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Global Forum on Competition

COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

Contribution from Gabon

-- Session V --

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COLLUSION AND CORRUPTION IN PUBLIC PROCUREMENT

-- Gabon --

1. Competitiveness as a Corollary of Free Competition

1. The economy in general and consumers in particular have much to gain from healthy competition in the market because, first, it enables enterprises to operate efficiently and, second, it offers consumers a wider selection of better-priced goods.

2. From the economic standpoint, competition is a mechanism that allows price formation in a market merely through the interplay of supply and demand.

3. The rationale behind free competition in Gabon is that freedom of competition is the best way – but not the only way – to ensure economic progress. This is the theory of competition as a means to end, in which competition is simply a tool used to meet a number of objectives: economic progress, but also the protection of consumers and, in particular, wage-earners.

4. However, when competing for larger market shares, enterprises at times adopt uncompetitive behaviour which hinders the free play of competition.

5. Some enterprises use corruption to obtain a competitive advantage, rather than allowing the free play of competition. This involves “offering, giving, accepting or requesting, directly, anything of value with a view to unduly influencing the actions of a party”.

6. This leads to collusion, or “arrangements between two or more parties to achieve an undue aim, and notably to unduly influence the actions of another party”.

7. There is more than one level of corruption; in the course of daily activities, it is known as minor corruption, while in the establishment, the public sector or decision-making bodies it is treated as major corruption. Systemic corruption involves both minor and major corruption, and constitutes the greatest barrier to efficiency in the field of development.

8. There are substantial differences between the private and the public sector, since private enterprise is generally subject to competition.

2. Indicators of Suspected Corruption in Respect of Competition

2.1 *Bid-rigging*

9. The purpose of a bidding process is to promote impartiality and ensure the lowest prices, but bid-rigging calls into question the whole process of competitive bidding. It can take several forms:

10. At the pre-award stage: it may involve bid suppression, or bogus tenders, i.e. collusion between bidders so that the same enterprise is often or always successful, while the same competitors continually fail to win contracts.

11. Frequency of open or restricted calls for bids, which are said to have failed and are eventually negotiated.

12. A fall in tendered prices when a bid is submitted by a new or unfamiliar bidder.
13. An abnormally long lead time between the award of a contract to a particular firm and the actual signature of the contract or service order (suspected corruption).
14. Existence of links between the decision-maker (or person in the same department) and the successful bidder (suspected unlawful conflict of interest).
15. Bid rotation: competitors arrange to take turns at winning contracts; the others submit higher bids, then one firm withdraws what would or could have been a successful bid and is subsequently employed as a sub-contractor by the successful bidder.
16. At the post-award stage: substitution of poorer-quality goods/services than those specified in the contract; fraudulent invoices (bogus, duplicate or overcharged) for undelivered goods/services or before payment is authorized; invoicing more than the price bid, and making numerous amendments to the contract.

3. Effects of Corruption on the Economy

	In Microeconomic Terms	In Macroeconomic Terms
Private sector	Ineffective and inefficient project-execution Private investment undermined by distorted competition Corporate relocations Poorly distributed talent, propensity of firms to look for activities that produce guaranteed income rather than productive activities	Long-term decline in investment Decline in competitiveness Decline in economic growth Decline in private savings Capital flight Rise in unemployment
Public sector	Government inefficiency Distorted sectoral priorities (Health and Education lose out to sectors such as Defence) Decline in tax revenue	Rise in inequalities Rise in inflation Decline in public revenue Rise in public debt Decline in the balance of payments Rise in poverty Worsening of budget deficits Payments in arrears

4. Avenues to be Explored

4.1 Gabon's Experience

17. There is a vital need, in the new economic environment that the authorities intend to set up, for Gabon to become an "emerging" economy. Some major incentives should be introduced to combat corruption with effective solutions. The legal framework has been in place since the adoption of Act No. 002/2003 of 7 May 2003 introducing a regime to prevent and curb illicit enrichment in the Republic of Gabon, and Act No. 003/2003 of 7 May 2003 establishing the CNLEI (*Commission nationale de lutte contre l'enrichissement illicite*), an Independent Government Authority (AAI), to "enable it effectively to exercise its functions "free of any influence". Although Act No. 20/2005 of 3 January 2006 reaffirms that an AAI acts on behalf of the State in particularly sensitive fields without reporting to any member of Government, it must be said that much of the work done by the CNLEI since its inception has

been confined to preventative measures, since no dossier has yet reached the judicial phase resulting in legal sanctions that could serve as an example in the fight against corruption.

18. Amongst the definitions set out in this legislation, illicit enrichment is described as follows: "...for any public servant, the act of making or endeavouring to make personal profit or obtain any advantage.... through an illicit practice in respect of expropriation, or of obtaining contracts, concessions or import/export licences".

19. Initiatives to ensure that the CNLEI operates optimally and effectively are under way.

4.2. *Other Possible Solutions*

20. In addition to political stability, the fight against corruption requires solid and effective public institutions.

21. It is still crucial to raise the awareness of business leaders about the importance of ethics as a decisive key to competitiveness which highlights the reality of their situation and hence the economic performance of their enterprise.

22. Higher moral standards in public life require new, exemplary measures to curb acts of corruption.

23. Collaboration between competition regulators and the judicial authorities is more than vital to build capacity in the fight against corruption. This is because the institutions set up by Governments are often targeted at "any public servant" whereas competition is being distorted by corruption; there is a need for joint initiatives; the competition authorities should institute proceedings against economic operators guilty of corruption and introduce effective disincentives. This would discourage such practices, the ultimate aim being to make competitiveness the sole criterion in the bidding process.