

Competition Agencies Take Root in Central America

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The antitrust landscape of Central America has changed dramatically over the last twenty years. The United States and other countries, together with international and non-governmental organizations, have assisted the countries in this region, whose combined population is about 44 million, in developing laws and institutions that support the premise that competition is beneficial for economic development and improves consumer welfare by motivating businesses to improve products and services and lower prices. While this message stands in contrast to the economic orthodoxy passed down through the region's colonial heritage, the era of domination by large agricultural interests, and more recent experiments with left-leaning economic systems, the region has largely embraced market principles, and most have adopted competition laws and institutions. Costa Rica and Panamá created their competition agencies in 1995 and 1996 respectively. El Salvador, Honduras, and Nicaragua created their competition agencies in the past five years. Only Guatemala and Belize (which is part of the Caribbean Community and stands somewhat apart from the rest of the region) remain without a competition agency, although there are legislative initiatives to create them in both.

Costa Rica

The *Comisión para Promover la Competencia* (COPROCOM, the Commission to Promote Competition) is part of the Ministry of Economy, Trade and Industry, and reports to its Minister.¹ COPROCOM enforces the Law to Promote Competition and Effective Consumer Protection (Law No. 7472), which is substantively similar to Mexico's Federal Law on Economic Competition. Its powers include investigating and sanctioning monopolies, cartels and anticompetitive conduct, and issuing opinions on laws, regulations, and other administrative acts. The Commission consists of

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¹ COPROCOM's web site is www.coprocom.go.cr. COPROCOM publishes an electronic bulletin. You may ask to subscribe by email to coprocom@meic.go.cr.

five commissioners (and five alternate ones) appointed to four-year terms by the Executive Power upon recommendation by the Minister of Economy, Trade and Industry. The commissioners serve part-time and do not receive a salary. COPROCOM's day-to-day work is carried out by its Executive Director and a staff of attorneys and economists. COPROCOM has had no authority to review mergers until recently. New legislation will give it power to do so in the near future. Most of COPROCOM's cases have consisted of single-firm conduct and horizontal agreements.

Panamá

The *Autoridad de Protección al Consumidor y Defensa de la Competencia* (ACODECO, the Authority for Consumer Protection and the Defense of Competition) is an independent agency attached to the Ministry of Commerce and Industry.² ACODECO has dual roles as competition and consumer protection enforcer pursuant to Law 45 of October 31, 2007, which amended the original competition law of 1996. Like Costa Rica's law, Panamá's was closely patterned on the Mexican model. ACODECO fulfills its mission to protect competition through investigation of monopolistic practices, consumer education, market studies, and legislative advocacy. The law applies broadly, not only to private enterprise, but also to state and municipal institutions and to not-for-profit organizations. Originally headed by a three-member Commission under its previous name, CLICAC, it is now headed by a single administrator. ACODECO and its predecessor also have the power to review mergers, and indeed did successfully block a merger of two breweries that would have created a monopoly in Panamá.

El Salvador

El Salvador enacted its Competition Law in 2004, and inaugurated *La Superintendencia de Competencia* (SC, the Competition Superintendence) in 2006. SC is an independent agency whose mission is to promote and protect competition in terms of economic efficiency and

² ACODECO's web site is www.autoridaddelconsumidor.gob.pa.

consumer welfare.³ SC is led by a Superintendent and a Board of Directors. SC has the authority to investigate and sanction anticompetitive practices, including the authority to sanction a target for failing to adequately collaborate in an investigation. SC also conducts mandatory review of mergers that meet certain asset and income thresholds, and can deny a merger or approve it subject to conditions. SC may also issue opinions on laws, regulations, and public procurement proceedings that affect competition. Another important function of the agency is to conduct industry studies that help identify market distortions, barriers, and anticompetitive conduct. The agency can make policy recommendations and initiate investigations based on these industry studies. The SC also has a clemency program that reduces economic sanctions to the first economic agent that cooperates in an investigation involving competitor agreements.

Honduras

Honduras enacted Law No. 357-2005 for the Defense and Promotion of Competition in 2006, which created the *Comisión para la Defensa y Promoción de la Competencia* (CDPC, the Commission for the Defense and Promotion of Competition).⁴ CDPC is an independent agency that protects and promotes efficient markets and consumer welfare. The Commission consists of three commissioners who are appointed to seven-year terms by the National Congress. CDPC has investigatory and law enforcement powers, and can impose sanctions and fines. It also has mandatory merger-review authority. It can also issue opinions on bills, regulations and other administrative proceedings. It is tasked with conducting market studies and with disseminating competition information throughout the country.

Nicaragua

Nicaragua also enacted its competition law in 2006. Law 601 created the *Instituto Nacional de Promoción de la Competencia* (PROCOMPETENCIA, National Institute for the Promotion of Competition), which began

operations in 2009.⁵ PROCOMPETENCIA is led by a Directive Board that can initiate investigations through its President. Investigations are initially decided by the President, and can be appealed to the Board. PROCOMPETENCIA reviews mergers, and it also has a clemency program for the first person or entity that informs it of illegal agreements and other violations of the law.

In Nicaragua, the Penal Code criminalizes some anticompetitive practices that are considered a civil violation in most other jurisdictions, and punishment may include prison. For example, Article 273 of the Penal Code states that anticompetitive practices may be punished by a prison term of two to six years in some instances involving certain “first necessity” products and services, or when the practice jeopardizes the country’s economic stability. Article 274 similarly penalizes certain unfair competition practices. Although we are not aware that anyone has been jailed in Nicaragua for engaging in traditional civil antitrust violations, persons doing business there should be aware of these and other penal code articles.

Guatemala

Legislation has been pending in Guatemala for over ten years but has yet to pass that country’s Congress. Competing bills following the European Union and United States’ models have been considered in the Guatemalan Congress, but to date no accord has been reached.

Regional Cooperation

Regional competition authorities are members of the Working Group on Central American Competition Policy. The Working Group meets periodically, and has held the Central American Competition Forum every year since 2007 to discuss topics of common interest, develop regional policies, and strengthen cooperation among the countries. The Forum’s venue rotates among the countries. Participants from the United States and other countries and organizations also attend the event. The 2011 Forum was held in Managua, Nicaragua, on August 18 and 19. Topics on the agenda include the effect of cartels in small economies, trade associations, and the role of public policy in market efficiencies. Topics of discussion of the Working Group in recent

³ SC’s web site is www.sc.gob.sv/english/index.php, where you may register to receive their press releases. Parts of the site are available in English.

⁴ CDPC’s web site is www.cdpc.hn. An English version of the Law is found in this site.

⁵ PROCOMPETENCIA’s web site is www.procompetencianic.org.

years have included telecommunications, medicine distribution, and fertilizers.

The region has benefitted from collective technical assistance programs funded by the United Nations Commission on Trade and Development in conjunction with the Swiss government, and by the United States Federal Trade Commission. They all participate in the new Inter American Competition Alliance. These common contacts may lead to even tighter integration, as the governments of the region are considering the establishment of a common agency to enforce a regional competition law.

Conclusion

Central America has gone from being an antitrust backwater to a region that, with the exception of Guatemala, has fully embraced competition policy. As with all developing regions, it is taking time for them to become fully effective. Early concerns that their policies would diverge from each other and create a patchwork of inconsistent approaches have proven unfounded. The authorities work closely with each other and with other regional authorities, including those in the United States, to develop an effective network that seeks to bring the benefits of competition to their citizens.