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LATIN AMERICAN COMPETITION FORUM

-- Session III: Strategies for Competition Advocacy --

Contribution from Paraguay

8-9 September 2010, San José (Costa Rica)

The attached document from Paraguay is circulated to the Latin American Competition Forum FOR DISCUSSION under session III of its forthcoming meeting to be held in Costa Rica on 8-9 September 2010.

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LATIN AMERICAN COMPETITION FORUM

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Session III: Strategies for Competition Advocacy

-- CONTRIBUTION FROM PARAGUAY¹ --

1. Introduction

1. This paper offers a brief overview of competition advocacy activities conducted in Paraguay as part of the effort to disseminate competition policies.

2. At the present time Paraguay does not have a competition law. Such a law is needed, however, in light of the legal precedents described below.

2. Legal framework

1. National Constitution, Article 107, "Free Competition". All persons have the right to devote themselves to the lawful economic activity of their choice, within a regime of equal opportunities. Market competition is guaranteed. The creation of monopolies is prohibited, as is the artificial manipulation of prices in ways that impede free competition. Usury and unauthorised trading in harmful goods shall be punished by law.
2. Law 1143/97, approving the MERCOSUR Competition Protocol. The purpose of that protocol is to protect competition within MERCOSUR, and it was incorporated into Paraguay's domestic law on 2 October 1997.
3. Law 3026/06, approving the agreement on Regulations to the MERCOSUR Competition Protocol. The regulations to the protocol were given domestic effect in Paraguay on 7 September 2006.

¹ This paper was prepared by Cynthia Andino.

3. Competition as an element in promoting economic growth with social inclusion

3. In the case of Paraguay, competition policy has been introduced as an element of the current government's development strategy in order to improve the business climate and attract investment under the Strategic Economic and Social Plan (2008-2013). It provides as follows:

- Responsibility centre: Ministry of Industry and Trade (MIC).
- Problem: informality in the market, lack of a competition policy and effective quality control for goods and services.
- Objective: to formalise and regulate the market by facilitating free competition and quality control for goods and services; to promote promulgation of the new 2009-2013 Competition Law.

4. Background

4.1 Draft legislation presented to Congress

4. The Legislative Information System (SIL) of the Paraguayan Parliament lists three draft versions of a Competition Law, tabled in 2003 as well as in 2008 and 2010.

5. The first was submitted by the executive branch to the Senate through the MIC in 2003. The second was presented by deputies Edmundo Rolón and Hans Werner Thielman in 2007. There is now a third draft, published in the press by the Federation of Production, Industry and Trade (FEPRINCO), a business association, in April 2010.

6. Of the three drafts, that from 2008 was rejected by the Senate and set aside, leaving two in play.

4.2 Competition advocacy activities in Paraguay, in the context of technical assistance

- *First technical mission*, 9 to 13 November 2009: at the initiative of the MIC, the institution responsible for co-ordinating and promoting promulgation of a competition law in Paraguay, a high-level technical mission visited Asunción, comprising representatives of the United Nations Conference on Trade and Development (UNCTAD), the Competition Tribunal of the Basque Country (TVDC), the Administrative Council for Economic Defence (CDE) and the National Economic Prosecutor's Office (FNE) from Santiago, Chile. One of its purposes was to examine the overall situation of the draft competition law and possible technical assistance from UNCTAD to the Government of Paraguay.

The agenda of that mission included a meeting with the President of the Republic, Mr. Fernando Lugo, meetings with the President of the National Congress and the President of the Senate and with various private sector associations, and an information workshop for the general public.

- *Second technical mission*, 19 to 23 April 2010. Under the framework of technical assistance, Paraguay received a mission from the US Federal Trade Commission (FTC) and the Competition Tribunal (TDLC) of Chile. That visit included a series of academic training events at various universities in Asunción, dealing with competition policy in developing countries.
- *Third technical mission*, 17 to 21 May 2010. This second mission of experts from UNCTAD and TVDC worked on the design of a legal framework for Paraguay, and also held working meetings with private sector associations and legal and economic advisers to the congressional committees examining the draft law.

5. The benefits of disseminating competition policies among Latin American agencies

7. Disseminating a competition culture is a general obligation for creating a critical mass of professionals with a view to promoting scientific co-operation, among other things. Public debate must also include free competition, as an issue that affects people's daily lives, as we are all consumers, and bearing in mind the need to promote effective enforcement of national competition legislation among Latin American countries.

8. The sharing of information as well as investigation techniques and jurisprudence is highly beneficial, especially for new agencies and for countries such as Paraguay which, although they do not yet have a law, must develop qualified human resources who can address the challenge of enforcing the rules.

9. Consequently, there is a need for co-operation among countries, and through advocacy activities the institutional capacity of governments can be strengthened.

10. The expansion of trading relations, as well as increased competitiveness, make it essential to improve the enforcement of competition policies, where agencies, private bodies, society and the courts must participate in applying competition laws and policies, which must be accompanied by other policies to promote our countries' development.

6. Current status of the draft competition law

11. Thanks to the competition advocacy activities mentioned above, there has been progress in discussions and debates with different strategic stakeholders involved in the design, promulgation and application of the rules.

12. Following completion of the draft, there will have to be national consultations on the text proposed by the MIC before it is submitted to Congress.

13. Paraguay is in the process of considering and designing the future structure of the competition agency, the enforcement authority, and the interaction of that authority with the various sector regulatory agencies, in order to address the interests of consumers and interaction with other government policies.

14. The agency must be a credible institution with sufficient economic and technical resources to function independently and transparently. There are positive relations and communications with the legislative branch, which is a key player in overseeing compliance with the Constitution and is involved in all the activities of the MIC.

15. We cannot go into further detail for, as mentioned, we are in the process of preparing the rules, and in that process we must take account of supranational legislation such as the Competition Protocol of MERCOSUR.

7. Law 1334 of 1998 on consumer protection

16. Paraguay's current consumer protection law includes among the rights of consumers (article 6.e) the right to "adequate protection against misleading advertising, coercive or unfair business practices..."

17. The State's duty to regulate trade and establish rules for economic agents is extremely important. The Consumer Protection Law must now be accompanied by a competition law to protect and oversee the rights of all the country's inhabitants.

"The defence of competition is not an end in itself but rather a means, a tool for achieving national development."