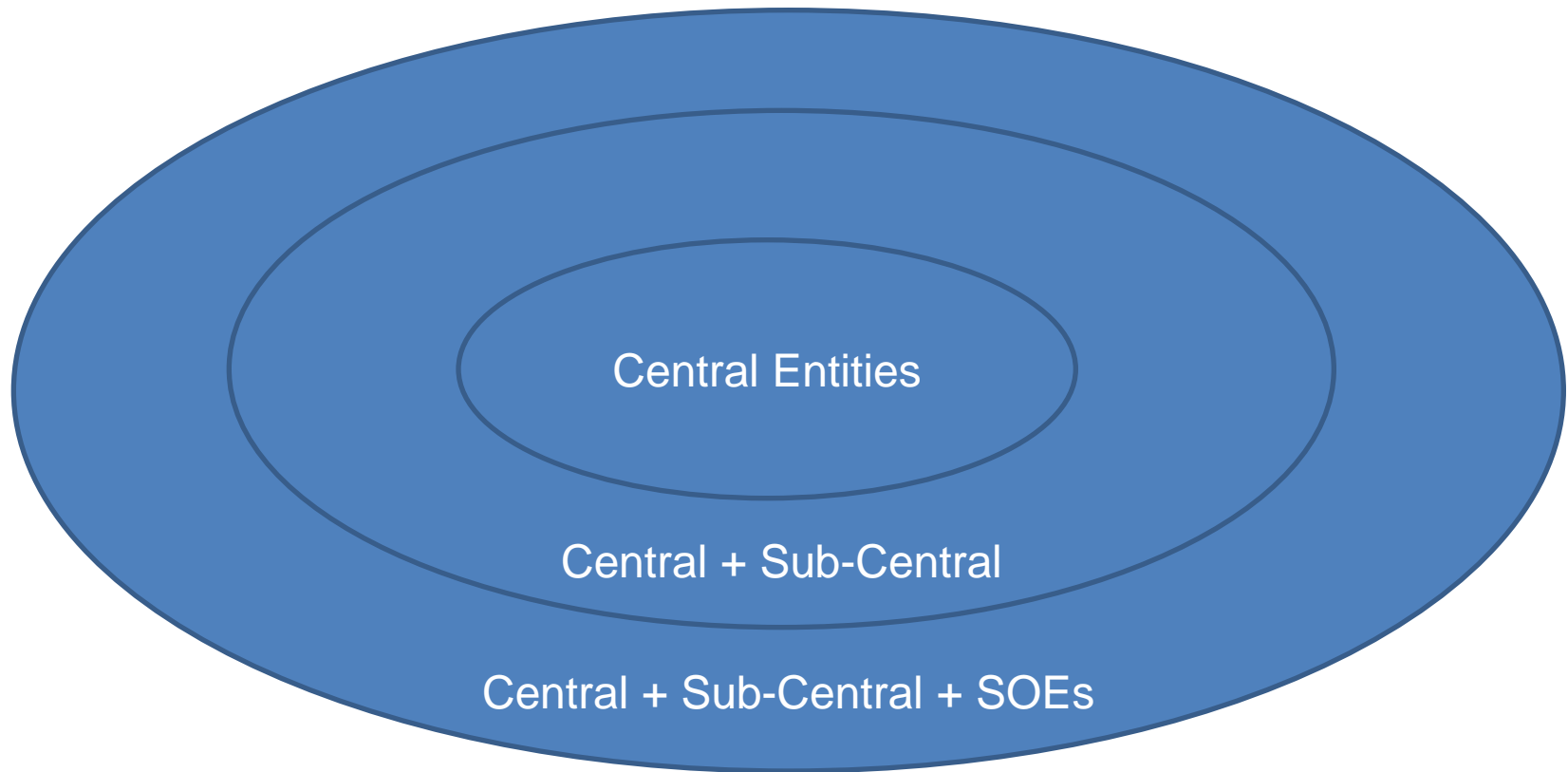
Challenge 1: Modalities

GP

GP + Concessions

GP + Concessions + PPPs

GP + Concessions + PPPs + Arrangements

Challenge 2: Entities

Central Entities

Central + Sub-Central

Central + Sub-Central + SOEs

Challenge 3: Level of Aggregation

- For Government regulation: "Easy"
  - Sectors are mentioned in laws : find HS codes (as in Global Trade Alert)

- For Administrative procedures: More challenging
  - Does procedure change across sectors?
  - If change for same sector: average by sector?
  - What product/sector in other dataset on GP?

Challenge 3: Level of Aggregation

- For instance in WTO-GPA datasets
  - For legislation or threshold documentation: broad sectors as goods, construction, services
  - For statistics on contracts: there are categories at 2 digits for goods and services: which classification?

- In Contract award data, example with TED (EC)
  - Classification by activity of contracting authority (COFOG) : General public service, Health; Defense; Education etc…
  - "CPV code": equivalent to HS code with more than 10,000 goods and services

Challenge 4: Data Sources

- Government Regulations:
  - Legislation on Public Procurement: already some collected by WTO for GPA
  - Other?

- Administrative Procedures:
  - If differs for each contract award … pain!
  - Where to find such info?
  - Follow steps of official procedure to detect where barriers can appear

Proposal 1 : Government Regulations

Code	Sub-Chapter	Group	Sub-Group
GR1	Buy Home		
GR11		Need to be National	
GR12		Local presence is enough (even if international)	
GR2	Preference Home		
GR21		Using a preference margin	
GR211			For National
GR212			For Local
GR22		??	
GR221			??
GR222			??

Proposal 2 : Administrative Procedures-
Step 1: Types of tendering

Code	Sub-Chapter	Group	Sub-Group
AP1	No Open Tendering		
AP11		Selective Tendering (reservation)	
AP111			Set asides
AP1111			*Limited to SMEs*
AP1112			*Limited to other specific group*
AP112			Offering back
AP1121			*Limited to SMEs*
AP1122			*Limited to other specific group*
AP12		Prequalified Tendering (preferencing)	
AP121			Limited to a single company in the case of direct tendering
AP122			Limited to a shortlist of companies
AP123			List of companies not updated annually

Proposal 2 : Administrative Procedures-
Step 2: Award criteria

Code	Sub-Chapter	Group	Sub-Group	Scheme
AP2	MEAT and Not the Lowest Price			
AP21		MEAT without criteria		
AP22		MEAT without ordered criteria		
AP23		MEAT without weighted criteria		

MEAT : Most economically advantageous tender

Proposal 2 : Administrative Procedures-
Step 3: Specific criteria

Code	Sub-Chapter	Group	Sub-Group
AP3	Restriction criteria		
AP31		Qualification criteria	
AP311			Exclusion for failure to pay taxes
AP312			Exclusion for failure to comply with environmental policies
AP313			Exclusion for failure to comply with social policies
AP32		Contractual conditions	
AP321			Production method
AP322			Use of unemployed/ keep existing employees
AP323			Delivery of the contracts
AP324			Environmental standards
AP325			Social objectives

Proposal 2 : Administrative Procedures-
Step 4: Advertising and Step 5: Application

Code	Sub-Chapter	Group	Sub-Group
AP4	Not Well advertised		
AP41		Not in Official Journal	
AP42		Not on etenders	
AP43		Not in English	
AP44		Additional info added in the last week before the end of application	
AP5	Difficulty in Application		
AP51		No E-procurement	
AP52		No electronic online Submission	
AP53		Specificity in Application (finger print in Korea, no recognition of e-signature in EU)	
AP54		Time limit too short (less than 20 days)	

Proposal 2 : Administrative Procedures-
Step 6: Evaluation and Step 7: Decisions

Code	Sub-Chapter	Group	Sub-Group
AP6	Award criteria is not Lowest Price		
AP61		Value for money	
AP62		Efficiency	
AP63		Secondary objectives	
AP64		No scoring system	
AP65		Not all tenders invited to elaborate on bids	
AP7	Delays in decision	Inform unsuccessful tender with delays	
AP8	Others		
AP81	Specific Packaging		
AP811		Break up in pieces to advantage SMEs….	
AP82	Taxes		
AP821		VAT payment	
AP822		Tax payment	

OECD existing work on GP

- Transparency Procurement Indicators: A sub-section on Openness
  - Promoting competition: procurement procedure
  - Promoting competition: number of bids and number of international bidders
  - Transparency of public procurement information

- STRI index : A sub-section on restrictions in GP for services (1 procurement law and 2 procurement procedures)
  - Explicit preferences for local supplier
  - Technical specifications affect the conditions of competition in favor of local
  - Contract award on the basis of non-objective/discriminatory criteria

To conclude

- Challenges 1 and 2 could be objectively addressed during our discussion

- There are massive problems with challenges 3 and 4, in particular for the administrative procedures component

- Other challenges exist that we have missed in this presentation

- The proposals of taxonomy exposed here were just illustration of what is a final output for such work

For more information about OECD work on trade:

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