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Venezuela

– *Gesner Oliveira*†

Venezuela is located at Northern South America, bordering the Caribbean Sea and the North Atlantic Ocean, between Colombia and Guyana. Democratically elected governments have held sway since 1959.

Current concerns include a polarised political environment, a politicised military, drug-related violence along the Colombian border, increasing internal drug consumption, over-dependence on the petroleum industry with its price fluctuations, and irresponsible mining operations that are endangering the rain forests and indigenous peoples.

Economy

Venezuela, the third largest economy of South America, is highly dependent on petroleum, which accounts for roughly one-third of GDP, around 80 percent of export earnings, and more than half of government operating revenues. Despite higher oil prices at the end of 2002 and into 2003, domestic political instability continued, culminating in a disastrous two-month national oil strike from December 2002 to February 2003. After bad performance through these two years, the economy recovered in 2004.

PROFILE	
Population:	25.7 million***
GDP (Current US$):	85.4 billion***
Per Capita Income: (Current US$)	3,490 (Atlas method)*** 5,380 (at PPP.)**
Surface Area:	912.1 thousand sq. km
Life Expectancy:	73.6 years**
Literacy (%):	93.1 (of ages 15 and above)**
HDI Rank:	68***

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

Principles of competition have been enshrined in several provisions of the Venezuelan constitution and some laws of the country. The most important among them are:

- Article 299 of Constitution of Venezuela: "The economic regime of the Bolivarian Republic of Venezuela is based on the principles of social justice, democratisation, efficiency, free competition...";
- Article 113 of the Constitution contains the following restrictions: i) Monopolies; ii) Abuse of Dominant Power; and iii) Concentrations;
- Article 114: "The economic unlawful, speculation, monopoly, usury, cartelisation, and other related practices, will be prosecuted severely in accordance with the law";
- Law to Promote and Protect the Exercise of Free Competition, G.O Nº 34.880 was enacted in 1992;
- Rule Nº 1 to Promote and Protect the Exercise of Free Competition (1993); and
- Rule Nº 2 to Promote and Protect the Exercise of Free Competition (1996).

Competition Law, Institutions and Anticompetitive Business Practices

The antitrust law was enacted in 1991. The free competition regime in Venezuela started in 1992 when the government set up new policies in order to prepare the country to face globalisation, including the Law to Promote and Protect the Exercise of Free Competition. The objective of the law is to guarantee the efficiency that benefits producers and consumers and also to prohibit monopolies and oligopolies. In short, the objective of the law is to avoid all practices that could impede or limit economic freedom.

The Superintendent for the Promotion and Protection of the Free Competition (*Pro-Competencia*) is the organisation that administers the competition law. It has functional autonomy, but administratively, it is under the Production and Commerce Ministry.

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The Venezuelan system of free competition prohibits in general all the conducts, practices, agreements that impede or limit free competition. In particular, the legislation prohibits boycotts, cartels and other horizontal agreements, bid rigging, vertical agreements that contain vertical restraints and the abuse of dominant position. The Law also prohibits all mergers – horizontal, vertical or other – that are restrictive of the market or could generate or reinforce a dominant position in a relevant market. Finally, the Law prohibits unfair competition in terms of misleading or false advertising, commercial corruption, violation of industrial secrets, etc. and other commercial policies, which tend to eliminate competitors.

Cartels and bid rigging, boycotts, abuse of dominant position and unfair competition are *per se* violations of the law. The Office should analyse other anticompetitive practices using the 'rule of reason' in order to establish whether or not there is violation of the Law or if the Office should authorise the practice. In order to develop the case, the Office uses the test of the relevant market.

In the case of mergers, there are two ways to review them. One is to authorise them (*ex ante*) and that is voluntary for the parties, i.e., the pre-merger notification procedure is not obligatory. The other is to announce an administrative measure. The principle is to determine *ex post* if the merger has violated the law, because it is anticompetitive or restricts competition.

Box 119.1: Case on Parallel Import in the Ball Bearings Sector

This is a parallel import case, involving the companies: SKF Venezolana and Seal-Pack. The first one is the official seller of the ball bearings produced by the Swedish company SKF and the second one is a company that distributes products of some companies, including SKF.

On September 18, 2002, the Office, on request from SKF Venezolana, started an administrative enquiry against Seal-Pack for selling SKF products illegally in Venezuela. The official seller argued that Seal-Pack was selling an inferior quality product with SKF's name and charging a different price for it. This would constitute an illegal practice.

According to Resolution No. SPPLC/0008-2003 adopted on April 2, 2003, the Office decided that there were no restrictive practices that would jeopardise free trade. The analyses concluded that Seal-Pack was making some 'parallel importation' of the same product that SKF Venezolana produced. Parallel import is not considered an irregular practice since those imports by someone other than the exclusive seller can provide the same quality for less cost to the consumers. The import of goods by other firms that do not have the exclusive dealership can be justified since it stimulates competition and the consumer can obtain cheaper prices for foreign goods in the national market.

Box 119.2: Price Fixing in the Cement Sector

On November 14, 2003, under enquiry No. SPPLC/0033-03, the Office imposed fines of US$1.3mn for price fixing on the following cement producers: Cemex de Venezuela, S.A.C.A , Cementos Caribe, C.A. , C.A. *Fábrica Nacional de Cementos*, S.A.C.A, *Cementos Catatumbo*, C.A. And *Corporación de Cemento Andino, C.A.*

During the investigation the Office obtained some evidence that the companies were colluding on the cement price. The fine represents 0.5 percent of sales from Portland Gris Tipe I during fiscal year 2002.

Regulatory Framework

Venezuela is a pioneer in Latin America of the idea that reform of the State is necessary. However, the country has underachieved goals. Regulation that was associated with privatisation was successful only in the telecommunications sector. Even in this case there are many difficulties due to legal deficiencies in the regulatory framework. In the other sectors the regulatory bodies are very dispersed and usually dependent on the Central Government. At this time, the regulatory bodies are not modern, professional or independent, and even though there is a desire for change, little can be done without institutional change.

Table 119.1: Prohibitions in Venezuela Competition Law

Horizontal Agreements	Vertical Agreements	Market Power
• Price-fixation • Boycotts • Market Allocation • Auction Manipulation	• Price Agreements • Market Sharing • Selling Agreements • Limitations to production	• Price Discrimination • Tying practice • Reducing market access to others' products

Source: Jatar (1993)

Telecommunications Sector[1]

The first legal instrument specially aimed at regulating telecommunication services in Venezuela was enacted in 1940. This Law was adopted under a traditional concept of public services, since it regulated all telecommunications services as activities exclusively reserved for the State. The legal regulation precluded the private sector from participating freely in that sector. In fact, during more than fifty years, the government held exclusive power allowing the private sector to operate some activities under strict controls and regulations, which required the granting of a public concession to render telecommunication services.

1 http://www.badellgrau.com/telecommunications.htm

Chart 119.2: Regulatory Bodies in Venezuela	
Agency	**Sector**
Conatel	Telecommunications
Enagas	Gas
Hidroven	Water
Cree	Electricity

The main purpose of the law is the protection of the interests and rights of users, as well as the quality of access to the telecommunication service. Moreover, it seeks to promote free competition among the service operators, development and efficient integration of telecommunication services, efficient use of spectrum resources and encouragement of national and foreign investment for the modernisation and development of the sector.

A new liberalisation process for the telecommunications sector is being carried out in Venezuela, since the adoption of the Telecommunications Law and a full set of regulations has been enacted by the National Telecommunications Commission (CONATEL). The liberalisation will aim to replace the 10-year exclusive operation granted to the National Telephone Company (CANTV) and attract new investors to the sector. The adoption of the Telecommunication Law in June 2000 provides a modern and workable framework that will lead to the development of the telecommunications services within a free and competitive market where both local and foreign investors operate.

Energy Sector

The Electricity Law (1999) formalises and further develops many features of the 1996 Presidential Decree. The main points covered by the new law are:

- guaranteed uninterrupted electricity supply at the lowest possible cost;
- develop real competition in generation and marketing, with state and private sector; capital, and permit free access to transmission and distribution networks;
- reserve the right to fix tariffs for generation, transmission, distribution and marketing for the state, through the Energy and Mines Ministry;
- separate the legal, accounting and management aspects of generation, transmission, distribution and marketing of electricity companies.
- promote extension of services to isolated and depressed areas and encourage alternative energy sources;
- respect rights of municipal governments;
- establishes the new *Comisión de Energía Eléctrica* (CNEE) to regulate and oversee the sector; and
- creates the new *Centro Nacional de Gestión del Sistema Eléctrico* (CNGSE) to operate and manage the interconnected system.

Under terms of the Law, electricity companies will split into separate distribution, transmission and generation units, all of which will be open to private sector investment. Hydroelectric plants, however, will remain under state control due to their 'strategic importance'.

The national transmission network, established in 1968, will become a separate state-run enterprise, which will connect power generators with local distribution firms.

The law envisages that the new institutions to regulate and operate the sector will be in place within two years from its enactment. During the interim, the Ministry of Energy and Mines, with the support of FUNDELEC, will perform the role of CNEE and the existing system operator, OPSIS will operate and control the generation and transmission activities

Decree No. 2383 (July 1992) created the Electric Energy Regulatory Commission (CREE). The Commission determines the maximum annual rate of return, establishes a tariff regime approving expansion plans and coordinates future investment. The Minister of Energy and Mines functions as the President of the Regulatory Commission.

Consumer Protection Scenario

The first consumer protection authority created in Venezuela was The National Commission of Supplying in 1994. The Commission's role was to regulate and control transport, rents and foreign trade.

In 1947, the Law against monopolies and speculation was created, a legal instrument to punish abusive practices and treatments, illegal sale and transfer of merchandise with the intention of increasing prices, and conditional sale. The project on an antitrust law was introduced in the National Congress the same year.

In 1973, the first Consumer Protection Project of Law was introduced in the National Congress. This Project was rejected and a new legal instrument titled 'Anti-trust Project of Law and Protection to the Consumer' was approved. This way, the Supervision of Protection to the Consumer was created, which is an authority assigned to the Ministry of Public Works and the Economy, renamed the Ministry of Production and Trade.

A new Consumer Protection Law was adopted in 1992. The promulgation of this new legal instrument brought with itself the creation of the Institute for the Defense and Education of Consumidor (IDEC). Its programmatic remit included consumer education, information, organisation, direction and protection to the consumers.

A reform of the Law was approved in 1995, including the figure of the user in its scope. Both the name of the Law and the one of the Institute, started to be called with a different name: Law of Protection to the Consumer and

the User, and Institute for the Defense and Education of the Consumer and User (INDECU).

Finally in 2004, the second reform of the Law took place with the objective of adapting it to the requirements of the new Constitution of Venezuela. In this exercise more than 76 articles were amended and twenty new ones were included, reinforcing the prosecuting and supervisory capacity of INDECU. Other present innovations in the law constitute the combat and penalty of crimes, such as usury, payment in dollars for real estate transactions, unjustified cut of the public services, monopolistic and fraudulent alteration of prices. In addition, it imposes sanctions on those who receive surcharges or commission to cancel with debit, credit cards, cheque or any other financial instrument.

Concluding Observations and Future Scenario

The State used to be interventionist in Venezuela. Practices, such as price control and import restrictions were the cornerstones of the economic policy. Collusive practices were common before the approval of the competition law. In a concentrated economy such as Venezuela, where monopolies and oligopolies are influential in many sectors, an aggressive attitude against powerful companies is expected from the competition authority. The competition law was enacted with the objective of changing this situation. Nevertheless, some sectors have been protected for so many years that the legal structure of those sectors conflicts with the competition law.

There are four important requirements to improve the competition law in Venezuela:

1. improve cartel monitoring;
2. more exposure of the financial sector to foreign competition;
3. signal that the Government has assumed an anti-protectionist posture with application of competition law *de facto*; and
4. creation of a Competition Commission (as proposed in the law project).