CHAPTER 3

Basics of competition law and procurement law

1. Introduction

In the EU, more than 250,000 contracting authorities each year purchase services, works or supplies at around 14% of GDP. According to data from Eurostat, the EU had a GDP of approximately € 14.8 trillion in 2016, which corresponds to public purchases worth of approximately € 2.1 trillion.

As mentioned in the introduction to this dissertation, a much used contract type in public procurement is framework agreements. In a procurement context it is evident that competition rules apply to the bidders in the tender as they are undertakings, but it is unclear whether the application of competition law can be spread out to apply to public buyers as well.

European businesses, i.e. suppliers, registered in the EU, are entitled to compete for public contracts in other Member States than where their own place of incorporation is. In order to make sure that all suppliers are treated equally and have a »level playing field«, the EU has established minimum harmonized rules, which are the focus of this chapter.

Thus, before going in detail with framework agreements and whether the public buyers can be caught by competition law, this author finds it prudent to introduce the overall public procurement law as well as the competition law with special regard to the objectives of the rules. This is to establish a

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2 Eurostat: Eurostat – GDP and main components (output, expenditure and income) [nama_10_gdp]. Available at http://ec.europa.eu/eurostat/web/national-accounts/data/database. The prices are measured in current prices. See the development of the GDP in the European Union in appendix 1.
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Baseline for the potential clashes between the two sets of rules and to lay a foundation for the further analyses. With that, the chapter is meant to have an introductory function and to present an overview of the rules applicable in this dissertation.

Thus, Section 2 of this chapter commences with an examination of the objectives of competition law, which can be divided into main objectives and secondary objectives, while Section 3 contains an examination of the objectives of the procurement rules. This includes an outline of the free movement of goods and services (the TFEU) as well as the procurement directives. Moreover, the means to achieve the objectives are examined.

2. Basics of competition law

The competition rules are found directly in the TFEU. The rules in Articles 101-109 TFEU are to prevent distortion of effective competition and ensure an efficient societal utilization of resources.\(^3\) With that, they regulate the market behavior which is aberrant. Articles 101-106 TFEU concern rules applying to undertakings, whereas Articles 107-109 TFEU concern state aid. The state aid rules are directed towards the Member States and hence not undertakings.

2.1. Objectives of the competition rules

The main objective of competition law is market integration.\(^4\) Thus, commentators argue that »The promotion of market integration is a key objective

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