



Paraguay is surrounded by Brazil, Bolivia, and Argentina in south-central South America. Eastern Paraguay, between the Parana and Paraguay rivers, is upland country with the thickest population settled on the grassy slope that inclines towards the Paraguay River. The greater part of the Chaco region to the west is covered with marshes, lagoons, and forests.

Paraguay suffered a long dictatorship till 1989. Once democracy was restored, a process of economic reforms started and markets were opened, but without proper regulation.

Other factors like small size of the economy, high levels of inefficiency, endemic corruption and control of local finances and opportunities in the hands of a few private business groups only exacerbated the already delicate situation.

Last year, Paraguay occupied the 100th position of a total of 104 countries in the Growth Competitiveness Index Rate, the World Economic Forum's annual review of global competitiveness, which is composed of three parameters: technology, public institutions and macroeconomic environment.

Economy

Landlocked Paraguay has a market economy marked by a large informal sector. A large percentage of the population derives its living from agricultural activity, often only at subsistence level. The formal economy grew at an average of about three percent annually between 1995-97, but averaged near-zero growth in 1998-2001. It contracted by 2.3 percent in 2002, in response to regional contagion and an outbreak of hoof-and-mouth disease. Aided by a firmer exchange rate and perhaps a greater confidence in the economic policy of the Duarte Frutos administration, the economy bounced back in 2003 and 2004, posting modest growth each year.

PROFILE	
Population:	5.6 million***
GDP (Current US\$):	6 billion***
Per Capita Income: (Current US\$)	1,110 (Atlas method)*** 4,610 (at PPP)**
Surface Area:	406.8 thousand sq. km
Life Expectancy:	70.7 years**
Literacy (%):	91.6 (of ages 15 and above)**
HDI Rank:	89***
Sources: - World Development Indicators Database, World Bank, 2004 - Human Development Report Statistics, UNDP, 2004 (**) For the year 2002 (***) For the year 2003	

Competition Policy and Law

Paraguay is in the process of implementing economic reforms, which has been called State Reform. In the absence of a competition law, the legislations introduced for promotion and protection of competition in local market have been unsuccessful up to today.

Besides the creation of effective competition and the promotion of economic efficiency and consumer welfare, a competition law is necessary in Paraguay as the State Reform includes the privatisation of public services. The Law that will govern these entities must take into consideration competition concerns. The competition law should be the framework from which these regulatory laws would be derived.

Furthermore, Paraguay is a member of Mercosur. It is negotiating on several trade liberalisation agreements, such as Mercosur-EU and the Free Trade Area of the Americas (FTAA). This means that more products and services will be competing in the market and, unless there is a

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Co-authors: Lucas Novaes, Pedro Scazufca, Tatiana Sereda, Amanda Felsky.

† For C.V.s of authors, please see pg-557.

competition law enforcing a clear set of rules, the benefits of liberalisation will be lost. Finally, creating a juridical security with clear and fair legislation will make the surrounding environment much more attractive to investors.

As a consequence of the need for a body of law that covers all aspects of competition defence, several drafts were submitted to the Congress for study.

Until 2000, the submitted drafts were rejected, as none of them was satisfactory. However, a Draft of Competition Law was submitted for approval to the National Congress in March 2002. The draft has been sponsored by the Ministry of Industry and Commerce of Paraguay (MIC), and prepared by the Portuguese jurist Nuno Ruiz, who was hired within the ATN/SF-5888-PR Programme of the Inter-American Bank of Development (IABD).

The draft of competition law took, as examples, the European model (specially Spain and Portugal) and the Argentine and Brazilian models where competition laws already exist.

It turned into a law project, prepared and revised by the Ministry of Industry and Commerce of Paraguay. It was approved by the *Equipo Económico de la Nación* and presented to the National Congress in December 2003. Three Commissions of the legislature studied the project and it was discussed in the Senate.

One of the major challenges faced by Paraguay to implement a competition law is the informal sector, which represents about 70 percent of the economy and it is vital for the country, especially in employment generation.

Although Paraguay is a relatively small economy, the country needs a suitable policy of competition to establish an effective protection to the consumer, to strengthen national firms and to increase the efficiency and dynamism of economy to cope with globalisation.

The Competition Law Project

Although there is no competition law in force yet, it is interesting to analyse the Law Project to be able to elaborate some future scenarios for the country. The project is still in a draft phase.

Competition, according to the Law Project, is the freedom to buy, to sell, and to have access to the market without restrictions, in efficient conditions.

The scope of the Law includes:

- all firms, from the public or private sector, which engage in economic activity, with or without a profit motive, in the national territory;

- national or foreign firms, which engage in economic activity outside the country with effects in the internal market; and
- natural persons who represent firms.

The enforcement authority is the National Commission for Competition Defence (Commission) – created by the law – linked to the Ministry of Industry and Commerce, and the Technical Secretariat for Competition Defence.

The Commission will have political and administrative autonomy. The body will be composed of three members and one president, appointed by the President of the Republic, who must be graduates in Law, Administration or Economics. Their tenure will be five years, but they may be re-appointed. The decision-making body, the Commission, will have jurisdiction to:

- investigate and prohibit restrictive practices;
- investigate and authorise certain practices;
- provide assistance to the Ministry of Industry and Commerce on competition policy issues; and
- the Technical Secretariat, an adjunct body of the Commission, will perform investigative tasks, and promote standard procedures and cooperation with foreign bodies and institutions.

Prohibited practices:

Agreements between firms, which have the following effects are proposed to be prohibited:

- impeding or restricting competition through price fixing, production and market share;
- creating a false appearance of competition;
- restricting the entry of new companies in the market;
- anticompetitive vertical practices or restrictions;
- abuse of market dominance;
- abuse of economic dependence: different from a dominant position as it consists of the abusive exploitation by a firm or more which have the power to force anticompetitive restrictions on suppliers, distributors and clients;
- predatory pricing, which means the sale of goods or services at a price below the actual cost of production, acquisition or replacement; and
- mergers or acquisitions, which can pose a significant threat to effective competition or create a dominant position.

Practices subject to authorisation:

Agreements between firms:

- that are the result of the application of special laws or regulations;
- when the total market share of the firms involved does not surpass:
 - ◆ five percent in horizontal agreements
 - ◆ 10 percent in vertical agreements

- when mergers and acquisitions contribute to improving the production or marketing of goods and services, or to promoting technical or economic progress, as long as these operations do not create the ability to eliminate competition; and
- that have as an object the promotion or protection of exports, as long as they do not impact on the internal market and are compatible with the international agreements Paraguay has entered into.

Sanctions

As in the case of EU, the penalties imposed are pecuniary fines. The Commission will be able to:

- penalise restrictive agreements and abusive conducts with fines of up to 6,500 times the monthly minimum wages, an amount that could be increased until 10 percent of the global gross turnover of the company in the immediate past year prior to the sanction;
- impose a fine to the legal representatives of up to 1,600 monthly minimum wages; and
- impose fines of up to 1,600 monthly minimum wages to the responsible persons, who, deliberately or by negligence, conceal information or present it in an incomplete or inexact way.

The Commission will be able to impose daily coercive fines of up to 1,600 monthly minimum wages to force:

- cessation of an action that has been prohibited according to the Law;
- removal of the harmful effect on competition by an infraction; and
- fulfillment of the commitments adopted.

Regulatory Framework

Although there is no competition law yet in force in Paraguay, some of the sectors, that used to be state monopolies, have been liberalised and privatised during the State Reform, with the purpose of promoting and developing competition as well as to attract private investments in those sectors. In the process, several regulatory agencies have been created. The main regulators are:

- Electricity: *Administración Nacional de Electricidad* (ANDE), autonomous regulatory body responsible for the regulation in the electricity markets (Law No. 966 of 1964 and Law No. 976 of 1982);
- Telecommunications: *Comisión Nacional de Telecomunicaciones* (CONATEL), autonomous regulatory body responsible for the telecom sector (Law No. 642 of 1995); and
- Sanitation: *Ente Regulador de Servicios Sanitarios* (ERSSAN). Law No. 1614 of 2000 established ERSSAN as the regulatory agency as well as the regulatory framework for the water and sanitation sector.

Paraguay and Brazil are partners in the biggest hydroelectricity project in the world: Itaipu. A capacity of 12,600MW a month is shared between the countries.

The project is responsible for the generation of 95 percent of the energy of the country. The construction started in the 70's and the first of the 18 units started to operate in 1984.

According to Article 3 of the Telecommunication Law, "it is a responsibility of the State for the promotion, control and regulation of the telecommunications; which will within the framework implement these functions through a National Commission of Telecommunications (CONATEL) with an integrated policy of services, lenders, users, technology and industry". CONATEL was created in 1995. Telecommunications regulatory framework, based on an open market system, intends to stimulate private investments in the sector.

Consumer Protection

The *'Dirección General de Defensa del Consumidor'* has the authority on matters regarding the application of the law No. 1334 of 1998 on 'Consumers and Users' Defence'. This body is responsible for organising consumer education and to investigate products and services. However, this body only assures that the supply and the image presented of products or services are precise. However, it does not promote consumer protection against anticompetitive practices.

In 2001, Agreement of Technical Cooperation was signed between the Government of Paraguay and the Inter-American Development Bank (IADB), to finance the hiring of consultants and the acquisition of necessary goods for the formulation of a focused programme for the strengthening of the System of Protection of Consumer (SPC). The Programme's object is to contribute to the enlargement of the SPC, looking for a greater transparency in the relations between market agents.

Concluding Observations and Future Scenario

If the Project of Law of Competition Defence is approved, it will provide the establishment of the National Commission for Competition Defence, which will be able to:

- control harmful effects of national or international cartels;
- control harmful effects derived from merging companies inside or outside the country;
- control exploitation of dominant position in the market by national or foreign companies;
- follow efficiently economic reforms of liberalisation of markets, sectors, prices, privatisations and foreign investments;
- assist the regulatory agencies properly; and
- honour commitments assumed in different processes of commercial integration in which the country takes part (MERCOSUR, EU, ALCA, WTO).

However, along with positive aspects, there are issues about the Project, which are either not clear, or not developed

enough, such as definition of unspecific conditions and an almost complete and exclusive control of public authorities over commercial operations. Nonetheless, the Project is a good starting point to protect consumer and general public interest.

It is clear that there are great challenges to be faced as Paraguay adopts national competition legislation, especially in the informal sector and the political instability. What remains to be seen is how effective will the said legislation be given that it may be abused by narrow political interests.