

Connecting public procurement and competition policies: the challenge of implementation

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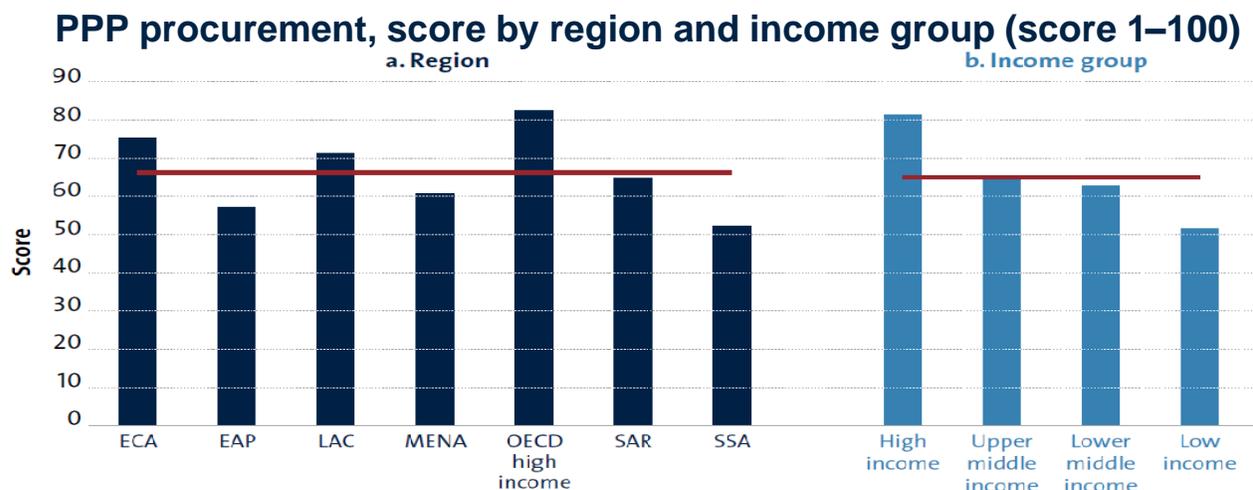
Competition Policy Team
WBG Trade and Competitiveness Global Practice

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Effective Public procurement is critical for economic development

Governments in developing countries are significant purchasers of good and services, and these markets represent huge opportunities to enhance competition and development.

- **Low-income countries have the highest share of public procurement in their economies, at 14.5 percent of GDP.**
- **Upper-middle income countries follow at 13.6 percent.**



Note: EAP = East Asia and Pacific; ECA = Europe and Central Asia; LAC = Latin America and the Caribbean; MENA = Middle East and North Africa; OECD = Organisation for Economic Co-operation and Development; PPP = public-private partnership; SAR = South Asia; SSA = Sub-Saharan Africa.
Source: Benchmarking PPP Procurement 2017

Estimated Cartel Overcharges

Road contracts

State of Florida	8%
Republic of Korea	15%
Tanzania	15–60%
Philippines	20–60%
Sample 29 developing countries	40%

All construction contracts –

Netherlands	Up to 20%
Japan	30–50%
All cartels	25%

Source: *Curbing Fraud, collusion and corruption in the road sector* (WBG 2011)

Public procurement policies are at the core of the World Bank Group mandate

Public Governance Global Practice

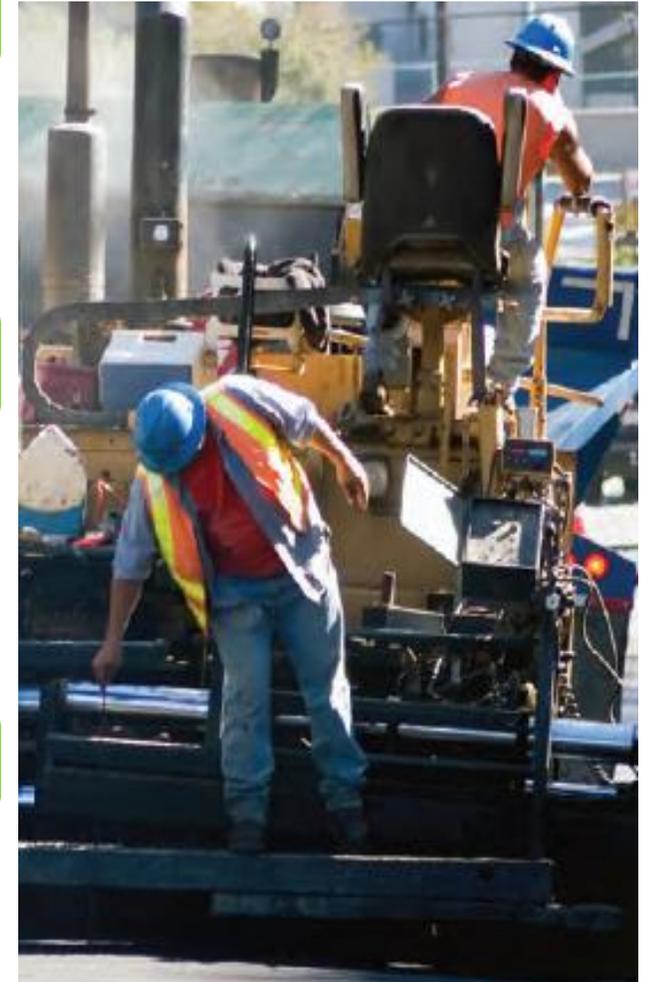
- The WBG Governance Global Practice (GGP) supports client countries to help them build capable, efficient, open, inclusive, and accountable institutions.
- GGP engages with counterparts to design and implement effective public procurement policies that ensure sustainable public resource management

Trade and Competitiveness Global Practice

- The WBG Trade and Competitiveness Global Practice fosters rapid and broad-based economic growth, centered on strong contributions from the private sector.
- The Competition Policy team works in more than 60 countries across the world to promote and implement pro-competition rules in key sectors, deterring anticompetitive business practices, and minimizing distortive government interventions in markets.

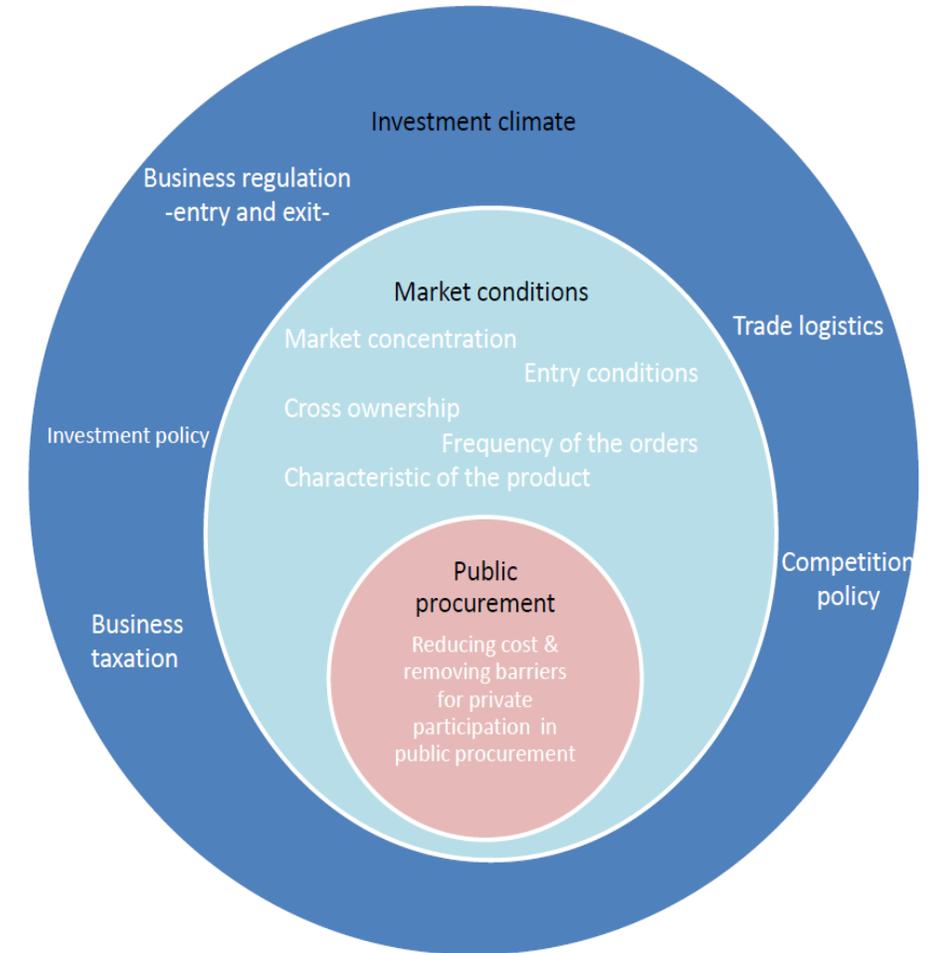
Integrity Vice-presidency

- The WBG Integrity Vice-Presidency investigates misconduct in Bank-funded projects and advises World Bank staff and borrowing country personnel on corruption prevention measures. When INT finds misconduct in a World Bank-funded project, the Bank can bar the firms or individuals involved from bidding on future World Bank-financed contracts.



Connecting public procurement policies and competition policies

- Public procurement has an impact on a wide realm of public policies including competition, trade, tax and investment.
- Public procurement and competition policies encourage businesses to interact on a level playing field by facilitating entry while penalizing and preventing unlawful/anticompetitive behavior
 - Support SMEs participation
 - Limit domestic requirements
 - Promote foreign entry
- However tension persists between transparency and collusion
 - Publishing obligations vs cartel monitoring
 - E-procurement
 - Reference price
 - Divisions by lots



Embedding competition and public procurement requires multi-layered approach...



Regulatory level

- Connect public procurement policy/reform with broader policy objectives
- Competition as a tool to help achieve public procurement goals

Institutional level

- Cost efficient public procurement procedures need not reduce competition (E.g. negotiated procurement, outsourcing procurement)
- Importance of governance framework

PP officials

- Encourage pro-competitive design of tenders through capacity building
- Punish unlawful/anticompetitive behavior

...to be implemented throughout the different stages of the public procurement process

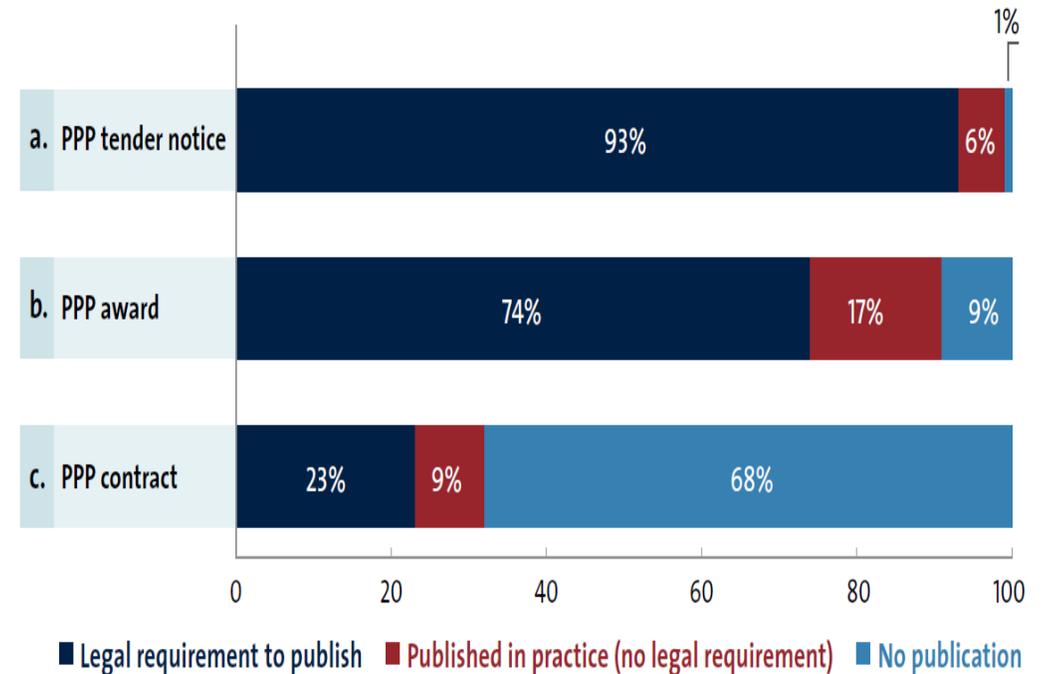
- **(1) to select the most pro-competitive procurement procedure;**
- **(2) to design the terms of the tender in order to favour competition;**
- **(3) to prevent anticompetitive decisions during the tendering process;**
- **4) to avoid anticompetitive decisions after the tendering process.**



Encouraging authorities to select the most pro-competitive tender procedures

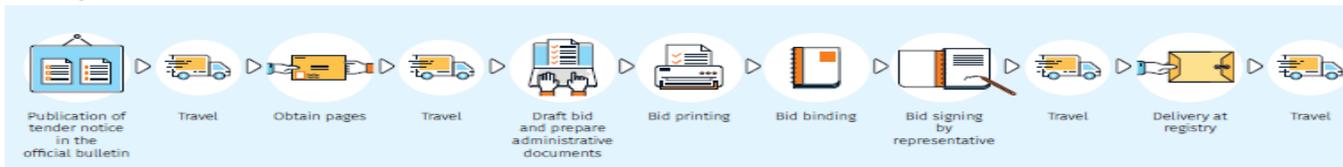
- Need to gather **information regarding market conditions** and choose best fitted procedure.
- Need to publish a **tender notice** when initiating new tender/PPPs/framework agreements.
- Need to ensure that **framework agreements** do not unduly limit market entry, favor coordination of parties, extend effects beyond duration of the agreement)
- Divisions by **lots**
- **E-procurement**

Access to information during PPP procurement



Note: PPP = public-private partnership.
Source: Benchmarking PPP Procurement 2017

Classic procedure



Electronic procedure



Encouraging authorities to design the tender conditions to favor competition

Bidding Eligibility

Quality requirements – quality certifications

Pre-qualification vs post-qualification

Specific legal structure (only ex-post)

No territorial discrimination (local content)

No foreign restrictions

No reference to types, brands or technical specifications

No burdensome technical or economic requirements

Award criteria

Objective, transparent, well-defined

Non discriminatory (experience, past performance or incumbency)

Adequate weighting according to relevance for contract (price – quality)

Risks of limitations on prices/fees (reference price, minimum vs maximum caps)

Rescoring elements for eligibility

Duration

According to contract nature, financing characteristics, need for periodic opening to competition

PPPs/concessions terms related to time needed to pay off investments

Avoid lengthy periods

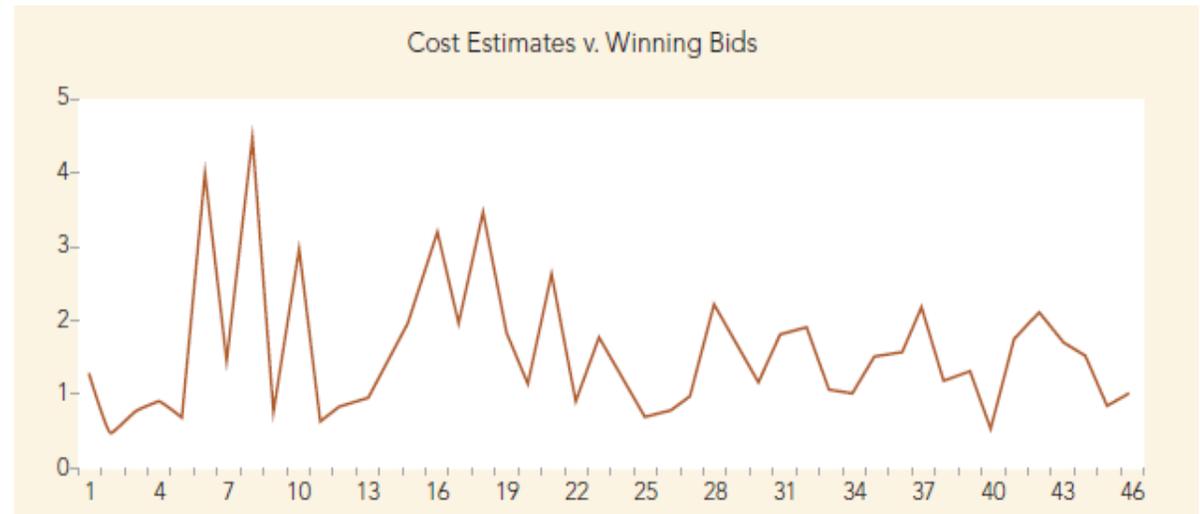
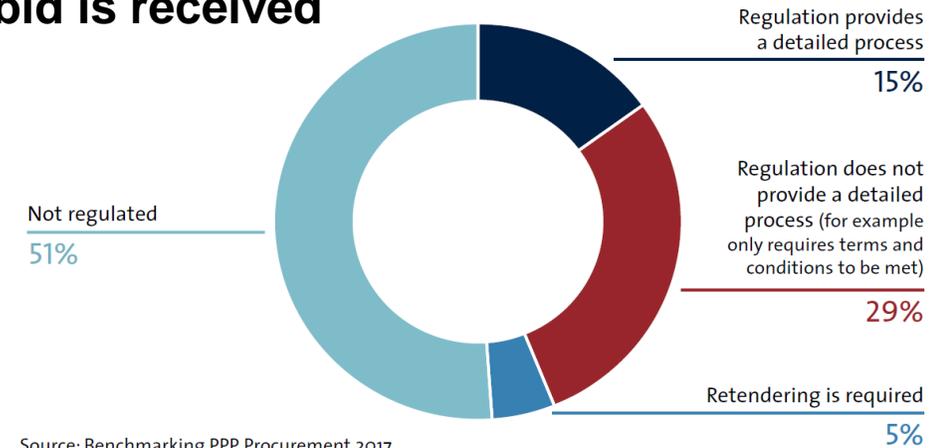
Avoid extensions (supervening, successive)

No need to exhaust regulatory terms

Encouraging authorities to avoid anti-competitive decisions/practices during tender process

- Provision of equal access to information
- Ability to remedy errors
 - **YES: accreditation of data or the characteristics of the company**
 - **No: accreditation of something that did not exist when submitting bid or bid content**
- Public and transparent procedural formalities
 - **Publication of reference price**
 - **Open bidding vs sealed bidding**
- Reducing anticompetitive risks of pre-bidding meetings
- Confidentiality of bidders' identities during the bidding process.
- Ability to redress

Approach to addressing cases when only one bid is received



Source: *Curbing Fraud, collusion and corruption in the road sector* (WBG 2011)

Encouraging authorities to avoid anti-competitive decisions/practices after tender process

Ex post modifications of a contract can affect the competitive character of the initial call for tenders:

- Introduce changes in the contract or price that alter their nature.
- aim of obtaining a return on a contract for which the bid price was too low.

Supervening modifications

- Justified on public interest grounds
- Cannot affect essential conditions of tender
- Include elements in tender
- Contractor's liability
- Ex-post monitoring of modifications

Complementary provisions of services

- New contract without publication
- Unexpected circumstances

Price modifications

- Importance of correct ex-ante estimations
- Specific formulas shall ensure financial equilibrium of the contract

Subcontracting

- Flexibility
- SMEs promotion
- Transparent procedure
- Publicly disclosed

Embedding competition through regulatory and behavioral changes in public procurement

- Key changes in regulatory and behavioral terms
 - Procurement notices were widely publicized in both national and provincial papers in prominent place and in large typefaces.
 - Local authorities' attempts to limit eligible bidders to local firms were rebuffed.
 - Bidders' qualifications were evaluated after, rather than before, the tender.
 - Mandatory participation in pre-bid meetings, which had given colluders an opportunity to agree on prices and intimidate firms not part of the ring, was ended.
 - A complaint handling mechanism was introduced that allowed contractors and community members to anonymously report fraud, collusion, corruption, and intimidation.

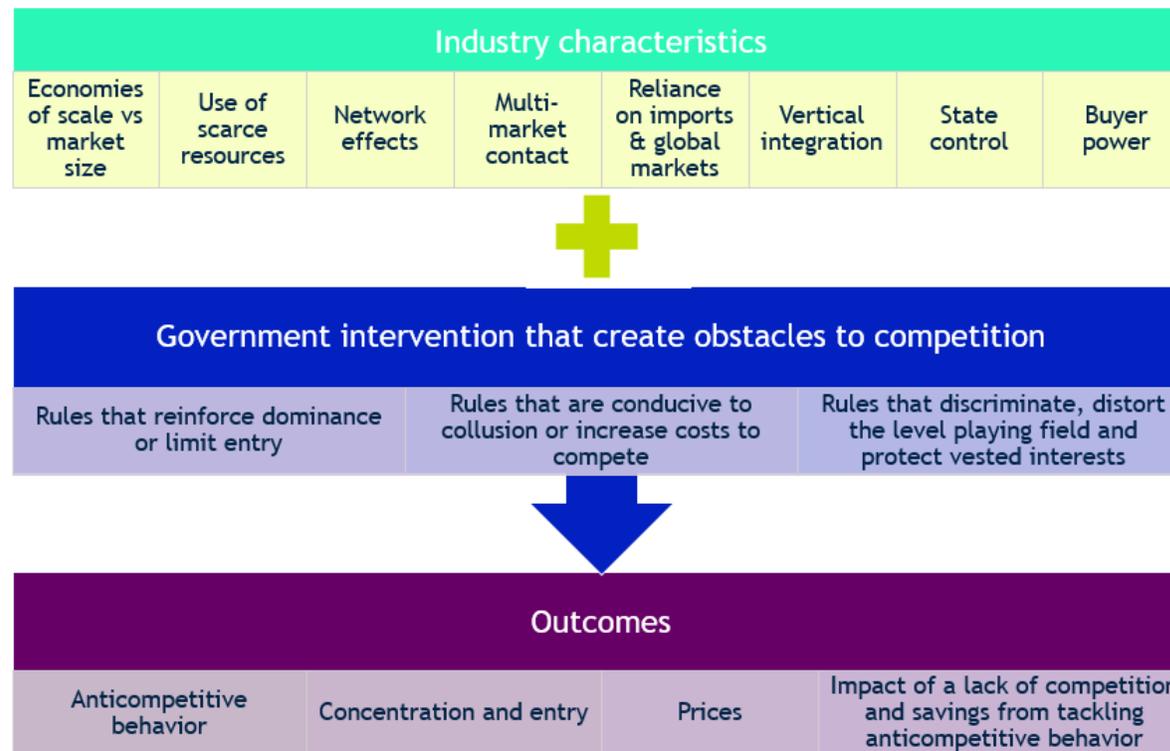
Bids for \$50,000 Contract: Best Three Bids as Percentage of Engineer's Estimate

Original	Post-changes
98.9%	58.0%
99.7%	67.6%
100.0%	68.0%

Source: *Curbing Fraud, collusion and corruption in the road sector* (WBG 2011)

Embedding competition through antitrust enforcement against anticompetitive actions of public bodies

- The mandate many competition authorities in Central Europe includes the ability to discipline anticompetitive behavior of public bodies (Russia, Kazakhstan, Georgia, Ukraine)
 - Many decisions tackle anticompetitive behavior in public tenders
- In Kazakhstan, The WBG has developed a methodology to implement this mandate in a systematized way.

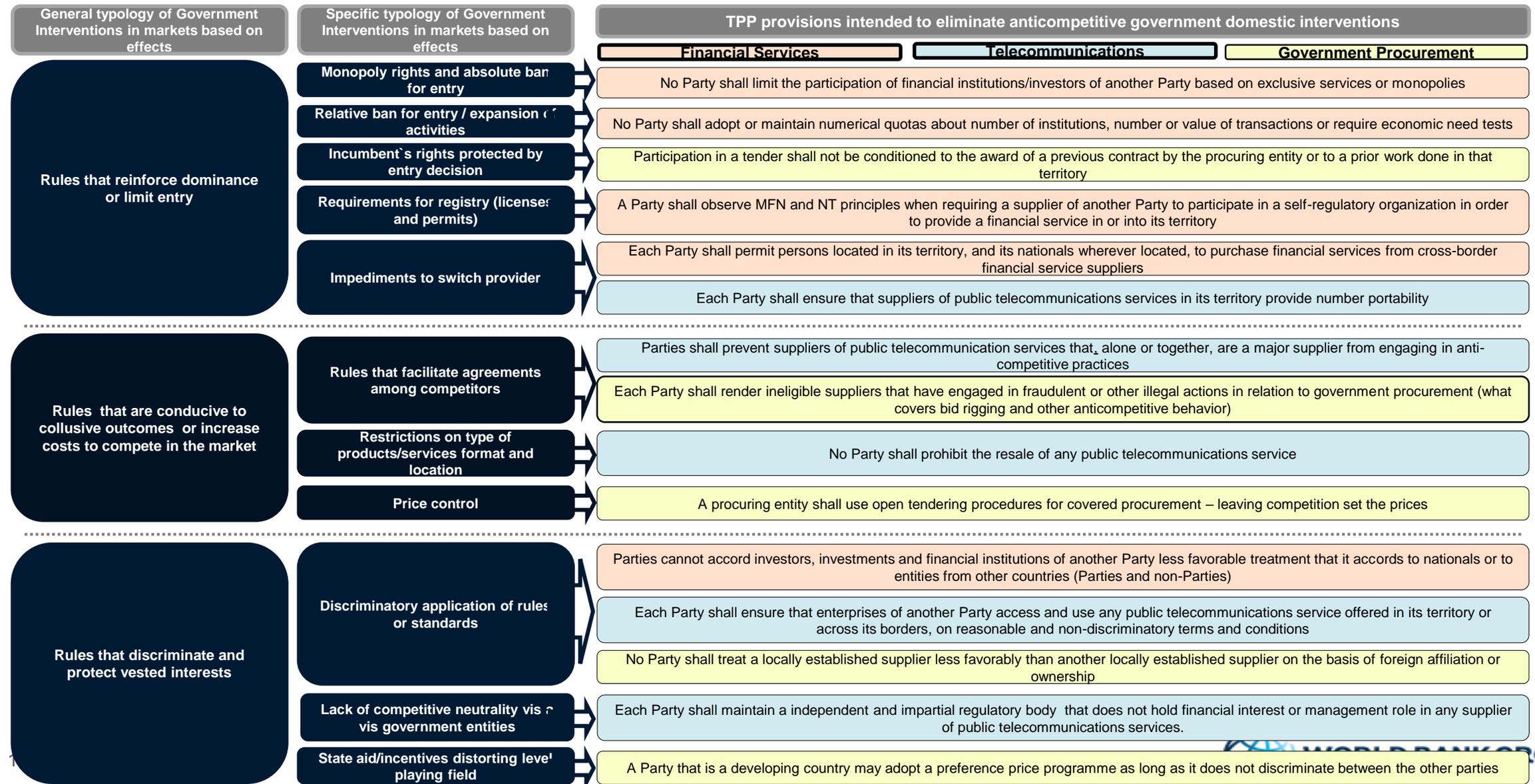


Embedding competition through competition advocacy

- ICN-WBG Competition Advocacy Contest showcases success stories in promoting competition in public procurement through advocacy:
 - Mexico: Saving public resources through a comprehensive advocacy strategy to fight bid rigging (3.7 billion pesos in savings that will be used to improve hospital infrastructure and equipment purchases)
 - South Africa: educating, training and empowering government officials to detect and take action against bid rigging and other collusive practices in public procurement.
 - Pakistan: recommendations to enhance the procurement process for electrical equipment, which were adopted by the Water and Power Development Authority.
 - Hong Kong led a multifaceted campaign to increase detection and reporting of bid rigging.
 - Portugal launched the first national campaign to fight bid rigging: “Playing Fair Isn’t a Secret.”



Embedding competition in public procurement through deep trade agreements



A stylized graphic of a globe, composed of several overlapping, curved lines in shades of light blue and grey, positioned on the left side of the slide. The lines form a grid-like pattern representing latitude and longitude.

Many Thanks!

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Time limits and types of review vary widely across income groups

Low-income	Lower-middle income	Upper-middle income	High-income
<p>The procuring entity is the first-tier review body in around 86% of the economies.</p> <hr/> <p>Almost all low income economies have legal requirements in place.</p> <hr/> <p>Around 72% of the economies respect their legal time limit.</p> <hr/> <p>Average decision time by procuring entities in practice is close to 15 days.</p> <hr/> <p>Examples of how review periods vary across economies: Mali (2 days), Comoros (15 days), Nepal (75 days), Zimbabwe (180 days)</p>	<p>A bigger number of economies require first-tier complaints be resolved by independent administrative review bodies (22%).</p> <hr/> <p>Around 64% of the economies respect their legal time limit.</p> <hr/> <p>Examples of how review periods vary across economies: Tajikistan (3 days), Lao PDR (18 days), Nigeria (21 days), Guatemala (135 days), India (365 days)</p>	<p>Complaint review is handled almost equally by procuring entities (43%) and independent administrative review bodies (40%).</p> <hr/> <p>Average decision time by both review bodies is around 25 days.</p> <hr/> <p>Examples of how review periods vary across economies: Bosnia and Herzegovina (5 days), Iran (21 days), South Africa (228 days), Lebanon (247 days)</p>	<p>The first-tier review is more spread between the 3 types of review bodies: procuring entity (43%), IRB (34%) and Court (20%).</p> <hr/> <p>Average decision times are higher than other income groups at around 36, 84 and 145 days respectively.</p> <hr/> <p>Around 40% of the economies have no legal time limit.</p> <hr/> <p>Examples of how review periods vary across economies: Lithuania (7 days), Poland (16 days), Luxembourg (360 days), Ireland (450)</p>

Source: Benchmarking Public Procurement 2017 database.