



**Minutes of the UNCTAD Training workshop (La Paz, 21-23 July 2010)**

**Wednesday, 21 July 2010**



The morning session addressed the introductory remarks including the presentation of the Competition Policy framework of March 2010. Although the document was finalized last March 2010 upon the first mission of UNCTAD, the Government will need additional time to reach consensus in order to officially adopt the Competition Policy Framework in Bolivia.

The second part of the morning session, COPROCOM, INDECOPI and CADE delivered their point of view as how to handle competition cases and what is the legal/economic and historical perspective in accordance to the experience of these three competition authorities.

In the afternoon, again, COPROCOM, CADE and INDECOPI addressed the issue of the definition of the relevant market with particular reference to their experience in concrete cases (beer & cement by CADE, port pilotage by INDECOPI and Soft drinks by COPROCOM). The level of analysis and detailed of the questions & answer session was particularly good as the investigation unit of the Competition Authority have already been investigating cases in the beverage market and beer market. Reference to the issue of standard of proof was made and UNCTAD provided some insights of this particular point while

presenting some chapters of the recently drafted Manual on investigation techniques done for Nicaragua last year.

#### **Thursday, 22 July 2010**

The first morning session was dedicated on the issue of how to draw up a draft competition ruling. In this case, UNCTAD delivered a presentation on the Manual of investigation techniques including a full reference of best practices of administrative procedures and recent experiences of Costa Rica (COMPAL II activity to draft an ad-hoc manual on administrative procedures for competition cases) and other countries.



Further, CADE delivered two presentations in relation to the main topic including the cooperatives in the informal sector in terms of their bargaining power vis-à-vis the monopsony and oligopsony power of big businesses. Particular attention was given to the four forms of economic organizations in Bolivia as per the Political Constitution. In turn, UNCTAD provided the experience of the Nicaraguan Sectoral in-depth studies (Basic Grains) when explaining this common problem in different settings throughout Latin America.

The second part of the morning session was devoted to the issue of the appropriateness of sanction and remedies. In this particular case, UNCTAD provided a general presentation on the topic by means of addressing the preliminary results of the forthcoming Sixth Review paper on the topic. CADE mentioned the direct relationship between the imposing the appropriate sanction and the effectiveness of leniency programmes. In this regard, reference to the Brazilian experience enriched the interactive session.

In the afternoon session, COPROCOM addressed a case on milk sector. The case referred to a Cooperative which is almost in a monopsony position in the market of purchasing milk from producers, in order to process it and commercialize. In this sense, they introduced a provision on its by laws forbidding its producers affiliates to sell milk to any other party. This clearly created a barrier to entry with exclusionary effects. However, it was impossible for the commission to impose any penalty or remedy, because the by laws provision was based on a provision contained in the Law of Cooperative Association, which was confirmed by the Constitutional Court. The idea of this case was to show that cooperatives can implement anticompetitive practices even against the interest of its affiliates. So, it

can not be assume that cooperatives and other schemes implemented to assist small and rural producers will not act ant competitively.

Similarly, INDECOPI addressed another case of dominant position in the milk sector. But before this, the resource person mentioned the difference between legal and economic definition of the market. According to the speaker, the definition of the market refers to the interrelation of at least two economic agents, rather than understanding a market as a way of describing the whole value chain. The issue becomes relevant when assessing an abuse of dominant position, whereby the abuse can take place in different markets. In other words, anticompetitive practices can take place into a market and take effect in one or more markets. Finally, the analysis of the implementation of competition policy to public enterprises generated an interactive discussion from the meeting participants.

### **Friday 23 July 2010**



The workshop on its third day started with a real case presentation ruled by the Bolivian Competition authority (AEMP) on a current case on the beer market. CBB (Auténtica) issued a complaint before the former competition authority in 2008 (SEMP) against the Bolivian Beer National Company (*Cervecera Boliviana Nacional - CBN*) for alleged vertical anticompetitive practices regarding exclusive agreements with small and poor markets within the market of La Paz and El Alto. The new Bolivian competition authority took over the case as the SEMP ruling was annulled due to procedural and substantive weaknesses.<sup>1</sup>

The issue at stake is that CBN was granting a big number of exclusive agreements with local kiosks providing them not only the goods (beer bottles) but also the whole infrastructure to sell the goods

---

<sup>1</sup> The superintendence of enterprises did not follow the steps in the analysis of competition with a lack of relevant market analysis as well as lack of sufficient appraisal of the evidence and the form of the witness declarations. Another point was a more substantive one as the company did not have a sufficient market power. Finally, if decision 608 is to be applied in this case, the jurisdiction should be the Andean Tribunal of Justice. (art. 49 actually entails the Bolivian authorities to apply the Decision 608). The Superintendence of enterprises ruled with a simple amonestacion. Hence, SIREFI annulled the ruling because of different grounds. At the time, the whole system disappeared. In addition, the annulment ordered to only re-do the ruling based on the same grounds originated by the plaintiff.

including refrigerators, tables, chairs, etc. The only condition of this lending contract of the assets was NOT to sell any other brand of beers such as the local competitor (“Autentica”) or any foreign brands: Argentinean (QUILMES) and Brazilian (AMBEV) beer companies.

AEMP sanctioned CBN for excluding other competitors in the selling goods throughout the market of local kiosks in La Paz and El Alto. In the analysis of the case, AEMP addressed the issue of CBN’s market power and its abuse towards its local & small points of sale (kiosks) and the legal validity of the contracts signed by CBB with its local points of sale in accordance to the civil and commercial code and other related legal instruments.

Later, the discussion focused on the issue of whether AEMP should have analyzed first the effects of the exclusive agreements in the market (as per vertical agreement) rather than have focused the legal validity of the contract taking into account that the administrative authority does not have the prerogative to declare the annulment of the contract (this is only possible by Judges). In addition, AEMP argued the business practice of CBN is common and abusive to local and poor kiosks and they do not have any choice but to accept the conditions of the contract in question. Another participant mentioned that whether AEMP should have included in its analysis all the conditions of the contract signed including the lending of assets to do business for the points of sale. AEMP’s analysis endorsed the issue of exhibiting the beers in the local points of sale and they did not include other conditions.

As a corollary, the Beer company did recognized the abusive nature of the exclusive agreements and as of 2 July 2010 (one day after AEMP’s ruling) they refrained from signing new contracts with points of sale. It was also mentioned that private companies have a special “respect” to public institutions.

As per the analysis of the relevant market, CBB complained the lack of access to the points of sale. Therefore, the market is the distribution of beers in points of sale rather than the market product of “beer”. From the analytical point of view, INDECOPI argued that CBB asked for the access of the points of sale and the methodological approach should have been the substitutability of points of sale (so as to sell the beers) rather than the substitutability of the beer against other beverage drinks (soft drinks, etc). However, UNCTAD considered that in any event, the analysis would have reached the same result as in Bolivia there are no other possibility rather to buy beers from points of sale (kiosks). In a nutshell, participants suggested the need to analyze first the market product and then the complementary services of this product to be sold in the market. However, INDECOPI argued that what is fundamental here is to approach the market by analyzing the “service” market rather than the “product” market.

In addition, the distributors company are about to disappear in Bolivia as the beer companies have upright contract with transport companies to ship the beers directly to the kiosks.

As for the analysis of the market power, AEMP went through market concentration indexes finding that CBN had more than 90% of market share in the beer market. The analysis of barriers to entry (strategic and economic) was also addressed.

AEMP requested UNCTAD, INDECOPI and COPROCOM to address the issue of quantifying and determining the appropriate sanction and remedies. This session was included in the programme during lunch time.

During the afternoon session, the Minister of Productive Development and Plural Economy Antonia Rodriguez Medrano, as well as the Deputy-minister Huáscar Ajata launched officialy the Manual of Anticompetitive Practices carried out under the COMPAL programme during March 2010. This Manual will be constitute the basis for enforcing the competition legislation that is already in place since last year 2009.

### **Case exercise: The market of Soft drinks in Bolivia**

Two working groups started their discussions in accordance to the instructions for the case given at the first morning session of 21 July 2010.

The case was built based on a resolution issued by COPROCOM where the claimant alleged that the largest bottler and distributor of carbonated drinks in the country was forcing retail stores around the country to enter into exclusive agreements. The exercise asked the groups to identify the information needed to define the relevant market and to determine the existence of market power. It then asked the groups to explore the conduct and the possible anticompetitive effects. There were two groups, one played the role of the authority and the other one played as the defendant, so the discussion was very lively and ended with the possible grounds for exclusive agreements and the anticompetitive effects that exclusive agreements may cause by foreclosing the market. During the exercise different elements were introduced to discuss different outcomes.

#### Additional documents

- PPTs of all speakers (Spanish version)
- Instructions for Case exercise (Spanish version)
- Case exercise (Spanish version)
- Ruling by COPROCOM (Spanish version)

## Minutes of the Consumer Protection Workshop



### Monday 26 July 2010

The morning session was opened by the Deputy Minister of Trade and Exports, Mr. Huascar Ajata and the Deputy Minister for Consumer Protection, Mr. Fernando Fuentes. The international speakers were from UNCTAD, and the Consumer Protection Authority of El Salvador.

In accordance to the agenda and drawing of the lessons and successful outcomes of the Competition Training Workshop held from 21 to 23 July, UNCTAD delivered a presentation on the link between Competition and Consumer Protection with reference to the recently published Consumer Protection Policy Framework back in March 2010. Similarly, the President of the Salvadorian Consumer Protection Authority addressed the important and vital need to link these two issues in accordance to the El Salvador experience. He mentioned that although in El Salvador there are two separate institutions dealing with competition and consumer protection issues, they have understood the need to strengthen the linkage of enforcing competition and consumer protection laws. An interactive session followed with the participation of not only the consumer protection officials of both Deputy Ministries but also officials from the Competition Protection Authority who participated in the previous workshop of last week. There were questions regarding how to design the best institutional framework for enforcing the consumer protection laws in accordance to the new Bolivian setting recognized by the Constitution. It is clear that from the discussions, Bolivian policy makers will have to carefully assessed experiences from Peru and El Salvador. That is to say, assess whether design a super structure that deals with competition, consumer protection, intellectual property and other issues similarly to INDECOPÍ's experience; or rather establish separate institutions such as the case of El Salvador.

In the second part of the morning session, the Director of Consumer Protection of the Deputy Minister for Consumer protection of the Ministry of Justice presented the philosophical vision of Bolivia towards the consumer protection and the definition of consumer welfare. The President of the Consumer Protection authority praised the view of Bolivia and suggested to be part of this revolutionary strategy in

terms of re-defining the concept of Consumer Welfare on the basis of the major Bolivian underpinnings of the new paradigm of what is the consumer in Bolivia.

As for the afternoon session, the Director for the Consumer Protection of the Deputy ministry of Trade and Exports delivered a presentation on the Consumer Policy Framework prepared under the auspices of UNCTAD – COMPAL Programme.

Later, the Deputy Minister of Consumer Protection delivered a presentation on the draft consumer protection bill with a reference to the philosophical view of the consumer protection and the Pluri-national State of Bolivia. This reference should shed light to the drafting of the competition bill. There is a context over which the future consumer protection law should be based on. For instance the consistency between consumer protections rights with those such as the political, cultural, economic rights. In addition, it should also take into account that the number of State own companies has increased from 10% to 30% of GDP participation. The first draft for the consumer protection bill has been prepared by a number of institutions at all levels taken into account the UN Guidelines on Consumer Protection, the access of the consumers to information, consumer education, consumer redress as well as the right of not being discriminated because of race problems and the way people dress in accordance to folkloric traditions against service providers. He added whether this consumer protection bill would be sufficient in order to carry out the new philosophical view for the consumer protection. In addition, he highlighted whether this consumer protection bill should be user-friendly to be used by any Bolivian citizen without any necessary education. If not it would be necessary to be translated into a language that should reach all Bolivian consumers. The new strategy in order to implement consumer protection bill should be part of the vital plan of action until the end of 2010. Late February 2011 should be the deadline in order to submit the consumer protection law. For this implementation plan, he kindly requested UNCTAD in order to support the technical capacity of the implementation plan. Participants questioned the Deputy Minister on the issue of the institutional design as well as division of competences.

Comments by UNCTAD and the Salvadorian Consumer Protection Authority followed. In the case of UNCTAD, as a response of the request of the Deputy Minister of Consumer Protection, it was made clear the need to make a clear line between the Consumer Protection Policy Framework and the contents of the future consumer protection law as one of the main instruments of the policy. In addition, the President of the Consumer Protection Authority highlighted the re-definition of the consumer welfare in light of the Bolivian vision. He added that consumer protection goes beyond the law and the institutional design and hence the integral vision that the Salvadorian Consumer Protection Policy observes. There should be a clear political will to increase the resources in order to implement the consumer protection law from half of million dollars to 4.5. Million dollars of annual budget of the authority.

As a margin meeting, the Deputy Minister for Consumer protection kindly called for a private meeting with UNCTAD and the President of the Salvadorian Consumer Protection Authority. The objective of the meeting was to create a better communications flow between UNCTAD and the Deputy Ministry as regards the finalization of the draft consumer protection bill. To this end, UNCTAD and El Salvador

offered their technical expertise to finalize the bill with comments and experience sharing. One issue that will have to be addressed at the outset is the re-definition of “consumer welfare” based on the vision of Bolivia. The Deputy Minister mentioned that they have hired a national consultant to finalize the drafting of the law. To this end, UNCTAD suggested to create synergies with the work of the other deputy ministry of trade and exports.



**Tuesday 27 July 2010**

The morning session was opened by the Salvadorian experience on the issue of product safety and guarantee. In addition, UNCTAD delivered a presentation on consumer protection and e-commerce. It was addressed the advantages, legal and technical challenges of e-commerce and its impact on the consumers and businesses. It was also mentioned a draft bill for the electronic signature, e-commerce and digital certificate that was approved by the Bolivian Senate back in August 2007. Unfortunately, the draft bill was never passed by the Parliament due to the lack of a targeted sensitization within the National Assembly as well as legal implications in costumes and tax legislations.

The institutional design for effective consumer protection enforcement was addressed by El Salvador. In this regard, the President of the Consumer Protection authority described the institutional structure of the authority starting from the Presidency as well as the four areas of intervention: Market surveillance; Market participation and citizenship; decentralization of offices throughout the country; and legal services. The authority launched the possibility to complain online. Since January 2010, more than 218 complaints per month have been put forward. Participants were asking whether the institutional design of El Salvador can be implemented in Bolivia in accordance to its reality.

El Salvador praised the support of UNCTAD in the institutional strengthening of the authority. In addition, the capacity-building strategy is of crucial importance for the

Implementing a plan has to be done by the ones who drafted the original plan rather than other agents. It also needs to be monitored and evaluated: Planning, monitoring and evaluation are the key aspects of the a successful strengthening institutionality.

As a conclusion of the Seminar, Bolivia praised the participation of El Salvador and UNCTAD, in particular their opening view of UNCTAD towards the particularities of Bolivia. In addition, he mentioned the successful work of the Consumer Protection Authority in all cities and villages of El Salvador. In turn, Bolivia has a constitutional mandate to reach every single city, village, community through the municipalities in protecting consumer rights. However, it is important to draft the law in order to reflect all the changes.