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*El Salvador**

Situated on the Pacific coast of Central America, El Salvador has Guatemala to the West and Honduras to the North and East. It is the smallest of the Central American countries.

El Salvador is both the most densely populated state on the mainland of the Americas and the most industrialised in Central America.

El Salvador achieved independence from Spain in 1821 and from the Central American Federation in 1839.

Economy

El Salvador's economy is primarily agricultural, generating employment to about 40 percent of the population and contributing to around a quarter of the GDP. Nonetheless, it is more highly industrialised than its neighbours. El Salvador's economy was adversely affected by its 12-year civil war. Beginning in the early 1990s, attempts were made to revive the country's economic life, and the economy had recovered by the beginning of 2001, when El Salvador adopted the US dollar as its official currency.

Coffee is the main export, accounting for nearly half of El Salvador's export income. Other exports include cotton and sugar. The leading imports are petroleum products, consumer goods, foodstuff, and machinery.

Much of the improvement in El Salvador's economy is a result of free market policy initiatives carried out by the Nationalist Republican Alliance (ARENA) governments, including the privatisation of the banking system, telecommunications, public pensions, electrical distribution and some electrical generation, reduction of import duties, elimination of price controls, and enhancing the investment climate through measures, such as improved enforcement of IPRs.

PROFILE	
Population:	6.5 million***
GDP (Current US$):	14.9 billion***
Per Capita Income: (Current US$)	2,340 (Atlas method)*** 4,890 (at PPP.)**
Surface Area:	21,040 thousand sq. km
Life Expectancy:	70.4 years ***
Literacy (%):	79.7 (of ages 15 and above)**
HDI Rank:	103***

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report Statistics, UNDP, 2004

(**) For the year 2002
(***) For the year 2003

Competition Evolution and Environment

Since 1989, the ultimate aim of the Salvadorian Government has been to create an efficient and diversified economy, driven by export-led growth. Reforms began in 1990s and the solid growth since the reform is testimony to the success of macroeconomic stabilisation, the extensive trade liberalisation and the deregulation policies pursued.

Since 1990s, the Salvadorian market economy has been characterised by great liberality. The extent of state intervention in the economy is small. The Government regulates market competition in a business-friendly manner.

El Salvador has enjoyed a stable macroeconomic environment but the need was felt to support it by on-going efforts to further liberalise and update the legal framework. Consideration was also given to the more active promotion of competition in the domestic market.

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An increased interest in competition policies followed the process of economic reforms and economic liberalisation undergone by most Latin American countries in the 1990s. Although discussions on competition law commenced in 1990s, it is only in recent times that the debate has resurged with greater strength.

Until recently, there was no explicit legislation or relevant authority to regulate competition conditions in the Salvadorian market. Over the past ten years, numerous legislative initiatives have been made to adopt a law for regulating free competition but to no avail.

To be more precise, seven attempts were made at passing a competition law, none of which succeeded.

The foundation of a competition law can also be found very much in El Salvador's constitution:

1. Article 110 promulgated by Decree No. 38 dated December 15, 1983 stipulates that *'monopolies are prohibited unless they are established in favour of the Government or are in the public interest'*.
2. Commercial Code Articles 489, 490 and 491 promulgated by Legislative Decree No. 671 dated May 8, 1970 that regulate matters relating to commercial activity and good practices without prejudice to the public interest or to the national economy.
3. Criminal Code Article 232 promulgated by Legislative Decree No. 1030 dated April 30, 1997, which imposes sanctions for offences relating to trade and free competition.

The fact was that the absence of a competition law in El Salvador was inconsistent with a well functioning market economy.

A national discussion on anti-trust laws and free competition led to development of a draft anti-trust law. In 2003, a draft *Bill on Free Competition* was submitted to the Salvadoran Parliament after being modified several times by the different political parties. Some of the key provisions of the draft Bill can be summarised as follows:

- drafted pursuant to Articles 101, 102 and 110 of the Salvadoran Constitution;
- applies to all economic agents;
- acts against free competition are those involving abuse of dominant position and concentrations, if such act substantially affects competition in the market;
- create the Bureau of Competition, which will have the authority to control and supervise activities of the market; and
- competitors are prohibited from dividing the market in any way.

Competition Law and Policy

Finally the *Law for Free Competition* was approved and adopted in November 2004. Nevertheless, the law is yet to be put into force. The Law has been drafted at a macro level, assuring the general economic interests, which will no doubt have a very favourable impact on consumers.

Further, the proposal for establishment of a competition authority is still pending.

Institutions and its Competencies

Presently, a group of fiscal bodies is responsible for supervision and monitoring of activities in different economic sectors, which have a decisive influence on the country's conditions for competition.

Although at present there is no direct authority responsible for overseeing the competition in the market, some institutions directly or indirectly related to competition policies were created for specific purposes, but without any strategic planning that enabled them to prevent the practices adversely affecting competition in the Salvadoran market.

There are specific markets, where several instances were found, which shows that anticompetitive behaviour does exist but it can be brought to light if allegations are proved to be factual.

Market	***Prevailing Practices***
Sugar	• Price-fixing agreements between producers • Territory distribution among producers • Vertical integration in the marketing and distribution of sugar
Beer	• Regional agreement on beer production • Vertical integration in beer distribution
Cement	• Abuse of dominant position on the part of single player in the market
Liquid Fuels	• Price setting between importing companies
Small and Medium-sized trading	• Predatory prices between competitors to remove their rivals from the market • Misleading publicity • Buying and selling conditions of raw materials • Quota setting for the sale of a product • Price setting between suppliers and distributors

It is evident from the above, that there is an urgent need to verify and confirm these practices as being anticompetitive. Further, such acts should be completely eliminated from the market based on a regulatory framework that prohibits restrictive business practices and abuse of dominant position, in order to strengthen the functioning of domestic market.

Regulatory Framework

A series of regulatory reforms were undertaken in El Salvador in order to integrate the economy into the global markets and to increase its competitiveness. For instance, the demonopolisation of state companies providing public utility services, especially in the energy and telecommunication sectors.

Telecommunications Sector

El Salvador's telecom market is among the most liberalised in Central America. The sector was opened to competition in 1997 when a new law liberalising the telecommunications market was passed in November 1997. This resulted in the privatisation of the state-owned incumbent, *Administradora Nacional de Telecomunicaciones* (ANTEL). Telecommunications is being regulated by the General Telecommunications Authority.

The main objective of liberalising the telecommunications market was to create a new regulatory framework for the sector and increase access to telephone lines.

The improvements have been remarkable as compared to other countries in Central America. Furthermore, in El Salvador, the telecom sector has been privatised with the active participation of the private sector and through the adoption of policies focusing on the sale of public telephone agencies.

Nevertheless, competition problems still persist and it seems necessary to increase participation of the private sector and to develop autonomous regulation and supervision.

Energy Sector

The new regulatory framework created the environment for a more competitive power sector at both the wholesale and retail levels. A new energy exchange has been in operation since April 1998. However, CEL (Company of the Lempa River) and Duke Energy remain the sole supplier of electricity in the wholesale market, and as long as it does not divest its assets there is unlikely to be much competition. Currently, some power companies from Guatemala are competing for access to El Salvador's electricity market. The current interconnection with Guatemala and the future interconnection with Honduras and with the SIEPAC (Electrical Interconnection System for Central America) transmission line will make the electricity market more competitive.

El Salvador's regulatory framework considers five types of market participants: generators, traders, transmitters, distributors and final consumers.

SIGET (*Superintendencia General de Electricidad y Telecomunicaciones*), in charge of regulating the industry, has been in operation since 1997. It was created as an autonomous body with its own budget and equity. Since its inception it has been struggling with a heavy work load and limited resources.

Box 110.1: Salvadoran Electricity Market at a Glance

The market comprises three generating companies viz:
1. Hydroelectric Company of the Lempa River (CEL)
2. Nejapa Power
3. Duke Energy International

These companies generate 93 percent of the national production. Remaining 5-6 percent is imported from Gautemala and one percent comes from hydroelectric mini centrals.

CEL has the largest installed capacity. The market is highly concentrated with little competition. The market is clearly being dominated by CEL and Duke.

The demand for energy in the wholesale market comes from five privately-owned distribution companies and the large-consumer segment.

Recently, certain reforms were approved for this sector. However, a wait-and-see attitude is recommended. In the meantime, SIGET should conduct and publish studies analysing market power in different segments of this sector, since there are well grounded concerns that some market participants, both in generation and distribution, may exert market power.

Consumer Protection[1]

Law 666 Protection to Consumidor (LPC), enacted on March 14, 1996, entrusts the Government of El Salvador, through its Ministry of Economic Affairs, with specific duties in the field of consumer protection. Since this was a new area of government participation, a study to visit SERNAC (National Consumer Service), the analogous

1 www.cdc.org.sv (website of Centre for Consumer Defense)

agency in Chile, was organized for two officials of the public consumer protection department of the Government of El Salvador. The objective of this visit was to analyze the organisation of a consumer protection agency, its internal procedures, and relationship with consumers etc., in order to obtain important inputs for the operation of the El Salvador consumer protection agency.

The present Law of Protection to Consumer (LPC) created the Directorate of Protection of Consumer (DPC).

The DPC functions as a division of the Ministry of Economics. Some of its important official functions are as follows:

- plan activities and design policies oriented toward protecting consumers;
- monitor and supervise price behaviour and compliance with quality, weights and measures;
- information to consumers, etc., of basic and strategic products sold in the domestic market;
- apply measures to avoid the immoderate increase of prices, hoarding of goods, shortages, low quality and other undesirable business practices related to essential goods and the delivery of services to consumers;
- publicise the Consumer Protection Law;
- create consumer awareness on market conditions;
- elaborate and develop consumer education programmes; and
- provide consumers with a redressal system.

However, still the functions of consumer protection law and agency are considered weak to a large extent and they need to be strengthened. For that, the following recommendations have been made:

- revise consumer protection law in a way that immediate actions can be taken on violation;
- increase the budget level of DPC;
- grant more powers to DPC;
- increase DPC's national coverage; and
- create an independent/autonomous authority where representation of consumers exists.

The new legislation is under discussion and the Presidential Commission which was set up by the new Government in June 2004, is actively engrossed in stimulating the national system for consumer protection.

Concluding Observations and Future Scenario

Under an economy with the characteristics and dimensions of the Salvadoran economy, much care must be taken when issuing and applying free competition laws, as the market is small and could easily cause serious damage within the market.

It is expected that the developments in the competition regime happening in recent years will result in incentives for national and foreign investment, an improved business environment and greater efficiency in the overall productive framework.

However, for the successful implementation of competition law, strengthening is needed in the areas, such as lack of local experience in terms of investigation, methods of market structures and behaviour as well as lack of experience on the part of regulatory bodies in the field of competition.

Further, special attention should be given to the inclusion of the following:

- Clear determination of the authority in charge of safeguarding free competition, its area of responsibility and powers. Depending on the type of entity, it must be independent, technical with the necessary strength to apply the resolutions and insulated from the political ups and downs; and
- Determination of practices considered anticompetitive and criteria that will be used to establish if the behaviour investigated is anticompetitive.

In a nutshell, there is an urgent need to have a modern competition law and a competition authority able to investigate and sanction the practices that are currently prevailing in the Salvadoran market.

Suggested Readings

UNCTAD's Phase-I Report on COMPAL Programme "*Strengthening Institutions and Capacities in the area of Competition and Consumer Protection Policies in Latin America*"

The Power Sector in El Salvador

El Salvador - Telecom Market Overview & Statistics