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(UNCTAD)**

COMPAL Programme

Strengthening Institutions and Capacities in
the area of Competition and Consumer
Protection Policies in Latin America

Cases of Bolivia, Costa Rica, El Salvador, Honduras,
Guatemala, Nicaragua and Peru

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List of Frequently Used Abbreviations in the Text

APEC	Asia–Pacific Economic Cooperation
CACM	Central American Common Market
CAFTA	Central American Free Trade Agreement
CARICOM	Caribbean Community
CFC	Comisión Federal de Competencia – Federal Competition Commission (Mexico)
CLICAC	Comisión de Libre Competencia y asuntos del Consumidor – Panama's Commission for Antitrust and Consumer Affairs
CODEDCO	Comité de Defensa de los Derechos del Consumidor – Bolivia's Consumer Movement
COPROCOM	Comisión de Promoción de la Competencia – Competition Promotion Commission (Costa Rica)
DGCTM	Dirección General de Competencia y Transparencia de Mercados – Directorate for Market Competition and Transparency (Nicaragua)
DIACO	Dirección de Atención y Asistencia al Consumidor – Directorate to assist consumer matters (Guatemala)
EC	European Community
ECLAC	Economic Commission for Latin America and the Caribbean
EU	European Union
FIAS	Foreign Investment Advisory Service (World Bank)
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GDP	Gross Domestic Product
GTZ	Gesellschaft für Technische Zusammenarbeit (Germany)
IADB	Inter-American Development Bank
IDRC	International Development Research Centre
INDECOPI	Instituto Nacional para la Defensa de la Competencia y de la Propiedad Intelectual – National Institute for the Defence of Competition and Intellectual Property (Peru)
MERCOSUR	Mercado Común del Sur – Southern Common Market
MIFIC	Ministerio de Fomento, Industria y Comercio – Ministry of Development, Industry and Trade (Nicaragua)
ODECO	Oficinas de defensa del Consumidor – Office for the Defence of Consumers (Bolivia)
OECD	Organisation for Economic Co-operation and Development
OSINERG	Organismo Supervisor de Energía – Supervisory Body for Energy (Peru)
OSIPTEL	Organismo Supervisor de Telecomunicaciones – Supervisory Body for Telecommunications (Peru)
OSITRAN	Organismo Supervisor de Transporte – Supervisory Body for Transport (Peru)
SDT	Special and Differential Treatment
SICA	Sistema de Integración Centroamericana – Central American Integration System
SIECA	Secretaría de Integración Económica Centroamericana – Secretariat for Central American Economic Integration
SIRESE	Sistema de Regulación Sectorial – System for Sectoral Regulation (Bolivia)
SMEs	Small and Medium sized Enterprises
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

PREFACE

This document draws on the findings of the sub-regional reports for Central America and for Bolivia and Peru that were prepared during Phase I of the Project on Strengthening Institutions and Capacities in the area of Competition and Consumer Protection Policies in Latin America: Cases of Bolivia, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua and Peru.

The exploratory missions to those countries were carried out by international experts from October to December 2003 and identified the major needs and priorities in the above-mentioned countries. The report draws on the lessons from their national reports both in the field of competition and consumer policies, from the two sub-regional seminars organized in San Jose, Costa Rica (8–10 December 2003) and in Lima, Peru (22–24 March 2004). The report also draws on the experiences of the bilateral meetings held in Sao Paulo during the Preparatory UNCTAD XI Seminar on the Role of Competition in the Promotion of Competitiveness and Development: Experiences from Latin America and the Caribbean and other regions (Sao Paulo, 10–12 June 2004) and from other discussions, such as those that took place at the UNCTAD XI parallel event on Competition, Competitiveness, and Development (Sao Paulo, 14 June 2004).

The work undertaken during Phase I of the project made possible the launching of the second phase of the programme now known as COMPAL. This programme, which started on 5 November 2004, is oriented towards cooperation with Nicaragua, Costa Rica, El Salvador, Peru and Bolivia. It will serve not only to provide for the needs and priorities of those countries but also as an opportunity to exchange experiences among countries in the region of Latin America and in other regions undergoing development.

It is appropriate to thank Maria Cecilia Martinez (Bolivia), Pamela Sittenfeld y Hazel Orozco (Costa Rica), Celina Escolán (El Salvador), Edgar Reyes (Guatemala), Jessica María Campos (Honduras), Julio Bendaña (Nicaragua) and Odette Herbozo (Peru) for their support, which was of key importance for the successful undertaking of the exploratory missions to their respective countries as well as the outcome of the sub-regional seminars and the parallel event organized during UNCTAD XI.

It is also important to acknowledge the effort and dedication of the consultants who worked in the preparation of national reports during Phase I, namely, Beatriz Boza, Claudia Collado, Liana Lacayo, Juan Pablo Lorenzini, Ricardo Maguiña, Gabriel Muadi and Diego Petrecolla. Their work is to be commended and they presented the results of their exploratory missions at the seminars held in San José and Lima.

The work carried out by Dr. Simon J. Evenett, the international technical adviser to the project, also merits a mention. He contributed extensively to the conceptual framework of the project and other ideas, which are reflected in this report. Mario Ballivian (SIRESE, Bolivia), Joselyn Olaechea (OSIPTEL, Peru) and Gonzalo Ruiz (INDECOPI, Peru) also transmitted their day-to-day experience and extensive knowledge in the areas covered by the report. Their unconditional support was key to the preparation of this report.

We are grateful to the State Secretariat for Economic Affairs (SECO) of the Helvetic Confederation and the Swiss Competition Agency (COMCO) for the support provided during Phase I of the programme. In particular, for the participation of their representatives in the aforementioned bilateral meetings where they provided their views and guidance to the national coordinators during the discussions held in the events. Their collaboration is ratified by the launching of the second Phase of the COMPAL programme, which started on 5 November 2004.

Similarly, the preparation of the report was enriched by constant discussions held with colleagues of the Branch, Elizabeth Gachuri and Lucian Cernat. María Carmen Marin contributed to the organization of the exploratory missions, the preparation of the Seminars held in San José, Costa Rica and Lima, Peru, and the preparation of the English version of this report.

It is hoped that the content of this report represents a useful tool for both the analysis of issues of competition and of consumer policies in selected Latin American countries as well as lessons learned from the technical assistance in these areas.

Finally, during the editing of this report, certain revisions have been made to the text to reflect information, statistical and chronological data referring to the exploratory missions of international experts during 2003 and the duration of Phase I of the project now entitled COMPAL.

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Executive Summary

This report is part of Phase I of UNCTAD's project on strengthening institutions and capacities in the areas of competition and consumer protection in Latin America which examines the cases of Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru.

Phase I of the Project included the identification of needs in the exploratory missions to beneficiary countries, the preparation of national reports (two per country for competition and consumer policy issues, respectively), and two sub-regional reports prepared by UNCTAD on the basis of the national reports prepared by international consultants, specialized in the Latin American region, and which were presented in two sub-regional seminars organized by UNCTAD.

The report introduces, at the outset, a brief conceptual framework related to the role of Competition and Consumer Protection in promoting development, in particular the convergence between competition law objectives, consumer protection and economic efficiency (dynamic and static). This problem is of crucial importance in developing countries. Another issue highlighted in the report is the relationship between regulatory bodies and competition agencies. This will be of particular interest to those countries that still have to enact competition laws, but have made progress in the formulation and adoption of sectorial laws and regulations.

The document is then organized into six chapters. Chapter 1 analyses the economic conditions and identifies the key economic sectors in Central American Countries¹ and Bolivia and Peru.

Taking into consideration the size of Central American countries, it makes the case for adopting competition legislation that is adapted to the needs of each country. In this regard, the existing legal and institutional context is examined in each country as well as its relationship with other legislation and public policies related to competition.

Chapter 2 presents the needs and priorities in the field of competition and consumer protection issues in two countries. First, Bolivia, a country whose development has encountered a number of problems, such as political instability and an increasing informal economy, which have undermined the underlying structural reforms carried out in the 1990s. Secondly, Peru, which despite encountering economic bottlenecks, has been able to develop a competition and consumer protection culture and to establish a multidisciplinary agency, namely INDECOPI.

A major contribution of Chapters 1 and 2 is to highlight the existence of anti-competitive practices and the manner in which they have been dealt with both in countries that have competition law and policy (Costa Rica, El Salvador² and Peru) and in countries that have not yet adopted competition laws (Bolivia, Guatemala, Honduras and Nicaragua). In the latter group of countries, the investigation revealed anti-competitive practices in some sectors of the economy, and after analysing the performance of sector regulators, it was found that sanctions had not been effectively implemented. The previous statement supports an effective competition policy (i.e. the legal and institutional context to promote competition) in this group of countries.

Chapters 3 and 4 survey the consumer protection needs identified in the exploratory missions. Chapter 3 is devoted to the case of Central American countries, by outlining the legal and institutional context as well as identifying consumer protection needs in each country. Finally, it outlines the legal and institutional needs of governmental associations and civil society (including consumer associations) with the aim of identifying the type of requirements common to all countries.

Chapter 4 considers the needs in the field of consumer protection for the cases of Bolivia and Peru. In the case of Bolivia, the following needs were identified: (a) diffusion and sensitizing on consumer protection, (b) strengthening the regulatory framework, and (c) strengthening consumer associations. In the case of Peru, the identified needs include: (a) reform of the legislation on consumer protection, (b) strengthening the role of INDECOPI in promoting a culture of consumer protection, and (c) strengthening consumer associations.

¹ The concept of Central America varies widely. The "Central American Isthmus" includes Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama. Some data used in this report refer to the wider concept of the Central American Isthmus and not only to Central America, which excludes Panama.

² El Salvador adopted a competition law on 26 November 2004. However, it has not yet been implemented.

Chapters 5 and 6 analyse the cooperation in the field of competition policy and consumer protection in the case of Central American countries and in Bolivia and Peru, as well as the best way to organize it in support of the needs identified in the countries discussed in previous chapters.

In this regard, it is maintained that, despite the obstacles encountered by integration agreements in which Central American countries participate, regional integration is an effective way to integrate into the world economy. Moreover, various Central American countries have raised the need to include competition provisions in their requests for technical assistance within the framework of such agreements, as it is an issue linked to other public policies. In spite of the clear willingness to include competition issues in recent Free Trade Agreements (FTA), the Central American Free Trade Agreement (US-CAFTA) does not include provisions on Competition Policy. This may hamper the ability of Central American countries to deal with anti-competitive practices, which may affect trade between these economies and the US.

The integration efforts of Central American countries are of two types: integration between similar economies as is the case of the Central American Integration System (SICA), and Integration with developed countries as in the Free Trade Area of the Americas (FTAA). This is a forum in which the countries analyse, among others, competition issues. In both categories, Central American countries project themselves as seekers of technical cooperation. This type of link, i.e. with a developed country (the United States), which is the main destination for Central American trade, is the one being negotiated in the FTA between the United States and Central America (CAFTA), concluded at the beginning of 2004. The present report deals with both types of integration and reinforces the importance of strengthening the

With regard to the cases of Bolivia and Peru, the cooperation received in the field of competition and consumer protection has been insufficient. Both countries require additional support to be able to meet the needs identified in the field of competition and consumer protection during the respective exploratory missions.

As a result of Phase I, the UNCTAD Secretariat has prepared Phase II entitled COMPAL whose objective is two-fold: first to facilitate the adoption and implementation of competition laws in selected countries that have been drafting laws (i.e. Nicaragua, and Bolivia, as well as El Salvador which has just adopted a competition law), and, second, to deepen the application of the law in more advanced countries, such as Costa Rica and Peru.

The COMPAL programme will give a particular emphasis to the exchange of experiences between these countries. Through the strengthening of competition agencies or public institutions in charge of promoting competition and the better understanding of the benefits of competition among consumers, public officials and the private sector, the programme will contribute to the establishment of a business environment that is conducive to the development of the private sector, with beneficial gains for society at large, especially for consumers.

The direct beneficiaries will be the competition agencies or public institutions in charge of promoting competition and consumer protection. The project will strengthen their efforts to adopt and implement a competition regime, which will have positive impacts on the development of the private sector, notably SMEs, as well as on consumers and their organizations.

Special attention will be given to incorporate the private sector into the planned activities as a means of sensitizing them to the benefits of competition in enhancing economic efficiency in their businesses.

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