

Competition concerns in public procurement

Anförande av Konkurrensverkets generaldirektör Dan Sjöblom i samband med konferens med BRICS-staterna i New Delhi den 22 november 2013.

Speech of the Director General for the Swedish Competition Authority, Mr Dan Sjöblom, at the 3:rd BRICS International Competition Conference 2012, 22 November in New Delhi.

Competition and public procurement are closely linked together as two sides of a coin. Both areas aim at efficient competition and well-functioning markets. When contracting authorities use public funds to purchase goods, services or works it is important to ensure that the best deal is reached by taking advantage of the competition in the relevant market.

Public procurement affects a substantial share of world trade flows, amounting to € 1000 billion per year. It also makes up a significant part of national economies, in Sweden approximately 17% of gross domestic product (GDP). In the EU, the public purchase of goods and services has been estimated to account for 16% of GDP. The figures differs from one country to another, but the budgets are high enough to make companies interested in making business and sell to publicly financed bodies.

Others on this panel have spoken about the inherent risk of bid rigging cartels and the importance of effective means to combat such manipulation.

Whilst I share this view, I would like to lift the perspective somewhat and look at other forms of market distortions one should be vary of in the context of public

procurement. The Swedish Competition Authority (SCA) is responsible for the surveillance of both competition and public procurement laws.

At the core of public procurement is the intention that public bodies should use tax payers funds effectively. If contracts are awarded without a fair and transparent procedure, there will, from a tax payer perspective be no guarantee that the best deal has been reached. There will also, from a supplier viewpoint, be a market distortion, as effectively the public purchaser has discriminated against all those potential suppliers who were not allowed to present their bids.

This is why we, in our role as supervising the public procurement activities of state and regional bodies, we prioritize illegal direct awards. If the fair and transparent procurement procedures are used, we have the legal power to take other authorities to court and seek penalties, up to 10% of the value of the illegally procured goods or services.

Our work in the field of competition and public procurement laws have also brought us in contact with other Government agencies responsible for legislation against corruption, bribery, tax evasion and other unsound behaviors. In areas where firms resort to bid rigging or where illegal direct awards take place such behaviors are more common. Bribery and tax evasion have very competition and market distortive effects, and I would encourage any Competition Authority to link up with sister agencies in charge of combatting such behaviors.

As I mentioned before the core function of public procurement is to ensure value for tax payer's money. But how to define "value for money" in this context? In the EU there is a strong trend amongst various interest groups and politicians to claim that public funds should be used so as to stimulate the society to develop in various directions deemed beneficial by such groups. This, as such, is unsurprising given the vast amount of money involved, as mentioned before around 17% of GDP in the Swedish case.

Thus, public procurement in the EU should contribute to enhance societal values such as sustainability, i.e. environmental and social responsibility, the interests of small and medium sized enterprises as well as to improve the conditions for increased use of innovation and innovative solutions. All of these are obviously very worth-while and legitimate societal goals that we, as competition authorities, have no reason to question as such.

However, even if we all can agree to the aforementioned ambitions, there are certainly many questions around the issue of how they are being implemented, where I do think a Competition Authority has a natural role to play. Our role as an advocate for competition enhancing rules and regulations is what I have in

mind here. It is very important in my view that a Competition Authority has a clear mandate to bring inefficient rules and regulations to the attention of the relevant part of its Government and to propose better regulation.

Inefficient regulation can act as at least as an important restraint to effective competition as any kind of arrangement between or by private sector operators.

With the view of improving and reinforcing the support and guidance to all interest groups, the Swedish government has decided to concentrate all support activities under one and the same authority. These tasks, which today are divided up between several authorities in Sweden, mainly one for each societal aim involved, will be placed at the Swedish Competition Authority.

I look forward to telling you all about the impact of this Government decision at the next BRICS conference in 2015!

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