

CO3B: Impose penalties on operators whose practices against free competition are not reversible

REGULATORY FUNCTION: COMPETITION		CO3B
OBJECTIVE CO3 There are sanction systems for operators for anti-competitive acts that affect consumers	ACTION CARD CO3B IMPOSE PENALTIES ON OPERATORS WHOSE PRACTICES AGAINST FREE-COMPETITION ARE NOT REVERSABLE	
COST: Medium FREQUENCY: One time TARGET GROUPS: Regulators, service operators, administrative courts		
DESCRIPTION In case of a severe breach of competition, or of regulation rules or other legislative acts by competing operators, and when the consequences of such anti-competitive acts are not reversible, regulators impose sanctions as a last resort. These must be clearly predefined and transparently outlined for operators following licence conditions and criteria. Regulators can deregister licenced operators if they do not comply with remedial measures proposed to restore competition. Alternatively, regulators may impose higher fines to reimburse costs resulting from the damage caused, and which could eventually remove operators from the market due to bankruptcy. These measures are usually implemented with judiciary assistance and support.		
EXPECTED OUTCOMES <ul style="list-style-type: none"> • Operators in breach of regulation and competition rules are removed from the market. • Consumers are protected from anticompetitive behaviour. • Only well-performing operators remain in the market. 		
EXAMPLE 1: TANZANIA In Tanzania , following the 2013 Guidelines for the Regulation of Water Tankers, the Energy and Water Utilities Regulatory Authority (EWURA) can deregister a water tanker operator for any of the following conditions. <ol style="list-style-type: none"> 1. Using a tanker to conduct an activity other than that it was registered for. 2. Providing false or inaccurate information related to the operation of a water tanker. 3. Drawing water from a non-designated filling point. 4. Selling water at a price which is above the approved cap price. 5. Ceasing to carry out water supply business. 6. Failing to carry out its obligations under these guidelines. 		
EXAMPLE 2: ARGENTINA In Argentina, in the case of practices that are prohibited in defense of competition or to avoid dominant positions or economic concentration in the market, Law No. 25.156, which is applicable to drinking water and sanitation services, stipulates the application of fines and business disqualification applicable to operators and directors, managers, administrators, auditors or members of the Supervisory Council, agents or legal representatives that by act or omission in their monitoring, supervisory or oversight duties have contributed to, encouraged or permitted the infringement.		
EXAMPLE 3: BOLIVIA In Bolivia, and pursuant to Laws No. 1600 and No. 2066, the Superintendency of Basic Services is responsible for applying regulations against monopolies and in defense of competition, with the power to impose sanctions against infringements as stipulated in the Regulatory Framework for Drinking Water and Sanitary Sewerage Services.		

LINKS

Tanzania: Tanzania Guidelines for the Regulation of Water Tankers 2013: <http://www.ewura.go.tz/wp-content/uploads/2015/03/Water-Supply-and-Sanitation-Water-Tanker-Services-Rules-2013.pdf>

Argentina: Law No. 25.156. Law for the Defense of Competition

<http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/60016/texact.htm>

Bolivia: Law No. 2066 of April 11, 2000 on Drinking Water and Sanitary Sewerage Services Provision and Use

And Law No. 1600 of October 28, 1994.

https://sea.gob.bo/digesto/CompendioII/O/160_L_2066.pdf http://www.oas.org/es/sla/dlc/mesicic/docs/blv_res15.pdf

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

A range of legal and administrative skills is necessary to complete this action, that obliges regulators to build their internal capacity through training, often seeking support from anti-monopoly institutions and development partners. Competition and judiciary authorities could also extend their expertise by defining and imposing sanctions. Development partners could build upon this through training. Regulators' staff must be trained on the available scale of sanctions, how to impose them on operators, and what protocols to follow in these circumstances.