

CO1B: Ensure healthy competition through equal treatment of all operators within the scope of public procurement

| REGULATORY FUNCTION: COMPETITION | | CO1B |
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| OBJECTIVE CO1 Water and sanitation service legislation and regulations are aligned with public competition policies | ACTION CARD CO1B <h2 style="margin: 0;">ENSURE HEALTHY COMPETITION THROUGH EQUAL TREATMENT OF ALL OPERATORS WITHIN THE SCOPE OF PUBLIC PROCUREMENT</h2> | |
| COST: Medium FREQUENCY: Regular TARGET GROUPS: Regulators, service operators, procurement institutions, anti-monopoly institutions, media agencies | | |
| DESCRIPTION Once rules and conditions are defined, it is important to apply them through appropriate procurement procedures and related protocols. When procuring, regulators must be always guided by their main principles of non-discrimination, equality, and transparency, to achieve fair competition in the WASH sector. The main objective of regulators is a market where consumer interests are met, so regulators analyses operators' propositions against predefined standards in terms of the quality of service and tariffs. Most importantly, this procedure, being a virtual benchmarking exercise, allows regulators to encourage and promote innovation and technical progress to increase the efficiency of competing operators. | | |
| EXPECTED OUTCOMES <ul style="list-style-type: none"> • Procurement processes are transparent, and allocation of contracts to operators is undertaken without discrimination. • All operators feel equal in terms of new market acquisition. • Consumers enjoy more choices in the WASH services they purchase. | | |
| EXAMPLE: KENYA In Kenya , under its Water Act 2002, the regulator WASREB (Water Services Regulatory Board) is specified under Article 26, that is dedicated to water supply in bulk, with pro-competition rules for both consumers and operators. <ul style="list-style-type: none"> • (9) It shall be a general condition of the license and any service provision agreement that water service needs of the service providers along the bulk water network are met to the agreed proportions, and the water in bulk supplier shall not, for the whole period of the agreement, retain, use or supply water in bulk to another new service provider, unless such alternative provision has been agreed upon between the water in bulk supplier and first service provider. • (10) The Regulatory Board shall only approve a supply of water in bulk agreement upon confirmation that the water in bulk supplier has a valid extraction permit giving it abstraction rights commensurate with its water sale requirements from the Water Resources Management Authority. • (11) Notwithstanding the foregoing provisions, in the interest of the public and where technically and economically feasible, the Regulatory Board may order the licensee to either supply water in bulk to another license area or enter into a service provision agreement with an agent who shall supply water in bulk to third parties within its area of supply. | | |
| LINKS https://wasreb.go.ke/downloads/SUPPLEMENT_183_WATER_RULES.pdf | | |

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

Regulators' staff must be trained on a range of procurement and administrative abilities to understand how to conduct open and transparent procurement procedures. Such capacity building can be supported by development partners, while other sector actors such as agencies in charge of public procurement, related ministries, and consumer associations could take an active role through providing substantive inputs and lessons learned. They can also help regulators to determine their procurement procedures and protocols along with other similar national examples.