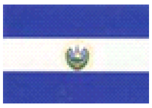

El Salvador❖

Situated on the Pacific coast of Central America, El Salvador has Guatemala to the West and Honduras to the North and East. It is the smallest of the Central American countries.

El Salvador is both the most densely populated state on the mainland of the Americas and the most industrialised in Central America.

El Salvador achieved independence from Spain in 1821 and from the Central American Federation in 1839.

Economy
El Salvador's economy is primarily agricultural, generating employment to about 40 percent of the population and contributing to around 15 percent of the GDP. Nonetheless, it is highly industrialised. El Salvador's economy was adversely affected by its 12-year civil war. Beginning in the early 1990s, attempts were made to revive the country's economic life, and the economy had recovered by the beginning of 2001, when El Salvador adopted the US dollar as its official currency.

Coffee is the main agricultural export. Other relevant exports include cotton, sugar, wheat and corn flour, clothing and metalworking. The leading imports are petroleum products, consumer goods, foodstuff, and machinery.

Compared to other developing countries, El Salvador has experienced relatively low rates of GDP growth. With the global recession in 2009, real GDP contracted by 3.1 per cent. The economy began a slow recovery in 2010 on the back of improved export and remittances figures.

Free market policy initiatives carried out by the Nationalist Republican Alliance (ARENA) governments, included the privatisation of the banking system, telecommunications, public pensions, electrical distribution and generation, reduction of import duties, elimination of price controls, and enhancing the investment climate through measures, such as enforcement of IPRs.

PROFILE	
Population:	6.23 million***
GDP (Current US$):	23.05 billion***
Per Capita Income: (Current US$)	3,480 (Atlas Method) 6,629 (at PPP.)***
Surface Area:	21,040 thousand sq. km
Life Expectancy:	72 years**
Literacy (%):	84.1 (of ages 15 and above)**
HDI Rank:	105**

Sources:
- World Development Indicators Database, World Bank, 2004
- Human Development Report, UNDP, 2011

(**) For the year 2010
(**) For the year 2011

On June 01, 2009, a new President took office; he was a political candidate appointed by *Frente Farabundo Martí para la Liberación Nacional* (FMLN) political party.

The five year plan of this government lays emphasis on constructing from a national cohesion perspective, a new model of growth and comprehensive economic and social development, which enables an efficient insertion in the global economy. It is envisaged that generation of significant and sustained growth, and provision of respectable and sufficient employment, might contribute to reduce inequalities, social exclusion, and poverty.

Competition Evolution and Environment
Since 1989, the Salvadorian Government has aimed to create an efficient and diversified economy, driven by export-led growth. Reforms began in 1990s, pursuing macroeconomic stabilisation, trade liberalisation, and deregulation policies.

Since 1990s, the Salvadorian market economy has been characterised by liberalisation. The extent of state intervention in the economy is small. The Government regulates market competition in a business-friendly manner.

❖ Original paper written (2006-07) & updated (August 2012) internally by CUTS International.

El Salvador has enjoyed a stable macroeconomic environment but the need was felt to support it by on-going efforts to further liberalise and update the legal framework. Consideration was also given to the more active promotion of competition in the domestic market.

An increased interest in competition policies followed the process of economic reforms and economic liberalisation undergone by most Latin American countries in the 1990s. Although discussions on competition law commenced in 1990s, it was almost ten years later when the debate resumed with greater strength.

Until 2004, there was no explicit legislation or relevant authority to regulate competition conditions in the Salvadorian market. Over the ten years before enacting the Competition Law, numerous legislative initiatives were made to adopt a law for regulating free competition but to no avail.

To be more precise, seven attempts were made at passing of a competition law, none of which succeeded.

The foundation of a competition law can also be found very much in El Salvador's Constitution:

1. Article 110 promulgated by Decree No. 38 dated December 15, 1983 stipulates that '*is prohibited to authorise any monopoly unless in favour of the Government or the Municipalities, when essential for the public interest…….. To guarantee economic freedom and protect the consumer, monopolistic practices are prohibited…*'
2. Commercial Code Articles 489, 490 and 491 promulgated by Legislative Decree No. 671 dated May 8, 1970 that regulate matters relating to commercial activity and good practices without prejudice to the public interest or to the national economy.
3. Criminal Code Article 232 promulgated by Legislative Decree No. 1030 dated April 30, 1997, which imposes sanctions for offences relating to trade and free competition.

The fact was that the absence of a competition law in El Salvador was inconsistent with a well-functioning market economy.

A first draft of a competition law was presented to the Legislative Assembly in 1994, but it was not enacted. Various proposals were made in the ensuing ten years, but none became law.

A national discussion on anti-trust laws and free competition led to development of a draft anti-trust law. In 2003, a draft *Bill on Free Competition* was submitted to the Salvadoran Parliament after being modified several times by the different political parties. Some of the key provisions of the draft Bill can be summarised as follows:

- drafted pursuant to Articles 101, 102 and 110 of the Salvadoran Constitution;
- applies to all economic agents;
- acts against free competition are those involving abuse of dominant position and concentrations, if such act substantially affects competition in the market;
- create the Bureau of Competition, which will have the authority to control and supervise activities of the market; and
- competitors are prohibited from dividing the market in any way.

Competition Law and Policy

In 2004 a new President, Antonio Saca, was elected, and he provided new impetus for a competition law. Finally the *Competition Law* was enacted in November 2004, to take effect on January 01, 2006.

The law was amended in 2007, providing for important new powers for the Superintendency and for higher maximum fines for especially harmful conduct.

Institutions and its Competencies

The law creates an independent enforcement agency, La Superintendencia de Competencia (Superintendency) with the powers that it needs to enforce the law effectively. It is an independent entity with administrative and budgetary autonomy, responsible for promoting, protecting, and ensuring competition in order to increase economic efficiency and consumer welfare.

It possesses the usual investigatory and advocacy powers. Its decisions are enforced by an autonomous Board of Directors, composed of the Superintendent, two Property Directors and three Alternate Directors appointed by the President of the Republic, for a five-year period.

The Superintendency of Competition is one of several independent superintendencies in El Salvador, which is a part of the executive branch; it has a separate budget, which is submitted through the Ministry of the Economy to the Ministry of Finance.

At the beginning of its work the competition agency systematically arranged its priorities for its first few years. It initially focused on developing supporting regulations and guidelines to round out the structure provided by the law. Then it concentrated on developing a competition advocacy programme, involving both providing advice to other government bodies on matters of competition policy and educating the public about competition policy and the work of the agency.

The Superintendency has entered into several co-operation agreements with other Ibero-American competition agencies and with Salvadorcan sector regulators.

Anti-Competitive Practices
In most respects the law is structured like many other competition laws. It addresses the three common forms of anticompetitive conduct: restrictive agreements, abuse of dominance and anticompetitive mergers. It employs the commonly-used substantive tests for each of these three types of conduct.

Box 1: Cable Television

In El Salvador, home builders sometimes undertake to construct new communities of many homes; in the process they build in infrastructure for such services as electricity, telephone and cable television. In one case, a builder subscribed an agreement with a company which belonged to its same economic group for the provision of cable TV service in two communities that it was building. The reporting parties (competing cable providers) claimed they also desired to provide service in those communities, but the construction company physically prevented the competitors from entering the premises to install equipment. In some instances the builder destroyed competitive equipment that had already been installed.

The respondent claimed that if it were to permit other entities to enter the construction zone it could cause damage to the properties. Another defense was that security was an important consideration to homeowners in the community, and that it would compromise security to permit others to enter. The Board of Directors resolved that the arguments alleged by the investigated parties were not enough to distort the anticompetitive practice attributed to them. The Board fined the builder and its affiliate a total of approximately US$34,000 and ordered them to cease the offending practices. The fines have been paid.

Regulatory Framework
A series of regulatory reforms were undertaken in El Salvador in order to integrate the economy into the global markets and to increase its competitiveness, for instance, the de-monopolisation of state companies providing public utility services, especially in the energy and telecommunication sectors.

Telecommunications Sector
El Salvador's telecom market is among the most liberalised in Central America. The sector was opened to competition in 1997 when a new law liberalising the telecommunications market was passed in November 1997. This resulted in the privatisation of the state-owned incumbent, *Administradora Nacional de Telecomunicaciones* (ANTEL). Telecommunications is regulated by SIGET (*Superintendencia General de Electricidady Telecomunicaciones*).

Box 2: Agricultural Products Brokers

In this case, a group of six brokers operating on the country's agricultural products exchange jointly published a notice that they were establishing a tariff for minimum commissions to be charged to their customers for determined transactions conducted on the exchange. The publication was clear evidence of the agreement, and the Superintendency obtained other evidence, including emails and minutes of meetings, that confirmed it.

In their defense the brokers claimed that the agreement had never been put into effect. The Superintendency developed evidence to the contrary. However, the brokers also claimed that the increase was necessary because the existing commissions, especially those paid by large customers, were very small.

The Board of Directors rejected these defenses and fined each of the brokers approximately US$5, 000. Three of the respondents appealed their fines to the Supreme Court, which has not yet made a decision

The main objective of liberalising the telecommunications market was to create a new regulatory framework for the sector and increase access to telephone lines.

The improvements have been remarkable as compared to other countries in Central America. Furthermore, in El Salvador, the telecom sector has been privatised with the active participation of the private sector and through the adoption of policies focusing on the sale of public telephone agencies.

El Salvador telecom sector has seen important developments in the last two decades. The combination of privatisation, liberalisation, and development of information and communication technologies (ICTs), and the expansion strategies of telecom international enterprises allowed the entry of new economic agents which have transformed the telecom market in El Salvador.

Energy Sector
The electricity sector, like other infrastructure sectors, was privatised in the mid and late 1990s. Competition exists in generation, distribution, and trade; the transmission company (ETESAL) is a state owned monopoly.

The new regulatory framework created the environment for a more competitive power sector at both the wholesale and retail levels. A new energy exchange has been in operation since April 1998.

Most of the electricity provided in the wholesale market is generated by four main economic agents: CEL (*Comisión*

Ejecutiva Hidroeléctrica del Río Lempa), LaGeo, Duke Energy International El Salvador, Nejapa Power Company. Additionally in the wholesale market are some cogenerating enterprises of less importance. Nonetheless, said four main generators contributed 90 per cent to the wholesale market during the first semester of 2006, and 95 per cent of the installed capacity (December 2005).

The impact of the imports from Guatemala and Honduras is highly peripheral and the interconnection yet does not have enough capacity to be considered that the generators in said countries, or others, compete directly with the national generators. The data from 2007 reflected that such energy net imports from peripherals ranged from 6 to 9 per cent in the last three years.

El Salvador's regulatory framework considers five types of market participants: generators, traders, transmitters, distributors and final consumers.

Box 3: Salvadoran Electricity Market at a Glance

The market comprises four main generating companies viz:
1. Hydroelectric Company of the Lempa River (CEL)
2. Nejapa Power Company
3. Duke Energy International El Salvador
4. La Geo

CEL has 40 per cent of the installed capacity (2005), followed by Duke (28 percent).

Distribution companies are: DELSUR, and the distributors which form the AES Corporation El Salvador group: CAESS, AES-CLESA, EEO, DEUSEM.

In the national and international transmission ETESAL (State enterprise) and the international operator act as monopolies.

In El Salvador, the demand for electricity comprises four segments: residential, industrial, commercial, and government.

The sector regulator is SIGET, in charge of regulating the industry, and has been in operation since 1997. As its name indicates, SIGET also has responsibility for the telecommunications sector. It was created as an autonomous body with its own budget and equity. Since its inception it has been struggling with a heavy work load and limited resources.

Some of the powers of the Superintendent in the electricity sector are:

- general provision to ensure the protection of Competition in the sector;
- regulation of fees for network use;
- regulation of positions in the Transactions Unit;
- granting concessions for the use of water resources and geothermal;
- resolving conflicts between operators; and
- issuing regulations and technical standards for electricity.

Consumer Protection[1]

Consumer protection is robust in El Salvador. *Law 666 Ley de Protección al Consumidor* (LPC), enacted on March 14, 1996, well before the competition law, entrusts the Government of El Salvador, through the *Defensoría del Consumidor*, with specific duties in the field of consumer protection.

The current consumer protection law, enacted in 2005, is a lengthy and comprehensive document. It addresses a wide range of practices, including the sale of unhealthy or dangerous products, toxic substances, various contractual provisions, the sale of defective goods, providing false and misleading information and other advertising practices.

The law is enforced by an independent consumer protection agency, La Defensoría del Consumidor (Defensoría). The Defensoría has broad investigatory and enforcement powers. Through a three person tribunal it can impose fines from 50 to 500 minimum monthly urban wages in the industrial sector, depending upon the severity of the offence and the magnitude of its effect, but for infractions which affect collective interests the fine can be up to five thousand minimum monthly urban wages in the industrial sector.

The 2005 law created what is called the National System for Consumer Protection (SNPC), composed of the *Defensoría* and representatives of the executive branch and other government institutions. Moreover, since 2010, the National Consumer Policy took effect. In this document, the institutions member of the SNPC are ranked according to their intervention areas, besides other agencies as transversal cooperation. The Superintendency is ranked as transversal cooperation. Co-ordinated by the Defensoría, the National System has responsibility for strategic planning and other co-ordinating activities in the field.

Further, the law created a Consultative Council to advise the Defensoría (*Consejo Consultivo de la Defensoría del Consumidor*). Members of the Council include the Superintendent of Competition and representatives of Salvadoran consumer NGOs.

Consumer NGOs are also active in El Salvador, the largest of which is the Center for the Defense of the Consumer.

1 http://defensoria.gob.sv (website: *Defensoría del Consumidor*)

Concluding Observations and Future Scenario

Competition policy in El Salvador is off to a good – one might say excellent – start. El Salvador's experience can serve, in some ways at least, as an example of an effective way to begin to implement a competition policy. Those responsible for drafting the competition law took time to study the laws of other countries and to learn from their experience. They sought and received assistance from outside sources in this endeavour.

Before the law had been in force for two years a consensus was again created for some amendments to it, providing the Superintendency with some important and necessary powers.

El Salvador still lacks a competition culture – a public understanding of and appreciation for competition policy and the mission of the competition agency. While the Superintendency has been successful in competition advocacy, it should build on those efforts, especially for the purpose of strengthening the competition culture in the country.

One area that has not been fully developed in this regard is the interface between competition policy and consumer protection. Consumer protection is popular in El Salvador. Competition policy is another form of consumer protection, and the enforcement entities in both fields would benefit from working more closely together.

The main challenge now is for the Superintendency to demonstrate success in its law enforcement function, especially in anti-cartel enforcement. In addition, the most serious problem confronting the Superintendency has to do with judicial review of its decisions. Appeal of its cases is made directly to the country´s highest court, the Supreme Court. The process there is slow and uncertain.

Suggested Readings

UNCTAD's Phase-I Report on COMPAL Programme "*Strengthening Institutions and Capacities in the area of Competition and Consumer Protection Policies in Latin America*"

The Power Sector in El Salvador

El Salvador - Telecom Market Overview & Statistics

Peer Review of Competition Law and Policy by OECD

Study of competition conditions in the Telecom sector in El Salvador ("*Estudio de Competencia del Sector de Telecomunicaciones de El Salvador*", SC, 2008). http://www.sc.gob.sv/uploads/sector_servicios.pdf

El Salvador, Energy Sector, Sectoral Study on Competition ("*El Salvador, Sector Eléctrico, Estudio Sectorial de Competencia*", SC, 2007). http://www.sc.gob.sv/uploads/sector_energia.pdf

Trade report, 2012. El Salvador Ministry of Economy. (*Informe de Comercio, año 2012, edición 6, Ministerio de Economía El Salvador).* http://www.minec.gob.sv/index.php?option=com_phocadownload&view=category&id=29:informe-de-comercio-internacional&Itemid=63#

Competition Superintendency (*Superintendencia de Competencia*) www.sc.gob.sv

Banco Central de Reserva www.bcr.gob.sv

Government of El Salvador Five year Plan 2010-2014 ("*Plan quinquenal de desarrollo 2010-2014",* Gobierno de El Salvador)