



The Republic of Guatemala is a small country on the Central American isthmus, bordering Mexico to the North, Belize to the East, and Honduras and El Salvador to the South, as well as the North Pacific Ocean, and Gulf of Honduras.

The Mayan civilisation flourished in Guatemala and the surrounding regions, during the first millennium A.D. After almost three centuries as a Spanish colony, Guatemala won its independence in 1821.

During the second half of the 20th century, it experienced a variety of military and civilian governments as well as a 36-year guerrilla war. In 1996, the Government signed a peace agreement formally ending the conflict.<sup>1</sup> Approximately half of the inhabitants of the country live in rural areas.

### Economy

Traditionally, the economy in Guatemala has been based mainly on agriculture. Nevertheless, since the 1980s, commerce has gained more importance. At present, commerce represents a quarter of the economy, and the rest of the tertiary sector contributes 29 percent towards national income. Despite the promotion of a market economy, the economy has not been modernised to a large extent. An important section of the economy has developed in a very informal way. In addition, a part of the income of the rural inhabitants involves consumption of its own production.

The informal development of the economy also affects the quality of information – a key element to the adequate functioning of the market.

The economy has been opened up by 37 percent, but has simultaneously shown signs of its limitations, with a current account deficit amounting to 4.1 percent of the GDP. This deficit has been a long-term characteristic of the Guatemalan economy. Hence, a new commercial strategy

PROFILE	
Population:	12.3 million***
GDP (Current US\$):	24.7 billion***
Per Capita Income: (Current US\$)	1,910 (Atlas method)*** 4,080 (at PPP)**
Surface Area:	108.9 thousand sq. km
Life Expectancy:	65.7 years**
Literacy (%):	69.9 (of ages 15 and above)**
HDI Rank:	121***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

was implemented in the later half of the 1980s, in order to replace the former approach of developing the economy via import substitution, whilst reducing the deficit by increasing export production.

The elements of this new strategy consisted of the gradual reduction of external tariffs; and the elimination of NTBs and price controls. As a result of these new measures, the number of exports increased in the first twelve years of implementation (without reaching those levels prior to 1980).

Even so, after 1995, exports seemed to lose pace, and showed signs of decline. The external sector was modified as a result of this strategy. Traditional exports, such as coffee beans, sugar and bananas began to lose their relative importance for the economy, whereas activities, such as tourism have significantly increased. Another strong income source for the economy is the incomes of those Guatemalan migrant workers, working in stronger economies, repatriating their earnings back home. This is especially the case with Guatemalans working in the US.

\* Original paper submitted in January 2005. Revised in March 2006.

1 <http://www.cia.gov/cia/publications/factbook/geos/gt.html>

## **Competition Evolution and Environment**

Other important economic reforms include privatisation of the public sector. The previously state-owned services have always enjoyed a monopolistic position in the market. The regulation of these sectors was not at a high enough level to deal with the monopolies, formed by the new private sector entities. Therefore, only limited competition was permitted within these sectors, incurring greater costs for the consumers, and creating and maintaining entry barriers for new players.

Presently, given the relatively small size of the economy, and the numerous regulations in existence, creating entry barriers, local markets are continuing to show very little competitive activity. In these sectors, in which prices are fixed, or are suggested by the major distributors, sectoral tariffs tend to be based on 'a common understanding', imparting service providers with 'comfortable positions', and consumers, very little choice. It can be said that, on the whole, sectors are characterised by monopolies, oligopolies, and cartelised markets.

The lack of competition in these markets is also evident on analysis of national accounts. Unearned income, in proportion to production value, seems quite high. This can be taken as a symptom of monopolistic incomes and weak competition. The narrowness of markets, derived from a low monetised economy, has resulted, especially in the twentieth century, in an economy with little diversity in goods and services, in which competition is a very uncommon practice.

At present, due to the narrowness of markets, and the existence of legal entry barriers, the economy has become monopolised and cartelised, particularly in the most important sectors. The sugar sector, for example, is monopolised in its internal distribution system. Sugar production is very important in Guatemala, generating a quarter of a million jobs, as well as being the second highest income earner as an export. There are 17 sugar plants in existence, yet there is only one national distributor, which also sets prices for the consumers.

Another example of anticompetitive business practices prevalent in Guatemala is in the canned beans sector. Five plants participate in the market, out of which two companies have a market share of 92.6 percent. The beer sector in Guatemala is constituted of a virtual duopoly. Prior to 2003, one company controlled 95 percent of the market. In September 2003, an alliance between the national soft drinks bottling company, and a Brazilian brewery broke the monopoly. This competitive action slashed sale prices by 35 percent, showing consumers the advantages of competition.

In the same way, the opening of the telecommunications sector has induced a reduction in the tariffs for established

fixed telephone lines, as well as a wider range of choices for consumers. The same, however, cannot be said for the opening of the electrical energy sector. Energy generation may be competitive, but in the distribution sub-sector, the tariffs for small users have been gradually increasing. Meanwhile, the regulatory authority for the sector has shown signs of incapacity, in failing to establish competitive prices.

In general, there is nothing to impede service providers from colluding to establish fixed prices. From primary necessity goods, such as eggs, to financial services; the alcoholic beverage industry, where an association dictates the prices, with legal sanction; transport services, where a cartel controls the transport of fuel; to many other goods and services – it is clear that the Guatemalan economy needs to urgently enact and enforce competition legislation.

## **Competition Legislation – Commercial Agreements and Commitments**

The countries of the Central American region have signed international agreements to trade freely with Panama, Chile, the Dominican Republic, Mexico and the United States of America, which are awaiting approval from Congress and the Assemblies of each country concerned. Agreements, of this nature, with Canada, are also being negotiated. In most cases, the aforementioned treaties, a chapter on competition has been detailed, establishing the measures to be taken, as well as agreements between parties, to prevent the anticompetitive business practices, which would diminish the benefits awarded by these free trade agreements. In addition, the agreements shape the establishment of mechanisms facilitating the development of competition policies.

Within the framework of the General Treaty on Central American Economic Integration (1993), the Protocol of Guatemala confirms the need of having legal frameworks to regulate competition in the internal markets of the member countries.

## **Regulatory Framework**

Since 1997, Guatemala's last three Governments have been developing a first draft of a Competition Law, into which recent policies, and the international regulatory principles have been incorporated.

The making of the first draft has involved the participation of international experts, as well as national experts, in terms of the draft's development and revision, leaving only the political support necessary for the draft, which is often not obtained due to general ignorance of the subject, or misunderstandings/faulty interpretations of competition policy.

The regulation of monopolies in Guatemala is not a new topic, regulation has occurred from the constitutional level;

**Table 111.1 Central American International Commitments regarding Competition**

Free Trade Agreement (FTA) Dominican Republic	FTA Chile	FTA Panama	Protocol of Guatemala
<i>Chapter XV Article 15</i>	<i>Chapter XV Article 15</i>	<i>Chapter XV Article 15</i>	<i>Chapter II Article 25</i>
To avoid anticompetitive business practices, which reduce the benefits of the treaty.  Establish mechanisms that facilitate and promote the development of competition policies.  To create the Committee of Free Trade and Competition. <sup>2</sup>	To avoid anticompetitive business practices, which reduce the benefits of the treaty.  Establish mechanisms that facilitate and promote the development of competition policies. <sup>3</sup>	To avoid anticompetitive business practices, which reduce the benefits of the treaty.  Establish mechanisms that facilitate and promote the development of competition policies. <sup>4</sup>	In the commerce sector, for the member states to convene and adopt common remedies and measures to prevent monopolistic activities and promote free competition in the countries of the region. <sup>5</sup>

previous paragraph, as ‘the relative specifics for these matters’. The Constitution also confirms other actions of the State, such as to:

- protect the market economy; and
- prevent the associations/combinations that restrict or aim to restrict market freedom and harm consumers.

In this Constitutional norm, the legislature incorporated, in a general manner, those elements constituting a competition law, such as:

- To preserve and promote free competition;
- To increase economic efficiency and consumer welfare;
- The control of acts inducing economic concentration, restrictive agreements or arrangements between firms, i.e. M&As;

- The prevention of abuse of dominant position, which limits market entry for other players or, in some form, restricts competition, thus, adversely affecting national and international trade or economic development; and

- The prevention of excessive practices that lead to the concentration of goods and production methods, to the detriment of the community; and to prohibit monopolistic practices and other practices that may lead to unfair advantages.

and through general, and specific, laws that have been in place for 16 and 30 years, respectively. At present, the Guatemalan regulatory framework is comprised of:

- The Political Constitution of the Republic of Guatemala;
- The Code of Commerce;
- The Penal Code;
- The Law on Hydrocarbon Commercialisation;
- The General Law on Telecommunications; and
- The Banking Law.

The Political Constitution of the Republic, dating back to 1986, clearly establishes the prohibition of Monopolies and Privileges, in an article that states:

**“Article 130. Prohibition of Monopolies.** *Monopolies and privileges are prohibited. The State will limit the operation of those enterprises that acquire or wish to acquire, with damage to the economy, the production in one or more industrial sectors, or in the same commercial activity, or agriculture. The Laws will determine the relative specifics for these matters. The State will protect the market economy, and prevent the combinations that restrict or aim to restrict market freedom, or harm consumers”.*

The Constitution dictates, in the ordinary regulatory laws, the established functions, which are referred to, in the

In addition, the Political Constitution obliges the State, amongst other things, to:

- defend consumers and users, in terms of the preservation of the quality of goods for consumption and for export, to guard consumer health, security, and legitimate economic interests;
- promote the structured and efficient development of trade, both internal and external – boosting the markets for national products; and
- create suitable conditions to encourage both national and foreign investment of capital.

On examination of the aforementioned Constitutional rules, one finds a solid base for the development of a well-founded competition policy, through the State’s obligations to protect the market, promote economic efficiency, prevent

2 Legislative Decree No. 590, 29 April 1999. First Protocol of Free Zone Treaty (FZT) Central America – Dominican republic

3 Legislative Decree No. 567, 4 October 2001. First Protocol of FZT Central America - Chile

4 Legislative Decree No. 1013, 3 October 2002. First Protocol of FZT Central America - Panama

5 Protocol of the General Treaty of Central American Economic Integration, 1993.

practices that restrict competition, and to protect consumer interests.

Unfortunately, these constitutional directives are not complemented by legal institutions or mechanisms, through which they can be effectively enforced or applied. The legislation related to anti-monopoly policy has been on the statute books for decades, before the promulgation of the Political Constitution. Yet, under this policy, not even a single case of violation of these norms has ever been brought forward. Amongst other subordinate legislation, one of the oldest regulatory laws is the Code of Commerce of 1970. This Code determines:

*“Article 361. Prohibition of Monopolies. All enterprises are obligated to sign a contract with whomsoever supplies them with goods or services, observing equal treatment towards all, amongst the diverse categories of consumers”.*

The epigraph of this rule does not necessarily coincide with the text of the article. In fact, this rule does not develop upon the principles established in Article 130 of the Political Constitution, nor does it develop upon the obligations of the State established in the interpolated clauses of Article 119, of the Constitution.

The Penal Code, which has been in force since 1973, outlines certain norms and conduct in Articles 340 and 341, relating especially to the stockpiling or hoarding of goods, resulting in shortages and price hikes. As in the Commercial Code, the Penal Code does not clearly define the terms monopoly and oligopoly, according to modern doctrine. In any case, the penalties imposed for these practices are slight, and so do not, in any way, improve upon economic efficiency, consumer benefits, or upon the essential elements of a modern competition policy.

### **Sectoral Regulation and Anticompetitive Business Practices**

From 1996 onwards, legislation governing the regulation of certain concentrated markets was established. For example:

#### ***Hydrocarbon Sector***

*The Law of Hydrocarbon Commercialisation.* Though this law regulates certain anticompetitive business practices, it has very little scope regarding corrective measures or penalties. The hydrocarbon sector in Guatemala is open. However, abuses of dominant position, cartels and other forms of restrictive business practices go unnoticed, negatively affecting both attempts to make the economy more efficient, as well as promote consumers' interest.

#### ***Telecommunications Sector***

*The General Law on Telecommunications.* This Law was enacted as a result of the need to deregulate the telecom

market, which went from a state-owned monopoly to a competitive market. Before this law was enforced, in 1996, the radio waves were owned and licensed by the State. The Ministry of Communications zoned the radio spectrum, assigning large blocks of bandwidth for particular uses.

This ministry would then split the large block up and assign the smaller portions to individual licensees. Foreign nationals were not allowed to apply for a licence. The licensing process conducted by this ministry was applicable to radio amateurs and TV channels alike, and was often not a transparent process. The licences were practically, and legally, free, if the officer in charge deemed them to be. Even so, demand for the licences far outnumbered the supply, and so an illegal market emerged, in which bribes and an informal market was able to match demand with supply.

The radio spectrum licence was a revocable authorisation to use a given frequency in a specified manner, and only for the use specified. It also specified what was permitted for use in a particular service, for example, technologies, type of equipment, etc. The licence was non-transferable, and as the Government issued it, it could also be revoked at the desire of the Government.

The new law created an allocation system. Any person, or company, national or foreigner may request a licence for any spectrum band, which is currently not assigned to anyone else. If conflicts arise, for example, through distortions or overlapping band interference, then private parties are encouraged to resolve the dispute between themselves. If, however, private mediation is unsuccessful, then the telecommunications regulatory authority, the Superintendencia of Telecommunications (Superintendencia de Telecomunicaciones, or SIT), can intervene. The body may enforce certain rules, and the injured party can even sue for damages.

The most prominent feature of the reform has been in the creation and distribution of usufruct titles. As opposed to the environment prior to 1996, the Government cannot, now, take away these rights. The 1996 law specifies that the Titles of Usufruct of Frequency (TUF) may be leased, sold, subdivided, or consolidated for a maximum period of 15 years. The TUF may be used as equity for investment capital. The duration can be extended for another 15 years, by a simple request and at no cost. Regulation is limited to adjudicating disputes over interfering emissions, and regarding certain bands set aside for solely State use.

The Superintendencia of Telecommunications has issued more than 5,000 TUFs since 1996. The auctions for these TUFs have generated over US\$100mn in revenue, 70 percent of which have been allocated by the State to subsidise rural telephony services.

From 1996 to 2000, the number of telephone lines in Guatemala increased at an annually compounded rate of 45 percent. The number of mobile phones constitutes a large part of this increase, rising from 64,197 at the end of 1997, to 935,488, in June 2001.

The enactment of the General Law on Telecommunications opened the market to both national and foreign investment, and has even helped in the process of economic modernisation and development. By de-monopolising the sector, the aim was to directly benefit users and consumers.

However, anticompetitive business practices are still rampant in the sector that the new Law has not been able to eliminate. This is mainly due to the weakness of the Superintendence of Telecommunications. This body lacks the capacity to penalise established market players for inappropriate business conduct.

Therefore, it is necessary to develop a collection of legislative norms that promote the freedom to compete in an unrestrictive environment, in order for the telecommunications market to pass on the lowest prices, the best services and the greatest diversity of choices to consumers.

### **Banking Sector**

*The Bank Law.* This new law regulates the banking sector with regard to M&As and takeovers. However, the scope of this law does not extend further, in terms of competition in the banking sector. The legislation is processed only in so far as the formal requisites are completed, and that the banking institutions have the economic viability they need to function in the markets, without taking into account any anticompetitive business conduct prevalent in that sector.

### **Consumer Protection**

On February 18, 2003, Congress enacted the Consumer and User Protection Law. This law substitutes the former Consumer Protection Decree-Law, which was enacted in 1985. The new law was enacted to promote, disseminate and defend the rights of customers and users, and establish the fines, sanctions and proceedings applicable to consumer complaints.

The Consumer and User Protection Agency assists consumers in their relations with the suppliers by disseminating information, and educating the public of their rights. To do this, the agency organises campaigns and awareness generating events. The agency also receives complaints and conciliates in the conflicts that arise between consumers and suppliers.

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

Presently, the Guatemalan Government is looking to draw up and implement specific legislation on competition, with the intention of eliminating those obstacles that limit competition, and in so doing, would contribute to the growth of trade and the economy in general.

In fact, there are 14 countries in the continent that have enacted some form of competition legislation. Guatemala forms part of a minority group of Latin American countries that are yet to implement a competition law. The absence of a real competition culture makes discussions on potential initiatives, and successfully reaching a consensus, difficult. Majority of people in the society possess a low perception of the importance of promoting and defending competition, as a prerequisite to reaching adequate levels of efficiency and consumer well being.

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### **Suggested Reading**

Giancarlo Iburguen. *What Guatemala Can Teach the FCC.* The Wall Street Journal, December 27, 2002.

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