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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM**

**Session III: Promoting effective competition in public procurement**

-- Contribution from Ecuador --

**12-13 April 2016, Mexico City, Mexico**

*The attached document from Ecuador is circulated under Session III of the Latin American and Caribbean Competition Forum at its forthcoming meeting to be held on 12-13 April 2016 in Mexico.*

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# LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



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Competencia  
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**14th Latin American and Caribbean Competition Forum**  
**12-13 APRIL 2016, Mexico City, Mexico**

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### Session III: Promoting Effective Competition in Public Procurement

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#### **NATIONAL HEALTH NETWORK: REVERSE AUCTION FOR (PUBLIC PROCUREMENT OF) MEDICINAL PRODUCTS FOR THE UNIVERSAL PUBLIC HEALTH NETWORK**

##### **-- CONTRIBUTION FROM ECUADOR --**

1. The Universal Public Health Network (RPIS) includes the Ministry of Public Health, the Ecuadorean Social Security Institute, the Armed Forces Social Security Institute and the National Police Social Security Institute and consists of 6 604 health centres or stations which provide healthcare for the Ecuadorean people. The main focus of State strategy towards the Network is cost reduction, and for this reason a single reverse auction procurement was launched for all medicinal products required by the institutions belonging to the Network. This process takes place in conjunction with the National Public Procurement Service (SERCOP).

2. It is important to note that Ecuador undertook its first public procurement using this methodology in 2010-2012, the aim being to buy 615 types of medicinal product with a budget of USD 842 million.

3. Although the first use of this reverse auction methodology for purchasing medicinal products for the Network should theoretically have had a positive outcome, in 2013, the Office of the State Comptroller General (CGE) drafted a document<sup>1</sup> setting out various criticisms regarding the way in which the process was handled; specifically, various medicinal products were bought for high prices, thereby undermining the core objective of procuring a considerable saving for the State and instead achieving negative outcomes. There were also comments relating to the lack of transparency and efficiency of the process itself.

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<sup>1</sup> Further information on the CGE report can be found at: <http://www.contraloria.gob.ec/pdf.asp?nombredocumento=2168>.

4. This first attempt at using the reverse auction process created problems for competition in that it excluded many operators, principally international ones. This was due to the existence of bidding rounds purely for national producers which were geared solely towards local distributors, thereby setting up entry barriers for other participants. This clear entry barrier also had its effects, such as preventing the effective transfer of technology to Ecuador in the pharmaceutical market.

5. Against this background, the RPIS, in conjunction with SERCOP, decided in 2015 to embark on a new procurement, taking into account the comments of the CGE and aimed at procuring 425 types of medicinal product with a budget of USD 500 million. For the purpose of this procurement, the Superintendency for Market Power Control (SCPM), which was set up in 2012 and was, at that time, involved in various competition-enhancing initiatives in conjunction with academia, provided advice on the development of activities in connection with the procurement.

6. The Superintendency for Market Power Control, the Risk Control Unit and the SERCOP procurement team started to construct the process with the aim of incorporating competition principles into the new procurement process with a view to improving efficiency and effectiveness.

7. The interinstitutional team analysed the various risks and opportunities which a reverse auction was capable of generating, focusing on the national rounds held during the 2010-2012 procurement and on the resulting high profits for successful bidders, which in turn stemmed from prices that were not necessarily the best for the State.

8. In the reverse auction held in 2010, the justification for the exclusive bidding rounds was the promotion of the national pharmaceutical industry; however, the end result was not the result hoped for by the State because then, as now, the local industry was still under-developed, and the national component only accounted for 13%, indicating that the effects of the first process could not stimulate the expected growth.

9. The national suppliers which were successful in the exclusively national rounds held in 2010-2012 were unable to cope with the resultant competition problems, and their manufacturing processes were in the early stages of development.

10. This is why national manufacturers were very keen for the current, new reverse auction procurement to include these exclusive rounds, and they even lobbied public and private authorities, citing the need to support the national industry. This lobbying made quite an impact with local communication media by trying to promote the socially acceptable idea that, if the exclusive rounds were not held, the development of the industry would be adversely affected.

11. As a result, the development of the new reverse auction procurement was based on the following principles:

1. legitimising a process in which the country had not had much experience, as mentioned in the CGE report;
2. generating significant savings for the country by using this process to buy the correct quantity of quality medicinal products;
3. promoting the involvement of academia and the general public;
4. promoting co-operation between the State and institutions in the health, competition and public procurement fields.

12. Bearing all these points in mind, the strategy was to attract the attention of academia and the general public and to ensure their active participation in developing the process and in creating public arenas for discussion and thorough examination of mechanisms for ensuring transparency in many cities throughout the country and in national, regional and local communication media.

**1. Creation of Observatories on the theme “Participation by academia and the general public reduces the possibility of anti-competitive practices”<sup>2</sup>**

13. The first part of the strategy entailed getting the general public and academia to take an interest and participate in the construction of this reverse auction public procurement on the basis that proper control can have a huge impact on the conduct of the process. The involvement of both sectors led to detailed discussions focusing on three main issues: exclusive rounds for local suppliers, types of medicinal products to be bought and the process itself.

14. The debate began by promoting the process and the importance of incorporating competition principles in public matters in universities, by means of in-depth discussions with the faculties of economics, medicine and administration. The SCPM used the legal and official “Observatory” instrument established in the Organic Law on Social Participation<sup>3</sup> in order to structure the work between public institutions and academia.

15. The Working Group met with the faculty heads and deans of various universities. Each proposal was designed separately, depending on the faculty, its areas of work and its interest in participating in the design process. The objective, in the case of the faculties of medicine, for example, was to analyse the quality of the medicinal and other, related products to be bought. The business administration and economics faculties assessed the process itself: matters such as the time needed between each stage of the reverse auction procurement and the qualifying conditions for becoming an authorised supplier. In order to avoid creating entry barriers, all these issues were widely discussed in open and closed fora.

16. The Superintendency monitored the process, encouraging the formation of 30 health sector Observatories and providing advice on the co-ordination of strategy in relation to reverse auction public procurement. Some of those observatories were responsible for examining the quality of the medicinal products included in the auction, whereas others, with a more administrative remit, examined the procurement process itself in order to ensure that, during the process, no anti-competitive practice or entry barrier ended up favouring a particular supplier. This project buoyed their interest in participating in other issues and activities organised by the Superintendency within its remit, including unfair practices in medicinal product advertising.

17. Certain conclusions which emerged from this important project emphasised the need to create rounds which did not favour solely national suppliers and to improve the conditions governing the participation of foreign companies, conditions which related, principally, to the mandatory rules on the establishment of a branch in order to be able to take part in the process and all the preliminary documentation required for participation in the auction. The joint work also made it possible to assess the need to alter or include various features of the medicinal products forming part of the auction package.

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<sup>2</sup> For further information on the interview with the Superintendent, visit: <http://portal.compraspublicas.gob.ec/sercop/mecanismos-de-participacion-a-nivel-nacional-evitan-la-colusion-en-proceso-de-subasta-de-medicamentos/>.

<sup>3</sup> For further information regarding this Law, visit: [https://www.oas.org/juridico/PDFs/mesicic4\\_ecu\\_org8.pdf](https://www.oas.org/juridico/PDFs/mesicic4_ecu_org8.pdf).

## 2. Creating public fora

18. Having realised that the involvement of academia and the general public in the process could ensure the transparency and efficiency of the procurement process, it became necessary to create public fora in which to provide information about and discuss those matters, on the understanding that the lobbying of the national pharmaceutical industry in favour of exclusive rounds would not be upheld.

19. In this connection, the Superintendency co-ordinated and organised public events and press conferences in cities such as Quito, Guayaquil, Cuenca, Riobamba and Loja involving the Observatories, academia, the general public and SERCOP, events which produced teamwork and a suitably structured process to ensure that conditions were appropriate for developing the reverse auction concept.

20. The most recent event was the International Seminar on “Public Access to Quality Medicinal Products”<sup>4</sup>, which was attended by leading experts from the United Kingdom and the United States. During that seminar, the book “Access to Quality Medicinal Products”<sup>5</sup> was launched. The publication included various academic articles analysing public policies in this sector and recognised the work carried out during this process, including contributions from participants.

## 3. Conclusions

21. The procurement process will take place in 2016. It will then be possible for the Superintendency to assess the saving made by the State. However, it is hoped that Ecuador will save at least USD 110 million. Since the project ended, as a result of the supervision and follow-up provided by the Observatories created by the SCPM, there has been an improvement in the quality of the constituents of medicinal products with a view to complying with the requirements for inclusion in the reverse auction.<sup>6</sup>

22. Furthermore, this reverse auction procurement will not include any rounds exclusive to national suppliers, and suitable conditions have been provided for participation by foreign companies, which will not now face any administrative barriers to entry, the most significant of which was the need to establish a branch in Ecuador solely for the purpose of participating in the process.

23. The medicinal products to be procured were subjected to prior analysis by the Public Health System, and also by academic circles through the Observatories, with the aim of guaranteeing quality.

24. Following on from the interinstitutional work mentioned above, 2015 saw the publication of the Handbook of Good Public Procurement Practices for the Development of Ecuador, a handbook which was put together by the SCPM’s Sub-Directorate General for Supervisory Matters, Technical Co-ordination of Disputes and Commissariat for the Investigation of Abuse of Market Power, Restrictive Agreements and Practices. This handbook was developed to promote the transparency and quality of public procurement spending, facilitate the acquisition of information on the most important aspects of public procurement and

<sup>4</sup> This seminar is available at: <http://www.scpm.gob.ec/descargar-53-seminario-internacional-acceso-publico-a-medicamentos-de-calidad/>.

<sup>5</sup> This book is available at: [http://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/downloads/2015/12/libro\\_acceso\\_publico\\_a\\_medicamentos\\_de\\_calidad.pdf](http://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/downloads/2015/12/libro_acceso_publico_a_medicamentos_de_calidad.pdf).

<sup>6</sup> For further information, visit: [http://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/2016/01/Resolucion\\_SERCOP\\_044\\_2016\\_INSTRUCTIVO\\_SICM.pdf](http://portal.compraspublicas.gob.ec/sercop/wp-content/uploads/2016/01/Resolucion_SERCOP_044_2016_INSTRUCTIVO_SICM.pdf).

serve as a tool to support and guide the continuous implementation of good public procurement practices at national level.<sup>7</sup>

25. This initiative is an example of joint work between public institutions and civil society aimed at protecting competition in an important sector such as health. This project has also instilled competition principles into the general public, a fact which will help in the future monitoring of similar procurement processes in this sector and in other sectors of the Ecuadorean economy.

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<sup>7</sup> This handbook is available at: <http://www.scpm.gob.ec/wp-content/uploads/2015/12/Manual-de-Buenas-Pr%C3%A1cticas-en-la-Contrataci%C3%B3n-P%C3%BCblica.pdf>.