

Unclassified

DAF/COMP/GF/WD(2014)29

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

24-Jan-2014

English - Or. English

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Global Forum on Competition**

**FIGHTING CORRUPTION AND PROMOTING COMPETITION**

**Contribution from Ecuador**

-- Session I --

*This contribution is submitted by Ecuador under Session I of the Global Forum on Competition to be held on 27-28 February 2014.*

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**JT03351491**

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## FIGHTING CORRUPTION AND PROMOTING COMPETITION

-- Ecuador --

### 1. Collusion and Corruption in Public Procurement in Ecuador

1. The Superintendency for Market Power Control – SCPM- , the Ecuadorian Competition Agency, has been in operation a little over a year and during this time a vast amount of its efforts have focused on combating collusive practices in the public procurement sector. The Agency recognizes that collusion is a widespread practice in this sector; however, it also recognizes that combating collusive practices by economic agents alone will not be enough to generate competitive market conditions and as such fair access to all economic agents that wish to take part in public procurement process. The Agency is aware that many of the actions that prevent a competitive process from taking place in public procurement are those carried out by public officials, and as such tackling the problem solely from a competition enforcement perspective will not suffice in solving the problem.

2. The Agency during this first year carried out a study of over 341 procurement processes related to the acquisition of pharmaceuticals. Through the aforementioned study, it became evident that market distortions were not created only by the actions taken by the economic agents that took part in them, but also possibly by those actions taken by public officials that acted as buyers during the processes.

3. Because of this, the Agency acknowledges the importance of working together with the national agency in charge of the public procurement processes, the *Servicio Nacional de Contratación Pública* – SERCON-, and is in the process of building a working and fruitful relationship with said agency so that information regarding anticompetitive practices and corruption can be reported between the two. Additionally, Ecuador in 2007 taking into account that among its main public policies objectives is to eradicate corruption from government administration, created a National Anticorruption Body. Through the coordinated action of the three agencies, coordination that has yet to be achieved given the limited amount of the time the SCPM has been in operation, an effective fight against both anticompetitive practices and corruption can take place in public procurement.

4. Considering that in 2011 public procurement accounted for 15% of Ecuador's GDP and 41% of the government's budget, the Agency will continue to devote its effort to fight and eliminate bid rigging and cooperate with anticorruption agencies. Both collusive practices and corruption in public procurement have cost the Ecuadorian government millions throughout the years, in there laying the importance to combat these phenomenon's.

5. In order to a build a culture of competition within public procurement, as well as, shed a light on the impact that corruption can have on the competitive process, the Agency during this previous year organized two seminars related to collusive practices in the public procurement where different areas of concern were approached. One of the topics introduced during the seminars was an economic analysis of the impact of corruption within public procurement. This seminar, which was one of the first steps to the building of the relationship the SCPM hopes to develop with the National Public Procurement Body, counted with the participation as a speaker of a delegate of that agency. Additionally, the SCPM elaborated and presented a proposal of a public procurement guideline so that SERCON, as the agency in charge of

public procurement processes at the national level, could implement it in the elaboration and control of public procurement processes with the hopes of targeting both anticompetitive practices and corruption through the effective implementation of said guideline.

6. Furthermore, the SCPM has several cases under investigation for possible collusive practices in public procurement processes for the acquisition of pharmaceuticals and shoes. In the analysis of said cases, it has also been apparent that the exclusion of potential bidders has not responded only to actions taken by the economic agents, but by the actions taken by the public officials in charge of analyzing the bids that seemed to favor a certain competitor.

7. Leaving the public procurement arena, the SCPM through its advocacy division analyses the regulatory actions taken by government agency and in said analyses tries to determine if a capture of a regulator has taken place; and thereby, if its regulatory policies are being used as a way to control entry of new competitors to favor incumbents. The SCPM during this time has focused its efforts on the telecommunication, health and financial sectors.

8. While carrying out both procompetitive intervention and confronting corruption can be costly, one action without the other would prove ineffective especially in public procurement. It is through the joint actions of the competition law enforcers and anticorruption law enforcers that the problem can be better tackled, and as such, competitive conditions can be established benefiting the economy as a whole. Ecuador's public procurement serves as the best example where one action is not fully effective without the other.