



Colombia is located at the northern end of South America bordering the Caribbean Sea, between Panama and Venezuela, and bordering the North Pacific Ocean, between Ecuador and Panama.

A several thousand strong anti-insurgent army of paramilitary has grown up in recent years, challenging the insurgents for control of territory and the drug trade, and also the government's ability to exert its dominion over rural areas. While Bogota steps up efforts to reassert government control throughout the country, neighbouring countries worry about the violence spilling over their borders.

Economy

Colombia's economy suffers from weak domestic and foreign demand, and serious internal armed conflict, but seems poised for a recovery. Other economic problems range from reforming the pension system to reducing high unemployment.

Two of Colombia's leading exports, oil and coffee, face an uncertain future; new exploration is needed to offset declining oil production, while coffee produce and prices are depressed. Nevertheless, the reforms made by President Uribe were acclaimed by the international community.

The reforms include measures designed to reduce the public deficit below 2.5 percent of GDP in 2004. The government's economic policy and democratic security strategy have engendered a growing sense of confidence in the economy, particularly within the business sector, and GDP growth in 2003 was among the highest in Latin America.

Colombia is a WTO member since April 30, 1995 and an ALADI member (Latin America Association of Integration) as well. It participates in the Andean Community, has Free Trade Agreement between the Group of Three (G3) and has negotiated a FTA with the United States.

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PROFILE

Population:	44.6 million***
GDP (Current US\$):	78.7 billion***
Per Capita Income: (Current US\$)	1,180 (Atlas method)*** 6,370 (at PPP)**
Surface Area:	1.1 million sq. km
Life Expectancy:	72.1 years**
Literacy (%):	92.1 (of ages 15 and above)**
HDI Rank:	73***
<i>Sources:</i>	
- 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

Article 1 of Law No. 155 of 1959, as amended by Article 1 of Decree no. 3.307 of 1963, prohibits agreements of any kind designed directly or indirectly, to restrict the production, supply, distribution or consumption of raw materials, goods or services of domestic or foreign origin and, generally speaking, practices, procedures or systems of any kind that restrict freedom of competition and maintain inequitable prices.

Act No. 155 of 1959 laid down certain general premises requiring the preparation of a compendium of case laws or of precise regulations specifying practices deemed to be anticompetitive. No compendium of case laws exists in Colombia, as the subject is new in the country.

Competition Law, Institutions and Anticompetitive Business Practices

The present Constitution of Colombia incorporated the right to free competition and the government issued the Decree No. 2.153 of 1992, by which the pro-competition

legislation was updated and the Superintendent of Industry and Commerce (SIC) was restructured, subordinate to the Commerce, Industry and Tourism Department. Though the Law dates back to 1959, the fundamental application of competition policy has not been initiated yet.

The Decree No. 2.153 of 1992 contains provisions concerning free competition and RTPs. It was designed to stimulate competition in the market and to improve the efficiency of the economy and the well being of entrepreneurs and consumers.

Article 46 of Decree No. 2.153 of 1992 stipulates that under the terms of Act No. 155 of 1959 all practices, which affect freedom of competition in markets and are considered illegal under the Civil Code, are prohibited.

The Law and the Decree are applicable to all public and private companies carrying on entrepreneurial activities – firstly, because the Law makes no distinction between two types of firms; and secondly, because the Decree specifically stipulates that the Superintendent’s terms of reference provide for supervision of all entities carrying on economic activities, irrespective of the type of activity or the legal character of the entity carrying on that activity.

General supervision is exercised to guarantee free competition in national markets, without supplanting the powers assigned in current legislation to other authorities, such as Household Public Services, which, under Law No. 140 of 1993, is the tutelary body of the Public Services Supervisory Board. In the financial sector, under Decree-Law No. 663 of 1992 and Decree No. 2159 of 1995, responsibility for supervision and control lies with the Banking Supervisory Board.

The Decree, while prohibiting all practices contrary to freedom of competition, specifically accepts agreements

to further research and development activities, agreements on compliance with rules, standards and measures and agreements relating to the use of procedures, methods and systems.

The Superintendent of Industry and Commerce (SIC) is a high administrative authority in charge of the protection of economic public order and the preservation of competition. It enjoys administrative, financial and budgetary autonomy. SIC also has judicial authority to investigate and decide on unfair trade practices.

Accordingly, SIC aims its activities towards the investigation and sanction of anticompetitive and unfair trade practices. SIC applies the general competition principles to all economic sectors without special free competition rules. Special competition regimes and additional authorities have been created for sectors of the economy, such as public residential services, telecommunications, television, financial and insurance systems, health, maritime transport and aeronautical sectors.

Decision No. 285 of the *Commission of the Cartagena Agreement*, signed in Lima (Peru) on March 21, 1991, contains regulations to prevent or correct distortions to competition caused by practices restrictive of competition within the Andean Group. This group consists of Bolivia, Colombia, Ecuador, Peru and Venezuela. The free trade agreement between the Group of Three, G3 (Colombia, Mexico and Venezuela), in paragraph (a) of article 16-03, provides for the creation of a Competition Committee with a specific mandate relating to subjects with a bearing on competition policies and trade in the free trade zone. The Committee is composed of representatives of the three countries.

Transactions whereby two or more organisations intend to merge, consolidate or integrate, as well as acquisitions,

Box 107.1: Failing Firm Acquisition Allowed in the Beer Sector

The beer industry in Colombia is highly concentrated. In fact, until a few years ago, all of it was in the hands of one of the five or six powerful conglomerates that control most of the industrial production in the country, with one notable exception.

The main producer (Bavaria) was challenged by a company established by the largest manufacturer of soft drinks (Leona) that built a beer plant for the national market. At around the same time, Bavaria started competing with Leona’s Group in the soft drinks market. Leona’s beer manufacturing operation did not reach the desired profitability levels and it offered the business for sale. Bavaria made a bid for part of the company, which was accepted. Subsequently, both parties requested the approval from

the authorities in pursuance of the regulations.

The decision to integrate was approved, so as to generate a competitive environment required for the establishment of other beer manufacturers at any time in accordance with the rules. The approval was granted making it subject to several relatively stringent conditions, which were put into place to allow other competitors to enter the market at a later time, whether domestic or foreign.

The approval was granted in view of the fact that one of the beer manufacturers would not survive without the integration; if that were the case, a monopoly would emerge, and there would be no easy legal recourse to break it afterwards.

must be reported to SIC prior to the transaction. The reporting requirement applies to transactions involving commercial, industrial and services related legal entities whose joint market share will be more than 25 percent of the relevant market or when the joint venture of the assets involved is higher than about US\$6mn. This would mean that most of the M&As would have to be reported.

The SIC has to make a decision within thirty working days from the date of application. If additional information is requested, the 30 days term is extended from the date the new information is submitted. If there is no decision made within the said term, it is understood that the transaction is approved.

Regulatory Framework

The regulatory framework is defined well in Colombia only in the Constitution of 1992. Later, in the complementary Law No. 142 of 1994, the sectors were defined and further perfected with complementary Laws No. 286 of 1996 and 632 of 2000. Only then was the creation of the regulatory institutions identified as essential.

In Colombia, the regulatory framework has been divided in four economic sectors with regulatory institutions: Telecommunication Regulatory Commission (CRT) and National Television Commission (CNTV) under the Communication Department, Drinking Water and Sanitation Basic Regulatory Commission (CRA) under the Environment Department and Energy and Gas Regulatory Commission (CREG) under the Mines Department.

Box 107.2: Airline Story

The airline industry was a monopoly for many years, since the inception of passenger flights in 1919. At that time an airline called Scadta was founded by Colombian and German investors, serving only national routes. Scadta changed its name later to *Aerovías Nacionales de Colombia*, and then to Avianca (as a result of a merger with *Servicio Aereo Colombiano* SACO).

The Colombian flagship airline served national and international routes. Other airlines tried to break Avianca's monopoly, such as Aerocondor, but later went broke. Others followed, including a small regional one called *Aerolíneas Centrales de Colombia* (ACES), then created by wealthy coffee growers.

ACES grew rapidly and captured a relatively large market share, both in domestic and international flights. More recently, ACES tried, unsuccessfully, to find a strategic partner, but the recession in the Colombian market discouraged prospective investors. The critical financial condition of Avianca prompted the airlines to devise a plan to merge. According to press reports, ACES President would manage both the airlines.

The airlines could choose to request the approval from either the Civil Aeronautics Authority or from the SIC or both. The last option was chosen. The Civil Aeronautics Authority has not made a final decision yet, while the SIC rejected the application. The application had been well documented and provided a schedule for the integration, which did not contemplate a complete merger of the two entities. Rather, the two airlines would remain as separate entities, under a common management and ownership.

In this case, the Superintendent reached a decision keeping in mind that the common good was defined as the preservation of the competition for the benefit of the consumers and allowing investors to continue in operation, carrying out their normal activities in the most effective manner.

One of the airlines claimed to be in poor financial health, having consistently lost market share, while the other was in much better shape, financial and otherwise, and had gained market share in the last years of operations. Therefore, the Superintendent concluded that the interest of the country and of the consumers would be better served by rejecting the integration, since in the event of failure of the least efficient one, there would be several other airlines that would take its place, thus providing more efficient and effective transportation services. On the other hand, if the decision had been in favour of the approval, a quasi-monopoly would emerge, generating the possibility of abuse of dominant position.

There are still any sectors without particular institutions, like the financial sector, transport and environment. The objective of Law No. 142 is to assure competition in sectors under public and/or private administration, while retaining the possibility of intervention by the government to promote overall welfare.

Telecommunications Sector¹

The telecommunications sector in Colombia has characteristics that differ substantially from most of the countries of the world. Today, the sector is open to competition in all services. Colombia has more than 30 companies that offer local telephony services in different cities and towns, more than 80 companies that offer services of data transmission and 6 cellular telephony companies that began operations three years ago.

Revenue from the telecommunications sector contributes almost three percent of the Gross Net Product. The Ministry of Telecommunications is in charge of planning and regulation of mobile, cellular telephony, data transmission services, Internet service providers (ISP), radio-electric spectrum, the technical plans of numbering and signaling and broadcasting services.

1 <http://www.connect-world.com/Articles/5Colombia.html>

There are also two regulatory commissions: one in charge of television – National Television Commission, and the other in charge of regulating telecommunications.

In 1994, the Telecommunications Regulatory Commission (CRT), was created by the Public Utility Services Law. The local telephony service was open to competition. This Law also established the parameters by which the CRT could define the structure for long distance service. The CRT has become an active, independent entity that was able to break 50 years of long distance monopoly.

Energy Sector²

Energy sector is of enormous importance as it yields important economic benefits. The law for the electricity sector was first passed in 1990 through a decree. The current structure of the electricity sector in Colombia is a direct result of the stipulations formulated in the Electricity Law and the Public Utilities Services Law.

CREG has been operating satisfactorily since 1993 when it was established by decree, and affirmed by law in 1994, as the new institution in charge of regulating the electricity and gas sectors. Its independence has been questioned, as three ministers sit on its eight-member board of directors, and most of its budget comes from the Ministry of Mines and Energy.

The 1994 Law also created the Superintendent of Public Services (SSP) to oversee the compliance of public service enterprises with legal and regulatory criteria.

Consumer Protection

The Constitution has many Articles about consumer protection – specifically No. 78 to control quality and freedom of consumer organisations, and No. 88, ‘the law will regulate the people’s action for the protection of the rights and collective interest, in its relation with free competition’.

It is not clear that the law’s core mandate is freedom to consumers or government control over market conditions.

About free competition, Article 333 says: “Free competition is the right of all who assume its

responsibilities... The State, under mandate of the Law, will prevent the obstruction or restriction of economic liberty and will prevent or control any form of abuse that persons or businesses make of their dominant market position. The law will restrict the scope of economic freedom when the Nation’s social interest, state of affairs, and cultural patrimony demands it”.

Article 334 gives to State the right to intervene to guarantee the development and to promote productivity and competitiveness.

Concluding Observations and Future Scenario

Presently, there are two projects or proposals in Colombia. The first one is the Indicative Plan 2002-2006 that involves the Superintendent of Industry and Commerce, in order to reinforce and create a conducive environment for competition. It was last revised in 2004.

The second project is the Internal Agenda for Productivity and Competitiveness, where central government, provinces, representatives of sectors, society and academia participate in forums and discuss proposals to strengthen the economy and institutions. The final report will be released in 2005.

Both the projects are the responsibility of the Planning Department and the Commerce, Industry and Tourism Department (mincomercio). The projects’ objectives are to prepare most of the Colombian sectors for globalisation and to adapt both legislation and institutions to provide competition and harmonisation with WTO rules.

Development has been assured with macroeconomic and microeconomic stabilisation policies. In this regard, it is possible to identify three points and future objectives in Colombia today:

- to build and maintain solid and efficient economic institutions;
- to prepare the domestic economy in the era of globalisation; and
- to promote economic development with regional integration.

2 www.iadb.org/sds/doc/1823eng.pdf