

CO3A: Impose mandatory procurement measures or split operators' assets when they benefit from a monopoly

REGULATORY FUNCTION: COMPETITION		CO3A
OBJECTIVE CO3 There are sanction systems for operators for any anti-competitive acts that affect consumers	ACTION CARD CO3A IMPOSE MANDATORY PROCUREMENT MEASURES OR SPLIT OPERATORS' ASSETS WHEN THEY BENEFIT FROM A MONOPOLY	
COST: Medium FREQUENCY: One time TARGET GROUPS: Regulators, service operators, administrative courts		
DESCRIPTION Before applying sanctions against an operator, regulators have available a wide range of options that can reduce anti-competitive behaviour. Legal measures commonly applied by competition authorities, could also be copied by WASH regulators. In order to do so, however, these would have to be transparently and clearly outlined within regulatory competition policies to ensure comprehension by all operators. Regulators can for example, request operators to sell some of their assets to competitors, split into several independent entities that would compete with each other, or to finance new or other market players from a fine, all with the objective of restoring competition. In most cases, regulators simply establish tendering and procurement procedure which allow them to review compliance with registration conditions.		
EXPECTED OUTCOMES <ul style="list-style-type: none"> • Operators are prevented from benefiting from a dominant position when competitive conditions could be met. • Consumers are protected in their rights and interests through measures which create an open market for everyone. • Corrective measures are also applicable to a single operator if it does not comply with agreed terms. 		
EXAMPLE 1: TANZANIA In Tanzania , following the 2013 Guidelines for the Regulation of the Private Boreholes, the Energy and Water Utilities Regulatory Authority (EWURA) specifies the following. 13. – (1) In the event a licensee starts to provide a water supply service to an area with limited or no supply, all operators in said area shall cease to provide borehole services to customers in said area; and the licensee shall, subject to the provisions of sub-rule (2), be at liberty to use existing infrastructure owned by said operators. (2) A licensee shall, in the event it decides to use the existing borehole and infrastructure owned by an operator, compensate said water operator at an amount as shall be agreed upon by the parties and approved by the Authority.		
EXAMPLE 2: ARGENTINA In Argentina, drinking water and sanitation services are subject to the consumer protection system set forth in Law No 24.240, and the system for the defense of competition set forth by Law No. 25.156. This last regulation prohibits economic concentration between companies by way of mergers, transfers, acquisitions or other means, when their purpose or effect is or could be to restrict or distort the competition in a way that harms general economic interests. Consequently, operations that are conducive to economic concentration must be previously authorized in order to verify that they do not impact the competition in their respective market, or compliance with the regulatory framework, and to this end, the regulator must issue a grounded report. As an example, Resolution No. 665/19 by the Secretary of Domestic Trade authorized the economic concentration resulting from the takeover by SUEZ S.A. of GE WATER AND PROCESS TECHNOLOGIES SOCIEDAD COLECTIVA, which belonged to GENERAL ELECTRIC COMPANY.		

LINKS

Tanzania: <http://www.ewura.go.tz/wp-content/uploads/2015/03/Water-Supply-and-Sanitation-Regulation-of-Private-Boreholes-Rules-2013.pdf>

Argentina: Law No. 24.240, Consumer Protection Law, and Law No. 25.156. Law for the Defense of Competition

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60016/texact.html>

<https://www.argentina.gob.ar/normativa/nacional/ley-24240-638/actualizacion>

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

A range of legal and administrative skills is necessary to complete this action, that obliges regulators to build their internal capacity through training, often seeking support from anti-monopoly institutions and development partners. Competition authorities could also extend their expertise by defining and imposing remedial actions. Development partners could build upon this through training. Regulators' staff must be trained on when to proceed with remedial measures, how to impose them on operators, and what steps to follow in case of non-compliance.