

CO1A: Regulate and promote market competition, public and private, for drinking water and sanitation services

REGULATORY FUNCTION: COMPETITION		CO1A
OBJECTIVE CO1 Water and sanitation service legislation and regulations are aligned with public competition policies	ACTION CARD CO1A REGULATE AND PROMOTE MARKET COMPETITION, PUBLIC AND PRIVATE, FOR DRINKING WATER AND SANITATION SERVICES	
COST: Medium FREQUENCY: One time TARGET GROUPS: Regulators, service operators, procurement institutions, anti-monopoly institutions		
DESCRIPTION Market competition between public and private contractors is usually regulated by national competition authorities. However, given the specifics of the sector, it is usually WASH regulators that are mandated to apply these rules over competing operators. These can be applied both in networked services (e.g. when private operators deliver services), or where water- or sanitation-related services are not provided through networked services (e.g. water tanks, or emptying latrines and septic tanks). In accordance, regulators technically align competition policies to sector requirements. Regulators define clear and transparent procedures and criteria for market entrance, with the objective of ensuring equal conditions to all potential competitors. Finally, regulators set conditions for continuous market operations by licencing or registering qualified operators.		
EXPECTED OUTCOMES <ul style="list-style-type: none"> • Procurement processes are open equally to all potential operators. • Consumers benefit from open competition by purchasing the services at lowest market prices. • Operators improve their service performance faster in a competitive market. 		
EXAMPLE 1: TANZANIA In Tanzania , the regulator EWURA, established guidelines in 2013 for regulator of water tankers, which specifies the following. <ul style="list-style-type: none"> • Any person intending to supply water in the Dar es Salaam Water Supply and Sewerage Authority (DAWASA) Designated Area using a water tanker shall apply to DAWASCO (Dar es Salaam Water and Sewerage Corporation) for registration of each tanker. • An application for registration shall be in the form prescribed by DAWASCO and shall contain the following information. <ul style="list-style-type: none"> – The applicant’s full name, business address, telephone and fax numbers, email and web page. – A list and details of water tankers. – A certified copy of registration cards of all water tankers. – A non-refundable application fee of TZS100,000 per water tanker, or such other amount as the authority shall from time to time prescribe. • DAWASCO shall, upon receipt of an application, satisfying itself to its completeness, evaluate such application by taking into account its compliance with applicable law, the water tanker’s compliance with technical requirements as prescribed in the Second Schedule, and the applicant’s past records. • DAWASCO shall, upon evaluation of the application, approve, refer back, or deny the application. • Where DAWASCO has rejected or denied an application for registration, it shall inform the applicant of the reasons for such denial or rejection. 		

- Where the applicant is not satisfied with DAWASCO's decision under Paragraph 3.5, the applicant may lodge a complaint to the authority for determination.
- Where DAWASCO has approved an application for registration, it shall issue a certificate of registration to the applicant, and the applicant shall from that moment be deemed to be an agent of DAWASCO.
- The operator shall comply with the terms and conditions of the certificate of registration. The period of registration shall be two (2) years and may be extended upon application by the operator.

EXAMPLE 2: CHILE

In Chile, pursuant to the General Law on Sanitary Services (Statutory Decree No. 382 of 1988), the provision of public utilities associated with producing and distributing drinking water and collecting and disposing of wastewater may be carried out within a system of open market competition, by virtue of a concession granted by a Public Works Ministry decree upon the recommendation of the Superintendency of Sanitary Services (SISS).

The law determines that all providers shall comply with the concessions system, regardless of their legal status, whether public or private in nature. It also stipulates that concessions shall be granted to corporations.

In this sense, the main principles for granting concessions, which drive SISS recommendations, are compliance with required technical conditions and the ability to offer the lowest tariffs for service provision, thereby benefiting users of the open competition process.

EXAMPLE 3: PARAGUAY

The General Law on the Regulatory and Tariff Framework for Drinking Water and Sanitary Sewerage Provision in the Republic of Paraguay indicates that the Sanitary Services Regulator (ERSSAN) is empowered and obliged to prevent and impede discriminatory or anti-competitive conduct, or conduct implying an abuse of natural monopolies, both to the detriment of other providers in each stage of the service, as well as users.

Likewise, the regulatory decree of this General Law details and elaborates on ERSSAN functions, clarifying that conduct that should be prevented or impeded refers to provider acts or omissions that imply behavior that is inefficient, or capable of altering (in a unilateral and uncompensated manner) the service quality and/or tariff conditions, such as selective quality reductions, the application of unequal tariffs, or analogous situations, the establishment of non-competitive procurement and contracting systems, among other issues.

With the aim of complying with this obligation, ERSSAN keeps an updated database or comparative reference list of supply and process costs, which it uses to rate provider behaviors in tariff review processes. Likewise, ERSSAN is empowered to regulate the prevention and sanctioning of the above behavior, as well as propose specific rules for its inclusion in the terms and conditions for concessions and permits, with the aim of promoting efficient and equitable competition.

LINKS

Tanzania: EWURA Guidelines for water tank operators: <http://www.ewura.go.tz/wp-content/uploads/2015/03/Water-Supply-and-Sanitation-Water-Tanker-Services-Rules-2013.pdf>

Chile: General Law on Sanitary Services, Statutory Decree No. 382 of 1988: <https://www.bcn.cl/leychile/navegar?idNorma=5545&idParte=>

Paraguay: General Law and Regulatory Decree No. 18880 of 2002: https://erssan.gov.py/application/files/7515/8741/1529/Marco_Regulatorio.pdf and https://erssan.gov.py/application/files/4716/6514/3615/Decreto_Reglamentario_N_18880.pdf

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

Regulators' staff must be trained on a range of skills that include legal, procurement and administrative abilities that enable them to define required procedures and related criteria. Such capacity building exercises can be supported by development partners, while national anti-monopoly authorities and consumer associations will take an active role in profiling the competitive WASH sector through substantive inputs reflecting other sector lessons learned. Benefits arising from the competition experience of other regulatory authorities could be facilitated through regional technical exchanges.