



The Republic of Bolivia<sup>1</sup> is a landlocked and the most isolated country in South America bordered by Brazil, Argentina, Chile and Peru. Its natural wonders, colourful traditions, and enigmatic ancient ruins make it one of the world's most unusual countries.

Bolivia is one of the poorest countries in South America. Majority of Bolivians are farmers, miners, small-businessmen or artisans, with low incomes.

#### Economy

Bolivia, one of the LDCs in Latin America, made considerable progress in the 1990s towards the development of a market-oriented economy. Efforts in this direction included the signing of a free trade agreement (FTA) with Mexico and becoming an associate member of the Southern Cone Common Market (Mercosur), as well as the privatisation of the state-owned airline, telephone, railroad, electric power and oil companies.

However, in 1999, growth slowed as a result of the government's budget policies, which restricted outlays for anti-poverty programmes. Reverberations from the Asian financial crisis were also felt here. In 2000, major civil disturbances held down overall growth to 2.5 percent. Bolivia's GDP failed to grow in 2001 due to the global slowdown and a lack of domestic activity.

Bolivia saw a positive growth rate in 2003 and 2004 but was still below the levels seen during the 1990's. It remains largely dependent on foreign aid for financing development projects and urgently needs to develop its substantial natural resources.

#### Competition Evolution and Environment

During the 1980's, Bolivia suffered a deep economic recession. The state market collapsed, resulting in the loss of jobs. Inflation was rampant and the national currency

PROFILE	
Population:	8.8 million***
GDP (Current US\$):	7.9 billion***
Per Capita Income: (Current US\$)	900.0 (Atlas method)*** 2,380 (at PPP)
Surface Area:	1.1 million sq kms.***
Life Expectancy:	64.1 years**
Literacy (%):	86.7 (of ages 15 and above)**
HDI Rank:	114
Sources: - World Development Indicators Database, World Bank, 2005 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

was in a state of severe crisis. However, since 1985, Bolivia has made considerable progress in transforming its economic order. By then the structural reforms had started, in two phases:

1. 1985-1993: The most important structural decisions to proceed in the direction of a more efficient market economy had been made in this phase of transformation. These included unification of exchange rate, elimination of restrictions to imports and freeing the movement of capital. Tax and customs systems were also simplified; and
2. 1994 onwards: This phase saw the administrative decentralisation of the state, the privatisation of public enterprises, the modernisation of private and state pension schemes, legal reforms and reform of the state and education system.

The reform of the legal system and the institutionalisation of the Council of Judicature and Constitutional Courts were vital elements, which gave foundations for establishment

\* Original paper submitted in June 2005. Revised in August 2005 & March 2006.

1 Some of the information in this introduction has been compiled from the CIA World Factbook, <http://www.cia.gov/cia/publications/factbook/geos/yi.html>

of a competitive market economy. In Bolivia competition policy has been limited to trade liberalisation and sectoral deregulatory efforts.

Following a series of reforms, the System of Sectoral Regulation (SIRESE) was created in 1984 with the aim of controlling and supervising activities in the sectors, such as in telecommunications, electricity, hydrocarbons, transport, water etc.

On this basis, Bolivia has been divided into two types of sectors: 'regulated' and 'non-regulated'. While a separate law and agency has been created for regulated sectors, an urgent need of the time is to adopt a competition legislation and establish an agency to govern the non-regulated sectors.

Currently, the following legislations govern Bolivia's economy:

- Political Constitution. Articles 134, 142 and 233;
- Investment Law; and
- SIRESE.

### Competition Law

No competition law is yet in force. However, the government was considering a competition law project during 2003. Bolivia was actively designing and debating draft legislation, but this proposal was not approved due to a change in government and some social conflicts.

Bolivia has no laws that directly regulate competition. Instead, articles regulating unfair competition are scattered throughout the country's laws, governing activity in specific economic sectors.

A draft bill proposal is currently under discussions. It was initiated in 1997, when the idea of a system for regulating the market was considered.

An attempt was also made during 2003. The Ministry of Economic Development, through the Vice-Ministry of Industry, Commerce and Exportation of Bolivia, along with the support of the UNCTAD, contracted the services of foreign consultants to help Bolivian authorities to draft a proposal for competition and consumer protection legislation. The draft was then presented to the civil society in a seminar in September 2003. However, it did not welcome the idea of drafting one law for both competition and consumer protection.

The proposal for legislation was never introduced in the Parliament. This is mainly due to constant changes in the national government and the political reluctance to introduce these laws.

Furthermore, Bolivia faces certain hindrances in implementing competition legislation:

- Lack of competition culture among the economic agents, or, in other words, little knowledge about the type of practices falling under the law's purview; and
- The cost of implementation of such legislation.

An urgent need to have a core of specialists was identified in the fields of economics and law to support the legislative procedures.

### Institutions and its Competencies

Like in the regulated sectors, establishment of a competition authority in the non-regulated sectors is also essential. At present, there are two enforcement bodies governing the market of Bolivia:

1. Common courts in the case of constitutional provisions and foreign investment provisions; and
2. Office of the General Superintendent of the Sectoral Regulation System in the case of the sectoral regulation system.

### Anticompetitive Practices

Under the circumstances prevailing in Bolivia, it becomes necessary to analyse the existence of certain presumed anticompetitive practices in non-regulated sectors and importance of adopting national competition legislation in order to overcome such behaviour.

**Table 103.1: Relevant Markets and their Anticompetitive Behaviour**

<i>Relevant Market</i>	<i>Anticompetitive Behaviour</i>
Cement	This market is extremely concentrated, with one firm having a high share of the market and hindering entry of other firms
Beer	The Paceaña firm is the only supplier without any room for competition
Professional services	Earlier, it was self regulated by professional associations resulting in barriers to entry, prohibited advertising and application of minimum tariffs by members of associations that deliver services
Other restrictive behaviour	Existence of certain types of unions, associations etc. that constitute impediments to the continuation of individuals in the respective market if they are not registered or not members of those groups.

In Bolivia's existing scenario neither is there any legal set up nor a competent authority to challenge anticompetitive practices or to investigate them in the non-regulated sectors.

Some illegal business practices do prevail, but in the absence of a competition law and its enforcement agency, these cannot be considered anticompetitive. Therefore, it was necessary to identify some evidence that may be relevant to the legal analysis of certain behaviours.

Few evidences of alleged anticompetitive practices were also found, which if competition law and agency existed, would have regulated these practices in a systematic and articulated manner.

It is evident from the above analysis of the Bolivian non-regulated market that anticompetitive practices exist and this calls for an immediate attention.

#### **Box 103.1: Concentration in the Cement Industry**

The cement industry in Bolivia is highly concentrated. According to the National Institute of Statistics, cement production (8.91 percent) and sales (13.04 percent) increased in the first half of 2004.

*Sociedad Boliviana de Cemento S.A. (SOBOCE)*, a cement manufacturing company has acquired most of the cement companies and controls more than 70 percent of the market without any other competitor. The company has consolidated its position in the market and has made good progress in improving its governance and safety procedures.

SOBOCE dominates production, marketing and sales of cement in Bolivia. This is a clear example of a near monopoly prevailing in the Bolivian market without any law/authority to regulate it.

### **Sectoral Regulation**

Bolivia continues to consolidate a series of structural reforms to further orient its economy to the demands of the market and to encourage greater efficiency in the business community by exposing it to increasing international competition.

The foundation of this new economic system was the privatisation of five large state-owned corporations and the establishment of a regulatory system to monitor the key sectors of Bolivia.

The Government of Bolivia created three sectoral regulatory systems in Bolivia:

- The Sectoral Regulation System (SIRESE);
- The Financial Regulation System (SIREFI); and
- The Natural Resource Regulatory System (SIRENARE).

The Sectoral Regulation System was created in October 1994 to regulate electricity, telecommunications, hydrocarbons, transportation and water sectors. The *Electricity Law (1994)*, *Telecommunications Law (1995)* and *the Hydrocarbons Law (1996)* defined the functions and attributions of their respective superintendents.

SIRESE Law is the first piece of legislation in Bolivia that establishes general principles governing anticompetitive practices. Specifically, companies engaged in regulated activities are forbidden from participating in agreements, contracts, decisions or practices whose purpose is to hinder, restrict or distort competition.

SIRESE, an autonomous regulatory body, is led by a general superintendent, to whom decisions handed down by the individual superintendents may be appealed. Competition policy in SIRESE has its own features applicable to the regulated sectors, due to the specific problems presented by the implementation of Anti-monopoly dispositions and the defense of competition in such sectors. SIRESE along with other sector regulations establishes a series of dispositions related to the promotion and defense of competition with the SIRESE regulated sectors.

The SIRESE Law stipulates that, in addition to the typical regulatory functions, the SIRESE is also responsible for the promotion and maintenance of competition in the sectors under its purview.

Chapter V of the Law contains competition guidelines that must be adhered to by companies operating in the regulated sectors. Section V prohibits anticompetitive agreements, abusive practices, and mergers leading to the creation or strengthening of a dominant position.

### **Consumer Protection**

Bolivia is one of the few countries in South America that does not have a law, specifically to promote, protect and defend consumer interests, despite the efforts of some civil society organisations, such as AIS-CODEDCO. Since 1985, the organisation has been working to promote and protect consumer rights and interests in the country, and has spent a long time lobbying for the adoption of a consumer protection law.

Consumer protection legislation is very crucial for Bolivia, considering its poverty levels and changing market conditions at both regional and international levels. The government needs to intensify its efforts in this area. That could be achieved through the following activities:

- involving consumer organisations in the formulation of the draft bill and all other activities;
- establish joint dissemination activities between SIRESE's Consumer Offices (ODECO) and consumer associations; and

- promote consumer associations as an ideal way to safeguard consumer interests.

Consumer organisations pitched for their rights, interests and participation to ensure that social and consumer protection policies are properly integrated into the commercial and political agenda. The opportunity was given to them by ODECO together with the regulated sector, but they were more aligned with the interests of the industry than with those of consumers. Moreover, consumer organisations lack qualified human resources to scientifically advocate consumer protection issues.

In this area, the cause of concern mainly lies in the non-regulated sector because of the lack of proper mechanisms.

### **Concluding Observations and Future Scenario**

The economy of Bolivia is characterised by high level of poverty, low level of industrialisation, and general backwardness in social development. The repercussions of this are evident in the difficulties encountered by authorities in developing adequate competition and consumer protection laws.

It is of paramount importance that Bolivia should have a clearly defined competition policy consistent with other public policies.

Certain needs have been identified related to adoption of a competition law:

- competition law should be compatible with the laws governing the market;
- the law must clearly lay down the jurisdictional basis and functions to be performed by the institutions in charge of implementation;
- competition law should ensure effective coordination between the various regulated sectors;
- activities should be designed to promote a competition culture and sensitise people through training workshops, incorporation of competition issues in the education system, conducting seminars targeting students and professors, creation of a specialised library using Internet resources etc.;
- strengthen human resources as a means to develop a proper competition environment through training, providing internships, by developing an information system on the resolved cases etc.; and
- the draft Bolivian competition law should take into account the major market failures.

Even in the regulated sectors in spite of the efforts made by SIRESE, the need was felt to further strengthen certain aspects:

- elaboration of Chapter V of SIRESE's Law; and
- strengthening the capacities of officials in SIRESE authorities by organising courses, seminars on issues related to conditions for competition policy and anticompetitive practices in general and regulated sectors; organising study tours etc.

\* *Urquieta Arias Rodrigo* of Health Action International – AIS Bolivia and the Bolivian Committee of Consumers Rights Defense – CODEDCO Bolivia is a Social Auditor and Human Rights consultant, and works as Project Officer of AIS – CODEDCO Bolivia. He is a co-founder of different institutions such as the Nature and Life Foundation in Bolivia and promoter of consumers and human rights movement in Bolivia.