



Panama², is a small country, which is situated between Costa Rica to the North and Colombia to the South, and connects Central and South America. The country is dominated by a central ridge of highlands that form a continental divide. It is bordered by both the Caribbean Sea and the Pacific Ocean

Economy

Panama's economy was in shambles at the outset of 1990, after years of mismanagement, two years of US economic sanctions, and the lingering effects of increased debt servicing requirements.

The recovery started after 1990s when the country experienced GDP growth at least 3.4 percent in real terms in 1990 and by 9.3 percent in 1991, and inflation remained very low. Government policies aimed at encouraging foreign private investment for export industries and at improving market efficiencies through the elimination of tariffs, price controls, and quotas were proposed.

Because of its key geographic location, Panama's economy is based on services, especially banking, commerce, and tourism. The most important sectors that have encouraged growth in the country are the Panama Canal and the country's shipping and port activities.

The country's chief exports include bananas, sugar, shrimp, and coffee. It also produces petroleum products, construction materials, and clothing. Despite these resources, Panama still faces a legacy of economic crises and soaring unemployment.

PROFILE	
Population:	3.0 million***
GDP (Current US\$):	12.9 billion***
Per Capita Income: (Current US\$)	4,060 (Atlas method)*** 6,170 (at PPP.)
Land Area:	75,520 sq kms ***
Life Expectancy:	75 years**
Literacy (%):	92.3** (of ages 15 and above)
HDI Rank:	61
Sources:	
- World Development Indicators Database, World Bank, 2005	
- Human Development Report Statistics, UNDP, 2004	
(**) For the year 2002	
(***) For the year 2003	

Competition Evolution and Environment

Structural economic reforms commenced in 1990s were the key to lasting Panamanian growth and development. The change in approach in Panama's economic policy since 1990s has translated into an increasingly market-driven economic development.

In early 1992, the Endara Government concluded negotiations with the international financial institutions to clear Panama's arrears with these institutions and to restore access to new financing. These negotiations included Panamanian agreement to implement various structural reforms, such as trade liberalisation, tax and social security reforms, privatisation, poverty reduction, and increased public investment.

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1 Comments received from Dr. Gustavo Adolfo Paredes, The Free Competition and Consumer Affairs Commission (CLICAC) and Oscar García Cardoze, Chief Economist - CLICAC

2 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>

The Government launched an economic reforms programme in 1994 to liberalise trade, attract foreign investment, privatise SoEs, stimulate fiscal reform, and encourage job creation. These reforms have taken root and are having a positive impact on the economy.

The economic reform implemented in Panama during the 1990s also paved the way towards formation of a free market economy, the principal objective of which was the generation of the fundamentals and mechanisms required for the efficient development of the markets, through a wide and competitive regulatory framework.

The concept of competition policy came into effect in the 90s and therefore this phenomenon is not new to Panama. Indeed the section of Panamanian Constitution on the domestic economy takes into account competition as one of its subjects. The section bans all such combinations, contracts or actions from commerce and industry intended to restrict or prevent competition and having monopolistic practices, which adversely affect the public.

From the Panamanian point of view, competition means rivalry in the market place, which is regulated by a set of policies and laws. Since the beginning, competition policy in Panama had three goals:

- consumer welfare;
- economic efficiency; and
- check on concentration of economic power.

In early 1994, the Government started preparing studies to enable the principle set forth in the Constitution to take form of a draft law regulating free competition and allowing new market policies to be adopted. This was done with the main objective of promoting economic efficiency and consumer welfare. While drafting this bill, laws of countries with high degree of experience in competition field were consulted, such as United States, Mexico, Peru etc., which resulted in a modern and up-to-date law.

The draft law covered substantive concepts for regulating a free-market economy and proposed the creation of an autonomous authority with decision-making and enforcement power and endowed with the legal means to carry out its duties. Furthermore, the draft law also endowed the judicial branch with a new, specialised structure to handle competition cases.

Competition Law

Panama thus enacted for the first time its antitrust legislation in 1996 by means of *Law No. 29* thereby rules in defense of competition as well as other measure were passed on February 01, 1996. This lays down the adequate framework for the promotion and protection of competition in the Republic of Panama. The objective of the law is to protect and ensure free economic competition; eliminating monopolistic practices and other restrictions on the

functioning of an efficient market in goods and services to preserve the highest consumers' interest.

The passage of such a law constituted a groundbreaking step in overcoming the obstacles to a free-market economy.

The Law has well designed provisions, which seek to ensure free competition and avoid distortions that may affect the free operation in markets of goods and services in the country.

Law 29, 1996 applies to all economic agents, with no distinction made between individuals, legal entities, private enterprises, state, municipal, industrial institutions, merchants, professionals and for-profit or not-for profit entities.

Institutions and its Competencies

Panamanian agencies responsible for competition, compared with their counterparts enjoy a high degree of autonomy, are given sufficient resources and have excellent technical capabilities for exercising their authority to investigate and sanction. To maintain the spirit, Law 29, 1996 created the following public entities:

- *The Free Competition and Consumer Affairs Commission (CLICAC)*, one of whose responsibilities is to foster free competition in the domestic market. It basically carries out administrative functions and as its main objectives ensures compliance with the constitutional and legal provisions which protect competition, promote consumer protection, and also the investigation and sanctioning of illegal acts.

CLICAC was created as a decentralised government agency with its own legal status and independent in its internal management. Hence, it was given autonomy in its decision-making and the ability to appoint its own staff; and

- *Specialised Tribunals*, comprising Municipal Courts, Circuit Courts and a Superior Tribunal of Justice, which are basically in charge of solving individual or collective claims and disputes that may arise in relation to intellectual property, antitrust, consumer protection, unfair trade practices, authorisations to CLICAC to present evidence, sanctions or violations to the law etc.

On the advocacy part, CLICAC has conducted investigations and studies aimed at preserving safety regulations governing goods and services available to consumers, while assisting various Commissions of the Legislative Assembly in framing and debating important pieces of draft legislations.

Law 29 of 1996 also empowers CLICAC to issue opinions on laws, regulations, administrative acts and draft laws, to

conduct studies, so as to detect distortions affecting consumers and to encourage the elimination of such practices either by providing the society with information or by recommending legislative/administrative measures to rectify them.

Anticompetitive Business Practices

The Antitrust Law, which also includes consumer protection and litigation provisions, among others, has been regulated by means of Executive Decree No.31 of September 03, 1998

The law contemplates the constitutional provisions on monopolies, free competition and consumer protection contained in Title X of the Political Constitution and comprises four groups of provisions:

- prevention of monopolistic practices;
- consumer protection provisions;
- prevention of unfair competition; and
- procedural provisions and specialised entities.

Therefore, the law prohibits:

- absolute monopolistic practices which are agreements that are deemed illegal *per se*, regardless of their economic effects
- Relative monopolistic practices, which are all those, which restrain or harm free competition and which involves an economic agent with substantial power in the relevant market.

Box 115.1: Fine Levied on Flour Cartel

CLICAC filed the complaint with the Eighth Circuit Court, Civil Branch of the First Judicial Circuit of Panama, against four companies in the flour industry for alleged monopolistic practices by fixing sales prices.

The Circuit Judge of Panama, acting on a complaint from CLICAC, fined Panama's four flour companies, Harinas Panama SA, Harinas del Istmo SA, Gold Mills de Panama SA and Oro del Norte SA, for price fixing.

In addition to US\$100,000 fines, the judge ordered the companies to stop consulting with one another about the prices of flour and declared all agreements among the companies null and void. The companies and their industry group, the National Association of Wheat Millers of Panama, protested against the action and decided to appeal the decision.

Source: http://www.thepanamanews.com/pn/v_09/issue_19/business_briefs.html

Box 115.2: Blocking a Merger in the Brewery Industry

Panama's competition authority, The Free Competition and Consumer Affairs Commission (CLICAC) had finally rejected an appeal by a Colombian drinks maker, *Bavaria*, Latin America's fourth largest brewer that was attempting to buy *Baru-Panama*, the Panamanian brewer.

The Commission blocked the deal after deciding that the combination would stifle competition in Panama's brewing industry.

CLICAC estimated that the takeover would cost consumers in Panama US\$23mn a year in higher beer prices.

Bavaria also owns Cerveceria Nacional, Panamanian Brewer and had hoped to merge the two entities on completion of a deal with Baru-Panama, thus achieving a monopoly position in Panama's beer market.

Furthermore, CLICAC stated that the deal was against the spirit of trade and expected to damage Panama's US\$10 bn a year economy.

Thus, Bavaria's efforts to buy Baru-Panama from Coca-Cola de Panama Cia Embotelladora SA, ended up in vain.

Source: www.global-competition.com/headlines/archive/2002/jun_jul/headlines.htm

Consumer protection provisions are geared towards the protection of consumers of goods and services. As such, the law regulates in detail certain implicit warranties of goods sold or service rendered to consumers.

Regulatory Framework

Panama maintains an open regulatory environment for services. The Public Service Regulatory Entity (ERSP) of 1996 and now the National Authority for Public Services (Decree Law N° 10 of February 20,2006) is an independent agency responsible for the regulation, supervision, and oversight of public water (potable) supply and sanitation, telecommunications, and electricity services. This entity regulates each sector according to the provisions of this, and the other relevant sector laws.

Telecommunications Sector

During the last four years, the telecommunications market in Panama has undergone a radical change. After the privatisation of the Government-owned

telecommunications company (INTEL) in 1997, and the creation of the Telecommunications Authority (*Ente Regulador de los Servicios Públicos* (ERSP) in 1996, the market has evolved through privatisation and limited market opening, improving the quality of the basic and value added telecommunication services within the country.

Energy Sector

The new regulatory framework aims to provide a more competitive environment. *Law No. 6, Electricity Public Service Law (February 1997)*: Submitted to Congress in October 1996, this law replaces provisions in Law No. 6 (1995) and other sector laws. It creates an Energy Policy Commission (CNPE) to define a strategy and a set of policies for the energy sector and outlines a new sector structure and guidelines for each activity.

With the establishment of the Public Service Regulatory Entity (ERSP) in 1996, regulatory functions (including tariff and standard-setting responsibilities) were separated from commercial activities. The 1997 Electricity Law assigns policy functions to a new entity, the *Comisión Nacional de Política Energética* (CNPE), under the Ministry of Planning and Energy Policy.

As per the new regulatory framework, the responsibility for central planning is under the aegis of Transmission Enterprise, and specific system coordinating, regulating, and oversight activities under the Central Dispatch Unit (CND). Commercial activities are to be carried out by private entities. All of these functions were formerly performed by IRHE.

The ERSP is in charge of establishing the rules, norms, and regulations for power sector activities.

Consumer Protection

Consumers' interest is enshrined in the whole system of the Panamanian competition policy. Panama's competition law and authority are both working with the main aim to protect the rights and interest of consumers.

Consumers are protected by the theoretically autonomous CLICAC, which has levied fines for practices ranging from selling expired products to price gouging.

One of CLICAC's main activities in this area was its registration of three consumer organisations, two of which are receiving funding (applicable under Law 29) for the purpose of conducting publicity campaigns.

The Registered Consumer Organisations are:

- Panama National Union of Consumers and Users (UNCUREPA);
- Consumers and Users Foundation (FUNDECU); and
- Association for the Protection of Consumer Rights and the Environment (ANAPRODECA).

In addition, various activities promoting consumer awareness are carried out through fairs, one-day training courses and information booths etc.

Box 115.3: Right to Information Asserted by CLICAC

Article 31 of Law 29, 1996 lays down the duty of the supplier to render due information on products and services offered in the market to the ultimate consumers.

The authority imposed a penalty on *Colegio Internacional de Saint George* on its failure to comply with its legal obligation to inform clearly and truthfully when advertising its educational services.

The Law imposes obligation on *Colegio Saint George* to see adequate and sufficient information to compare different alternatives on the market and to choose the best option is given to the consumers of the services.

Source: Report on Development and Enforcement of Competition Policy and Laws in the Western Hemisphere

Concluding Observations and Future Scenario

The key of Panamanian competition policy implementation system is based on universally proven principles: free competition; deregulation of the economy and an opening of fair trade which are undoubtedly proven tools to promote economic efficiency, employment generation, and reduced cost of living.

Previously some sectors such as telecommunications, public transportation, energy, water and sanitation etc., were not under the jurisdiction of the Law 29, 1996. However, a change was brought about recently to CLICAC's structure and functions, as well as to major provisions of Law 29 (Decree Law N° 9 of February 20, 2006), that now includes these sectors under the jurisdiction of Law 29 and the Authority for the Protection of Consumer and Defense of the Competition (former CLICAC).

It is recommended for CLICAC to have an understanding with other regulatory bodies, as in many other countries. Otherwise, this reticence tends to be one of the biggest drawbacks in the Panamanian competition regime.

However, after so many years of existence, CLICAC faces certain institutional challenges in discharging its functions efficiently. The following is recommended to overcome the problems faced by the competition authority:

- obtaining more budget for functioning;
- recruiting personnel with professional expertise;
- conducting training programmes for officials;

- providing CLICAC with adequate legal instruments to undertake tests and procedures for processing of investigations;
- well planned dissemination strategy; and
- transparency in regard to the interpretation and compliance of the competition law.

These efforts will certainly increase the efficiency and credibility of the competition agency in fulfilling its activities in the area of competition policy in the Republic of Panama.

Suggested Readings

Report on Development and Enforcement of Competition Policy and Laws in the Western Hemisphere, Submitted by the OAS Trade Unit to the FTAA Working Group on Competition Policies

The Power Sector In Panama: An Overview