



Panama^{❖1}

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.

Panama has enjoyed some of the highest economic growth in Latin America in the past decade, and most observers predict continued strong growth in the years ahead due to stable and consistent macro-economic policies. Growth tallied 10.5 percent in 2011 and 7.5 percent in 2010, after a deceleration to 3.2 percent in 2009. The Government of Panama (GoP) has promoted economic growth over the last decade through open market policies and by encouraging trade.

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.

PROFILE	
Population:	3.5 million***
GDP (Current US\$):	26.68 billion*
Per Capita Income: (Current US\$)	6,970 (Atlas method)** 12,770 (at PPP.)
Surface Area:	74,340 sq. kms**
Life Expectancy:	77 years***
Literacy (%):	94* (of ages 15 and above)
HDI Rank:	58
<i>Sources:</i> - World Development Indicators Database, World Bank, 2011 - Human Development Report Statistics, UNDP, 2011 (* For the year 2010 (**) For the year 2011 (***) For the year 2012(est.)	

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.

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

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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>

reforms, such as trade liberalisation, tax and social security reforms, privatisation, poverty reduction, and increased public investment.

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 US, 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.

Panama's Law on Competition was modified in February 2006. This new vision expands the law's reach to include companies that provide publicly useful services, as well as substantially altering the commission's internal structure in order to expedite case resolution, and raising fines and facilitating their collection. The new law also offers greater protection for competition authorities, who previously could face prosecution as a result of litigation from existing anti-competitive cases.

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 in Panama's 2006 reform of Law 29, the three-member CLICAC commission was replaced by the National Authority for Consumer Protection and the Defence of Competition presided over by a single administrator.

- *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.

Box 1: Vitamins Class Action Lawsuit Filed in Panama

Hausfeld LLP, a global claimants announced that its Latin American correspondent law firm Rubio, Alvarez, Solis & Abrego (RASA) has filed a class action lawsuit in the First Judicial Circuit of Panama against F. Hoffmann-La Roche, Ltd. (Roche). The lawsuit seeks compensation from Roche for Panamanian vitamin purchasers as a result of Roche’s participation in one of the world’s most notorious price fixing cartels.

The lawsuit specifically alleges that Industrias Lacteas, S.A., a company that, among other activities, raises livestock, was overcharged in its purchases of bulk vitamins from Roche between January 1992 and March 1998.

Under this suit six of the world’s largest vitamin makers agreed to pay about US\$1.1bn to resolve a class-action lawsuit that accused them of participating in a conspiracy to fix vitamin prices over the past decade.

This lawsuit, filed in Panama under Panama’s Law 19 of 2008, is the first international class action filed in Latin America against a non-Latin American defendant, where foreign plaintiffs, with similar claims, are allowed to join. It is also the first Latin American class action involving a global cartel.

Source: http://www.hausfeldllp.com/pages/press_releases/273/vitamins-class-action-lawsuit-filed-in-panama

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. Investigations on anti-competitive practices and applying sanctions fall under the jurisdiction of the Consumer Protection and Competition Defence Authority (ACODECO). Autoridad Nacional de los Servicios Públicos de Panamá or Authority of Public Service (ASEP) can issue resolutions and rules intended to promote fair and efficient competition.

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

Box 2: A Case on Absolute Monopolistic Practices

“*Estaciones de Combustible*” (Petrol Stations): Second Circuit Civil Court of Veraguas, Sentence No. 9, 18 January 2010

ACODECO filed a complaint against six competitors accusing them to have formed a cartel in the fuel market. The Agency affirmed that the firms agreed to fix their retail prices for different types of petrol and diesel during the period of one year (January-December 2005).

According to the agency, the firms uniformly overcharged customers despite having different cost structures. They also exchanged information as a means to sustain the cartel. The defendants denied the charges. The court held in favour of ACODECO’s position and confirmed that there was a cartel during the period at issue.

The court ruled out the argument of price regulation explaining that regulation was not mandatory, but merely a price-signal to the firms. Despite condemning the cartel, however, the court reduced the time duration of the absolute practice to four months (August-December 2005). The decision was challenged by both parties. The sentence has not yet been given by the court of appeal.

Source: <http://www.oecd.org/dataoecd/50/18/46587096.pdf>

- 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.

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 which is converted into the current ASEP, 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 ERSP in 1996 which is converted into the current ASEP, 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 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).

Box 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

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

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, banking, 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 Defence of the Competition (former CLICAC).

The government also revised the 1970 banking law that had enabled Panama to become an international banking centre, and in 1998, created the independent "Superintendencia de Bancos" (Superintendency of Banks of Panamá or SBP) as the agency to oversee financial regulation.

It is recommended for CLICAC to develop an understanding with other regulatory bodies, as in many other countries. Else, this reticence could 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