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LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM

Session III: Addressing Competition Challenges in Financial Markets

-- Contribution from El Salvador --

4-5 April 2017, Managua, Nicaragua

The attached document from El Salvador is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 4-5 April 2017 in Nicaragua.

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LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



15th Latin American and Caribbean Competition Forum
4-5 APRIL 2017, Managua, Nicaragua

Session III: Addressing Competition Challenges in Financial Markets

-- CONTRIBUTION FROM EL SALVADOR --

1. The Salvadoran Financial System

1. The Salvadoran financial system encompasses the functioning of both banks and non-bank financial institutions, and therefore covers sectors like banking, insurance, pensions and securities. Legislation governing the financial sector, particularly the Consumer Protection Law, provides the legal framework for this sector.

2. The financial sector has both a regulatory and a supervisory authority: the Central Reserve Bank of El Salvador (BCR) and the Financial System Superintendency (SSF). The BCR is responsible for adopting the regulatory and prudential framework needed for the effective application of laws regulating institutions that operate within the financial system, while the SSF is responsible for supervising these institutions.

3. Delving deeper into the roles of both authorities, we can say that the **BCR** is responsible for safeguarding the country's macroeconomic stability, thus contributing to a secure, efficient and transparent financial system that is safe and reliable for the population to use and that supports sustained economic growth. In addition, the BCR guarantees the proper functioning of the country's payment transaction processing systems and provides analysis, studies and technical research to promote better decision-making on economic and financial matters for the benefit of all Salvadorans and the Salvadoran financial system.

4. For its part, the **SSF** is integrated into the BCR, but has its own legal status and its own resources. It is responsible for supervising institutions that operate within the financial system, conducting risk assessments on these institutions, promoting the efficient, transparent and orderly functioning of the financial system, and ensuring that the institutions under its supervision conduct their business, activities and transactions in accordance with the applicable legislation. The SSF carries out all these duties in line with international best practice.

5. Consumer protection in this sector falls under the remit of both the Consumer Protection Authority, and the SSF through its Consumer Help Office.

2. The Competition Superintendency and the Financial System

6. In El Salvador, the Competition Law has been in force since 2006 and the agency responsible for its enforcement is the Competition Superintendency (SC). This law does not stipulate any limit on the sectors to which it applies, and it also supersedes competition provisions in legislation governing other sectors such as the financial sector. Furthermore, the Competition Law stipulates that in regulated sectors like the financial sector the SC's ruling on mergers within the sector is binding on the supervisory body, in this case the SSF.

7. For this reason, from its inception the SC sought to build a good relationship with the financial regulators, particularly since one of its first tasks was to conduct a review of the proposed acquisition of the country's two largest banks at that time, and the corresponding merger authorisations.

8. The SC signed co-operation agreements with both agencies: the Co-operation and Co-ordination Agreement between the SSF and the SC was signed on 13 March 2007, and the Co-operation and Co-ordination Agreement between the SC and the BCR was signed on 5 September 2007.

9. Both agreements provide the basis for overall co-ordination between agencies to establish co-operation mechanisms for collecting, analysing, processing and exchanging information on financial markets. Furthermore, the agreements enable the agencies to carry out activities of common interest relevant to their respective remits through the exchange of ideas, policies, information, knowledge and experiences on operational matters related to the financial services market, with the aim of preventing and identifying possible anticompetitive conduct.

10. In addition, the agreements enable joint periodic monitoring of the financial services markets for the continual assessment of the effectiveness of current regulations and market behaviour with a view to undertaking joint actions to strengthen and build capacity in the financial markets, improve efficiency and protect consumers.

11. In both agreements, the respective agencies fully commit themselves to handling information appropriately, in line with the responsibility conferred on them by the Competition Law. The regulators are also bound by the same high standards when handling the information of regulated entities.

12. The agreement with the BCR was amended in 2016 to broaden the scope of provisions on information sharing and thereby enable a smoother flow of information between both agencies. In addition, an inter-institutional training schedule was established for 2016 and 2017 to better understand the scope for training and for sharing information held by one agency that might be useful to its counterpart

13. Under this initiative, several training courses have already been held, including on the following topics: studies on competitive conditions in Salvadoran credit and debit card market; financial resolution and mergers; and the various duties of the BCR with particular focus on the databases and economic indicators that it manages to better understand the statistics that the BCR provides.

3. Co-operation on analysing competition in the financial market

14. The SC has undertaken many initiatives in the financial sector, and has always had the support of the BCR and the SSF. The most relevant areas of action are outlined below.

3.1 Economic concentrations

15. As mentioned earlier, the merger review that the SC conducted soon after its inception was concerned with the acquisition of the two largest financial groups in the country at that time: Inversiones Financieras Cuscatlán in 2006 and Inversiones Financieras Banco Agrícola in 2007.

16. In both transactions, each of the acquired groups comprised a bank, an insurance company, a credit card issuer and one of the country's pension plan administrators, as well as other businesses. The signing of the respective agreements facilitated and speeded up co-operation between the regulators and the SC, enabling both to obtain all the information on different areas of the Salvadoran financial sector that they needed to conduct the respective merger reviews.

17. In 2016 a new acquisition occurred in the financial sector: a foreign conglomerate acquired CITI bank, SISA (one of the country's largest insurance companies) and the credit card issuer Cititarjetas.

18. That same year, a concentration of companies occurred in the insurance sector. The SSF provided us with support during the respective merger review processes. Furthermore, in response to our requests, they provided us with all the information that we needed, and the diligent and collaborative approach adopted by SSF staff towards our team was particularly noteworthy.

3.2 Studies of Competitive Conditions

19. Whenever the SC has needed assistance with its financial market studies, both the BCR and the SSF have co-operated in a timely and diligent manner whether through interviews or responding to information requests.

20. In 2010 and 2011, the SC conducted a *study of the competitive conditions in the Salvadoran credit and debit card market*. According to the study, greater competition in the market could lead to a fall in interest rates, exchange rates and commissions on credit and debit card transactions. To this end, the SC issued public policy recommendations aimed at introducing greater competition. The regulators have not yet adopted these recommendations, but we hope to set up an inter-institutional working group to follow up on the recommendations and to consider their implementation.

21. The SC is currently finalising a market study on financial services for micro and small enterprises (MSEs) in El Salvador to enable us to make public policy recommendations on expanding access to credit for MSEs. MSE growth can contribute to the country's economic growth and development given that MSEs account for 99.3% of all businesses and employ 67.6% of the workforce. The results of this study will be published in the coming months and will provide the basis for a subsequent study of competition in this sector.

22. The BCR and the SSF provided support primarily through interviews and responses to queries raised on their publications and on their regulatory framework as applicable to the areas under study. Both institutions have provided most of this information in the form of their own publications.

23. In the case of the BCR, it has also answered our queries on real sector indicators, such as GDP composition by sector, among other areas.

24. In addition, the BCR assists the SC in its market monitoring work by continuously answering queries and supplying information on the Central American Tariff System (SAC), particularly on tariff headings applicable to certain products and on foreign exchange fluctuations in the SAC.

3.3 *Consultative opinions on legislation and bidding processes*

25. Before issuing consultative opinions on the competition aspect of draft laws applicable to the financial sector, the SC consults both the SSF and the BCR.

26. For example, in 2017 the Presidency of the Republic forwarded the draft General Insurance Law and the draft Insurance Business Law for the SC to analyse from the competition perspective. For this, the SC needed to understand the reasoning behind the text drafted by the regulators since their intentions need to be considered and reconciled with the principle of competition.

27. The SC's analysis of the General Insurance Law resulted in public policy recommendations, while in the case of the Insurance Business Law the SC did not identify any serious threats to competition.

3.4 *Anticompetitive conduct*

28. Both the BCR and the SSF have assisted with investigations into potential cases of anticompetitive conduct in the financial sector. In 2015, the SC imposed penalties on three insurance companies for an anticompetitive agreement consisting of bid rigging for the purpose of market allocation in response to a call for tenders issued by two Pension Plan Administrators (AFPs) for the provision of the Disability and Survivors' Insurance (SIS) to their members. The process was rigged to ensure that contracts were awarded to the insurance company belonging to the same business group as the AFP.

29. Following this case, the SC board tasked the Competition Superintendent with setting up an inter-institutional working group with the SSF and the BCR to undertake a joint review and propose appropriate reforms to the regulatory framework governing the process by which AFPs put disability and survivors' insurance contracts out to tender on behalf of their members. The aim was to prevent and combat future instances of anticompetitive conduct of the type that had been uncovered in this case.

4. **SC–BCR–SSF inter-institutional task force**

30. As follow up to the recommendations arising from the above-mentioned case, the SC coordinated the setting up of an inter-institutional task force with experts from the SC, the SSF and the BCR to undertake a joint review and analysis of the regulatory framework governing the process by which AFPs put disability and survivors' insurance contracts out to tender on behalf of their members and, if appropriate, to propose reforms aimed at preventing similar cases of anticompetitive conduct in the future.

31. Throughout 2016, experts from the three agencies analysed the relevant legislation and in January 2017 they presented to their agency heads a final report containing proposed amendments to the Pension Savings System Law and to the Regulations governing the Contracting of Disability and Survivors' Insurance by Pension Plan Administrators.

32. The SC views the inter-institutional task force as a success given that it produced, thanks to the commitment and willingness of the regulators, a comprehensive analysis of current legislation to identify improvements that might increase competition, and therefore efficiency, in the market without compromising regulation of the sector.

33. Significantly, the BCR has recently followed this precedent by proposing that another inter-institutional task force be established to follow up on any recommendations arising from the SC's *study of the competitive conditions in the Salvadoran credit and debit card market*. This working group would also follow up on the consultative opinions that the SC has issued in relation to this sector, in particular the opinions on the draft General Insurance Law and the draft Insurance Business Law.