

# CPBs, Procurement Digitalisation & Digital Tech Procurement — Competition Implications

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# Goal

**To highlight governance implications of digitalisation and digital tech procurement by central purchasing bodies (CPBs), with an emphasis on competition issues**

**Full draft paper:**

**<https://ssrn.com/abstract=4376037>**

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# Double interaction

**2017 EU Procurement Strategy included the two goals of procurement digitalisation and centralisation (as part of a broader push towards collaboration)**

**These goals interact in (at least) two ways**

- **Digitalisation -> centralisation**
- **Digital tech acquisition -> centralisation**



# Main concern

**Digitalisation and the related procurement of digital technologies push for further procurement centralisation, leading to**

- **Accumulation of (unbridled) digital regulation power in CPBs**
- **Heightened competition risks in both 'standard' and digital markets**



# Drivers for further procurement centralisation

# Drivers of further centralisation

There are drivers for further centralisation in relation to:

- 1) **extracting insights from big data;**
- 2) **building public digital capabilities, as well as adopting 'capability-replacing' AI; and**
- 3) **boosting procurement's regulatory gatekeeping potential (through the exercise of market power)**





# Big data insights and procurement centralisation

**Growing strategic push for data analytics**  
**Despite initiatives such as the PPDS and new eForms, CPBs (very likely to) retain a 'data advantage' (at a minimum following *Antea Polska* and under ODD/DGA rules)**  
**Data advantage particularly meaningful for 'category management' and other 'ProcureTech' adoptions**



# Centralisation and public digital capabilities

**Digitalisation requires a significant increase (and diversification) of digital skills within the public sector**

**Given generalised public sector digital capabilities gap, CPBs emerge as one of few institutions (potentially) capable of aggregating the required capabilities**





# 'Capability-replacing' AI and centralisation

Potential implementations of digital technologies—especially AI—that could reduce administrative/expertise burden more likely viable/justifiable in a CPB context

- Chatbots
- Recommender systems
- Algorithmic screens



# Centralisation and regulatory gatekeeping

**Digital tech are largely unregulated (and will largely remain despite EU AI Act)**

**(Meta-)regulation through public contracts requires avoiding the 'weak public buyer' problem when faced with concentrated/dominant tech offer**

**It however generates accumulation of regulatory power in CPBs**

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*ACCUMULATION OF PROFIT & POWER*

# Competition implications

# Competition implications

**Higher levels of data analysis (enabling 'ProcureTech'), higher levels of skills and greater chances of regulating the technologies procured can attract use of CPB-managed FWAs and DPSs**

**This can have effects both in**

- **'Standard' markets**
- **Digital markets**





# 'Standard' markets

**Digitalisation can lead to 'consumerisation' of contracting authorities and, in turn, to an extension of CPB remit and an increase in market volumes managed by CPBs**

**Demand concentration can have negative impacts on competition in the relevant markets, which requires market access management by the CPBs, and dynamic monitoring by competition authorities**





# Digital markets—data

**Main competition implications:**

- (i) potential differential access to the data,**
- (ii) data exchanges that violated the rights of third parties in relation to competition sensitive information, or**
- (iii) data exchanges in violation of the competition rules on information exchange**

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# Digital markets— (ancillary) data services

**CPBs as (potential) providers of (ancillary) data services are necessarily conflicted in the management of access to ‘their’ procurement data – which can be necessary to develop solutions or for the direct provision of services**



# Digital markets—tech

**CPBs can (inadvertently) raise barriers to access services and goods markets related to digital technology deployments (eg data or tech governance requirements)**

**CPB-led standards could also impact on the relevant industries (lock-in management)**

**Need for short FWAs (do they make sense?)**

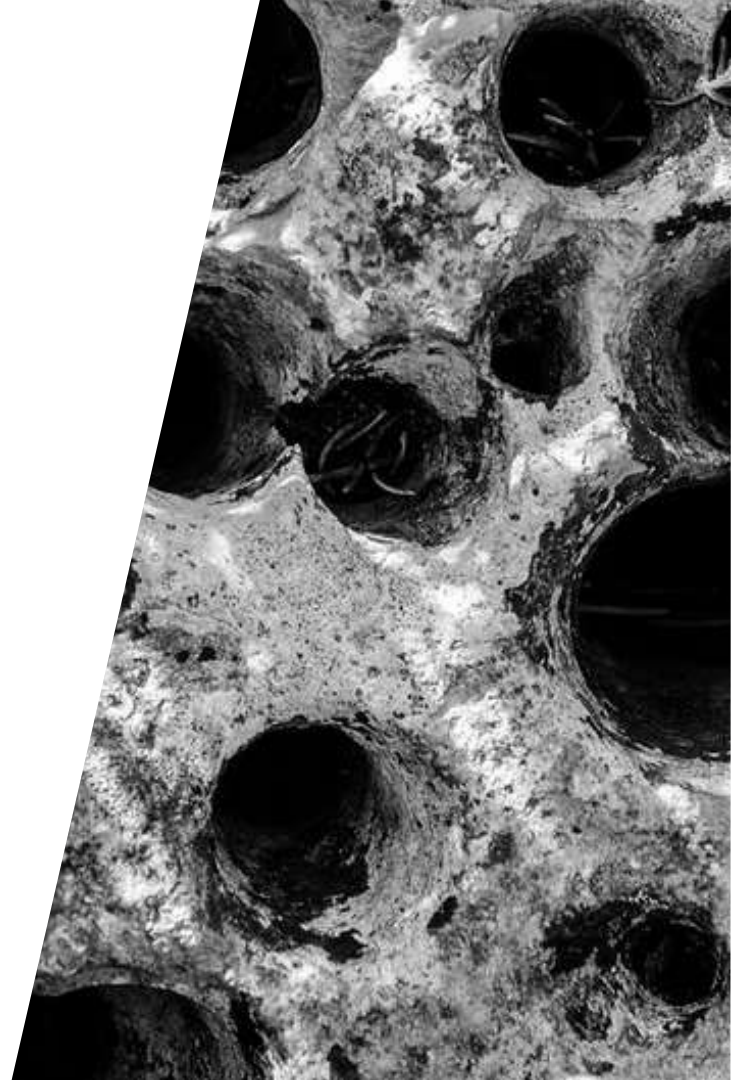
**CPB-led timing of digital tech adoption**



# Conclusion

# Proposed interventions

- 1. Consider assigning the management of access CPB-held data to a separate competent body under DGA (NCA?)**
- 2. Reconsider subjecting CPBs to competition law, and design dynamic monitoring mechanisms**
- 3. Regulate public sector digital tech use through an independent authority and mandatory requirements**





# Thank you for your attention & stay in touch



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