#EUCA_Trade
EU-CENTRAL AMERICA
ASSOCIATION AGREEMENT

Funded by
The European Union

LEGAL REVIEW OF THE CENTRAL AMERICAN COMPETITION FRAMEWORK

Association Agreement between Central America and the European Union

TITLE VII -TRADE AND COMPETITION
SEPTEMBER 2022

Legal review of the Central American Competition framework

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the AESA and EY, and do not necessarily reflect the views of the European Union or the interviewed stakeholders that were interviewed.

Table of contents

ACRONYMS

EUCAAA	Association Agreement between the European Union and its Members and Central America.
Costa Rica	
ARESEP	Authority for the Regulation Public Services.
AYA	The Institute of Aqueducts and Sewers.
COPROCOM	Costa Rica's Commission to Promote Competition.
ICE	Costa Rican Electricity Institute.
MEIC	Ministry of Economy, Industry and Commerce.
RECOPE	The Costa Rican Oil Refinery.
SUTEL	Costa Rica's Superintendency of Telecommunications.
Guatemala:	
ANFAL	National Association of Manufacturers of Alcohols and Liquors.
ASAZGUA	Association of Sugar Producers of Guatemala.
CENGICAÑA	Research and Development Center of the Sugar Industry.
COMIECO	Council of Ministers of Economic Integration.
Honduras:	
CDPC	Commission for the Defense and Promotion of Competition.
CONATEL	National Commissions of Telecommunications.
Nicaragua:	
ENACAL	Nicaraguan Company of Aqueducts and Sewers.
ENATREL	National Company for Electric Transmission.
ENABUS	National Company of Autobuses
ENABIN	National Company of Inter-Urban Autobuses
ENEL	Nicaraguan Company of Electricity
ENICOM	Nicaraguan Company of Importation, Transport and Marketing of Hydrocarbons
ENIGAS	Nicaraguan Company of Gas
ENIMINAS	Nicaraguan Company of Mines
ENIPLANH	Nicaraguan Company for the Storage and Distribution of Hydrocarbons
ENTRACAR	National Company of Cargo Transport
PROCOMPETENCIA	National Institute for the Promotion of Competition.
Panama:	
ACODECO	Authority of Consumer Protection and Defense of Competition.

INTRODUCTION

This Legal Review analyzes the national Competition Framework of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; as well as the Central American Competition Regulations and the extent to which these laws lead to free and undistorted competition in trade relations between the EU and these Central American countries in light of the provisions of the EUCAAA. The aim of the study is not only to describe how the Competition Framework is shaped in these Central American countries, but rather, it also focuses on how the law is enforced.

Enforcement of competition laws and policies does not lie, however, on a single factor and thus, the complexity of its measurement. Enforcement could stem from having a robust Competition Framework that ensures a consistent, predictable, and transparent process, but also from creating a competent and independent authority (both from an organizational and financial point of view) who can enforce such law. Nevertheless, other factors that escape the legal perspective are also key such as, but not limited to, efficient application of economic analysis, trade regulations, and even the priority given to competition policies by a government, bureaucracy, corruption, and a company's likelihood to be able to *effectively* access markets without having to fight against burdensome entry barriers.

Even though all of those factors aid determining whether the Competition Framework is being properly enforced, this study focuses on the *legal* aspects of such enforcement by analyzing the following: i) Who are the Competition Authorities, what are their faculties, their co-operation with peers and other public entities and whether they have sufficient independence to act based on current laws; ii) Cases brought before such Competition Authorities, the fines imposed to the parties involved and whether or not the cases have been overruled by judicial authorities; iii) Markets or issues that special laws (or even competition laws) have excluded from the Competition Framework; iv) Existence of public monopolies and companies with special rights (other than concessions) and thus restricting access to those markets. Furthermore, this legal study has included examples and situations where the law has imposed specific restrictions to foreign companies or individuals to access specific markets and consequently, create a barrier that would restrict such foreign competition. This study will also briefly describe the anti-competitive conducts and merger controls (concentrations) regulated by the Central American countries. All of the above is performed in light of Chapter VII the EUCAAA.

I. COSTA RICA

1. Introduction

In Costa Rica, Competition regulations were first introduced in 1994, when Law N° 7472, Law for the Promotion of Competition and Effective Defense of Consumers, came into force. Among other matters, Law N° 7472 called for the creation of COPROCOM, charged with enforcing competition rules. This law remained, for the most part, unaffected until 2019 with the approval of Law N° 9736: *Law for the Strengthening of the Competition Authorities*, approved as part of Costa Rica's accession process to the OECD, and which includes some important reforms to the country's Competition Framework e.g., merger control, as well as the inclusion of new instruments such as the leniency program and the *de minimis* rule, and most importantly, it aimed to strengthen both of Costa Rica's competition authorities (i.e. COPROCOM and SUTEL). The General Telecommunications Law created a "sectorial" competition regime especially for the operation of networks and telecommunications services promoted and supervised by SUTEL. This regime, however, is fundamentally the same as the competition regulations of Law N° 7472 and Law N° 9726 and in fact, both laws are of supplementary application to the General Telecommunications Law.

Costa Rica's Competition Framework is comprised by the following laws: i) Political Constitution of Costa Rica (Article 46); ii) Law for the Promotion of Competition and Effective Defense of the Consumer (Law Nr. 7472) and its Bylaws; iii) General Telecommunications Law (Law Nr. 8642); iv) Law for the Strengthening of the Competition Authorities (Law N° 9736) and its Bylaws; v) Law of the Public Services Regulatory Authority (Law Nr. 7593); vi) General Law of Public Administration (Law Nr. 6227). Furthermore, Costa Rica adopted the Central American Competition Regulations without reservations by executive decree on May 21, 2021.

2. Competition Authorities (article 279 of the EUCAAA)

Description: COPROCOM[1] and SUTEL[2] oversee the defense and promotion of free competition, the latter being Costa Rica's Superintendency specialized in overseeing in general, the telecommunications market and its regulations. Whereas COPROCOM is an organ pertaining to the MEIC, SUTEL pertains to ARESEP, albeit both have maximum independence and autonomy, i.e., they possess technical, administrative, budgetary, and functional independence that allows them to execute their functions under their own discretion without interference from political pressures. They also have instrumental legal capacity that allows them to manage their resources and assets and enter into contracts and agreements with both public and private entities either national or international. SUTEL has the obligation to consult with COPROCOM before issuing final decisions on concentrations and anticompetitive practices. However, COMPROCOM´s opinion is not binding. Law Nr. 9736's main objective is the modernization of both competition authorities. For instance, it increased the competition authorities' budget[3] and modified COPROCOM's organization by introducing a full-time competition council. This Law, among other important reforms, strengthen both

[1] https://www.coprocom.go.cr/
[2] https://sutel.go.cr/
[3] Coprocom's budget for 2022 is of ¢708,641,188.00, colones, approximately USD$1,024,47. 00 (based on an exchange rate of ¢692 per USD$1.00). However, this represents 30% of the total of the budget that was designated by law:
https://www.coprocom.go.cr/acerca_coprocom/priorizacion_evaluacion/PROYECTO_Presup_ORDINARIO_2022.pdf

authorities' capacities for the promotion of competition or their "advocacy function", and granted them with the possibility to encourage undistorted competition with non- coercive means such as the issue of opinions, and guides, market studies, counseling activities, trainings and the execution of cooperation agreements with peers from other countries. The latter, is considered fundamental for the enforcement of Competition Law. Competition Authorities may also issue opinions with regards to a public bid's term sheet and identify those elements that could obstruct competition. These opinions, however, are not binding. Nevertheless, those public entities that chose to disregard these opinions will have to justify the grounds for disregarding Coprocom´s recommendation.

Functions and powers: The Competition Authorities in Costa Rica have 3 fundamental functions: *i) competition advocacy or promotion of competition;* [4] *ii) investigate and fine anticompetitive conducts or illegal concentrations;* and *iii) merger control*. As mentioned above, the advocacy function was invigorated with the introduction of changes of Law N° 9736 as did, in general all 3 fundamental functions. For instance, COPROCOM is empowered to request to public or private entities any relevant information or documentation required by COPROCOM to fulfill its tasks. It also has the possibility – once authorized by the competent judicial authority-, to conduct inspections of industrial and commercial establishments and of other facilities, when deemed necessary to collect evidence or avoid its destruction. The tasks of the Competition Authorities are not only aimed towards the private sector, but also to the public one. The Authorities are empowered to challenge administrative acts of public entities, but also, they are encouraged to establish cooperation mechanisms. COPROCOM has the authority to impeach and challenge any acts, resolutions or conducts by public entities, as well as laws and regulations that could hinder competition. The Competition Authorities can also recommend to the Public Administration the regulation or deregulation of prices. Internationally, the Authorities may request every 5 years to a specialized international organism, the performance of a peer review. In contrast to other countries, COPROCOM does not oversee consumer protection law which is entrusted to a different entity[5] and is focused solely in competition issues.

Cooperation Agreements and Exchange of Information: Prior to the enaction of Law N° 9736, COPROCOM did not have the authority to conduct joint investigations or share information with competition authorities from other countries. However, since its adoption, several international cooperation agreements have been signed with competition agencies such as CONACOM (Paraguay), SIC (Colombia), and COFECE (Mexico). Among the Central American countries, Costa Rica has agreements with all its peers (with the exception of Guatemala). In addition, Costa Rica signed the agreement to create the Central American network of national competition authorities with the Republic of Nicaragua, El Salvador, Panama and Honduras in 2012. Confidential Information may also be shared. However, the Cooperation Agreements must provide for the appropriate mechanisms to safeguard such information in accordance with applicable law. Confidential information may only be used for the purposes for which it was requested under the terms of the Cooperation Agreement and those officials who breach such dispositions are subject to applicable sanctions.

[4] Advocacy function: one of the most important tasks of COPROCOM is to disseminate the scope of the legislation and contribute to the development of a competition culture in the country, through the awareness of the benefits that it can generate to the various actors and, especially, to consumers

[5] National Consumers' Commission.

3. Anticompetitive Conducts and Concentrations (article 279 of the EUCAAA)

Articles 278 and Article 279 Section1, of the EUCAAA call for the adoption of laws to efficiently regulate the following anticompetitive conducts: i) agreements between entities or cartels; ii) any type of abuse by any company with a dominant position or market power; and iii) concentrations that could hinder competition. Costa Rica's competition law covers all these 3 aspects.

Agreements/Cartels: Cartels or Agreements are known as "Absolute Monopolistic Practices". Costa Rican Law (article 11 of Law N° 7472) prohibits conducts known in international doctrine as "hardcore cartels" (i.e., price fixing; output restriction, submission of collusive tenders and division or sharing of markets). In addition, article 11 includes 2 additional practices: agreements to boycott competitors and exchange of information to achieve the formation of the cartel. Costa Rican law, however, neglects regulating other types of conducts different to the conducts specifically regulated by article 11, and therefore, in theory, such agreements would not be punishable by law, even if these generate anticompetitive effects. In Costa Rica, there are no criminal sanctions for those responsible. Nevertheless, the modification introduced by Law N° 9736 does include *personal* economic responsibility in addition to the fines that are imposed to the companies or economic agents involved in the agreement. It also increased the quantum of the fines to up to 10% of the company's gross income of the last fiscal year; as well as the prohibition to participate in public tenders.

It is not necessary to prove that the agreement had actual effects in the market, but rather, it is only necessary to verify that the agreement took place, i.e., Competition Authorities use the *per-se* rule for "hardcore cartels"; which has been confirmed by case-law. The intention, effects in the market and size of the company are analyzed, but only to establish the applicable fines. However, the modifications introduced by Law N° 9736, include a "de minimis rule" and hence, economic agents that represent less than 5% of the relevant market are exempt from these regulations, creating thus an exception to the *per-se* rule. Furthermore, Law N° 9736 also includes a leniency program which has not yet been put in practice.

In 27 years, there have been 16 procedures conducted by COPROCOM related to Absolute Monopolistic Practices. [6] Most of these decisions have remained firm or have been confirmed by judicial authorities. However, in some cases courts have partially or totally annulled COPROCOM's decisions due to either insufficient reasoning when establishing the fines[7] or rejected the existence of the illegal conduct based on a different assessment of the evidence. Out of those 16 cases, 11 cases have been revised by the judicial authority, 6 were confirmed and 3 were partially revoked due to the aforementioned reasons. Just 1 case was totally revoked. [8] This case took place in 2009 and the authority established fines to 7 out of the 8 pension funds that existed at that time due to price fixing of the commissions that were charged for the administration of the pension funds. The judicial authorities revoked COPROCOM's decision indicating that the evidence was not adequately analyzed. It is important to point out that the insurance market is supervised and regulated in Costa Rica by the General

[6] Thompson Chacon, Alan, Prácticas Monopolísticas Absolutas en la Ley y Jurisprudencia de Costa Rica, Logos Julio-Diciembre, Vol 1 No. 2, p 58.
[7] Fines were from 25 to 569 Base Salaries. In 2001, when the highest fine was imposed, this translated to ₡256,163,800 that based on the highest exchange rate of 2021 converted to USD$ 784,527.13, approximately (based on an exchange rate of ₡1 equal $326. 52).
[8] Thompson, Op. cit.

Superintendency of Insurances (SUGESE) These cases also involved the participation of trade and business associations or organizations and show that these can play an important role in facilitating the agreement and if these organization were to directly sell products or services then they would be considered as "economic agents" and thus, also punishable by law. SUTEL has not registered any proceedings regarding cartels. Even if the number of cases could seem low, these might increase due to the novelties and increase of budget introduced by Law N° 9736 and its Regulations.

Abuse of Market Power: In Costa Rica, these types of conducts are known as "vertical anticompetitive conducts" or "relative monopolistic conducts". Article 12 of Law N° 7472 describes 15 different types of conducts that are prohibited if indeed, the economic agent performing such conduct has "substantial market power in the relevant market". De "*de minimis"* rule of 5% as explained above, also applies. In 2019, Law N° 9736 added 2 conducts out of the current 15 conducts: cross-subsidization and margin squeezing. With regards to the sectorial competition framework of telecommunications, the General Telecommunications Law only regulates 10 conducts excluding margin squeezing. SUTEL has solved just 1 case which was overruled by the judicial authorities. COPROCOM has investigated several cases, that were dismissed due to insufficient evidence and from these, it has been able to impose fines in 13 cases. However, not all fines have been applied, for instance in the case against Credomatic de Costa Rica, S.A. one of Costa Rica's largest financial entity. The case was based on exclusivities and the fine on 2013 was of USD$23,809,4040.7. [9]

Concentrations: Concentrations must be approved by the competition authorities prior to having their intended effect. In case of the telecommunications market all transactions must be notified. The remainder of the economic agents acting in any other market, must only request approval if the thresholds established by Law are met (related to the revenue of the involved parties both individually and jointly, as well as if both economic agents perform actions that have incidence or impact in Costa Rica). In the case of the telecommunications market, the concentration carried out without the prior authorization is considered a material breach consisting of 0,5% to 1% of the parties' gross income and SUTEL is also authorized to order the definitive closure of the establishment if deemed necessary or order the removal of equipment and instruments used in the operations of the telecommunications services Failure to await approval in the markets supervised by COPROCOM is considered a light infraction which entails an economic fine from 0,1% to 3% of the parties "business volume" or revenue from the previous fiscal year. However, COPROCOM could order the dissolution of the concentration, and if this is not possible, the authority could order conditions aimed to reestablish competition levels in the affected market. COPROCOM has rejected only one transaction in the case of a concentration between Walmart and a Costa Rican supermarket chain ("*Periféricos*"). COPROCOM, when concerned by possible anticompetitive effects, approves concentrations subject to the fulfilment of certain conditions that must be complied by the economic agents in order to compensate such negative effects. However, in this case, COPROCOM considered that conditions would not have even been sufficient to counteract the negative effects that would produce this transaction. The case is currently being revised by the judicial authority. In 2020 alone, COPROCOM handled 20 requests for concentration in markets such as: technology products, transportation, loans and leasing, textiles, production and marketing of spices, condiments, seasonings or similar products, and services of

[9] Organization for Economic Co-operation and Development, Costa Rica: Evaluation of Competition Law and Policy, 2020, pp. 62 and 63. Available at: https://www.comex.go.cr/media/8236/evaluacio-n-del-derecho-y-la-poli-tica-de-competencia-cr-esp-20-07-23.pdf

preparations of generic or specific mix packages for the industrial sector, professional services in electromechanical, electrical and mechanical engineering, among others. [10]

4. Public companies or companies holding special or exclusive rights, including designated monopolies (Article 280 EUCAAA).

The Costa Rican Constitution prohibits private monopolies, as well as any acts that threatens freedom of commerce and agriculture. [11] The creation of State-owned monopolies requires the approval of 2/3 of Congress and *de facto* private monopolies must be subjected to special laws. However, there are several public monopolies and companies with special rights to be considered. [12] Further, in Costa Rica there are some markets that are expressly excluded from competition law or, where prices are regulated by guilds or associations; and lastly, there are also markets where discrimination against foreign investment has been imposed by the legal framework; all of which are analyzed as follows:

Public Monopolies: RECOPE: The Costa Rican Oil Refinery was granted by law the monopoly of the importation, refinery, sell and distribution of and its derivates in the country. Law N° 7356 of August 24th, 1993. **ICE:** The Costa Rican Electricity Institute was granted by law the monopoly of the generation of electricity in Costa Rica. Private generation is allowed provided the company sign a Power Purchase Contract with the ICE, private companies are not allowed to sell the electricity to any other party different than ICE and their generation capacity is limited. **JPS**: The Social Protection Board was granted a monopoly in the production, distribution and sale of lottery and raffles in Costa Rica. Law N° 13876 of November 21 st 1951. **AYA:** the AYA is in charge of the provision of water and sewerage in a public monopoly basics, private parties are not allowed to provide such services, in certain locations there are semipublic organizations (ASADAS) that are allowed to provide such services in a specific territory but under a public service philosophy and in coordination with AYA.

Companies with special rights: Dos Pinos: The Co-op law in Costa Rica establish several tax benefits for Co-op companies there are several companies organized under this legislation. The most significant example is Dos Pinos, that Co-op controls the dairy and related industry in a de facto semi monopoly.

Exclusion of Markets: In Costa Rica, the following markets are either expressly excluded from competition law or their prices are fixed by public authorities and/or guilds. **Professional associations:** In Costa Rica there are 33 professional associations, that due to an interpretation of the Constitutional Chamber, are allowed to establish minimum prices. COPROCOM has been opposed to this, most recently in February 2022, indicating that such minimum price fixing restrict access of consumers to such markets, facilitate collusion and increase such prices. **Rice:** The price of rice in Costa Rica is regulated. The Competition Authority (COPROCOM) has issued several resolutions stating that the regulation of rice prices in Costa Rica is not appropriate because it does not meet the principles for an efficient economic regulation, since the regulation is not necessary, nor proportionate, it is distorting and not very transparent. It affects the most vulnerable members of society. However, this resolution has no binding effect. **Coffee:** the Law for the Promotion of Competition and

[10] Executive Report on the Work and Activities of the Commission to Promote Competition (COPROCOM) during 2020. Latest available report.
[11] Article 46, Political Constitution of November 7,1949 and its amendments.
[12] This analysis does not include entities who were granted concessions based on the General Law of Public Administration and the General Concessions Law on Public Works with Public Services.

Effective Defense of the Consumer (Law No. 7472), expressly exempts the coffee industry with respect to the setting of profit percentages for coffee processors and exporters. **Sugar:** the Law for the Promotion of Competition and Effective Consumer Protection, Law No. 7472, expressly exempts the sugar cane industry with respect to the setting of production quotas and sales prices. **Land Maritime Transportation:** the Law for the Promotion of Competition and Effective Consumer Defense (Law No. 7472), expressly exempts maritime transportation maritime transportation with respect to maritime conferences in which tariffs and route distribution among competitors are agreed upon. **Public Services:** ARESEP oversees how the services categorized as "public services or utilities" are being rendered and fixes their prices. These public services are divided into 3 sectors: i) Water; ii) Energy; and iii) Transportation: **i) Water**: hydric resource; sewerage systems; fire hydrants; **ii) Energy:** gas; electricity; **iii) Transportation:** airports; public buses, cabotage; taxis, trains, tolls, ports. ARESP also regulates the prices of mail services (letters and envelopes with weight inferior to 2 kg), which is provided by the Costa Rican Postal Office. **Credit and Debit Card Commissions:** A very recent Law granted the Central Bank of Costa Rica (in charge of macroeconomic issues of the country) to authority to establish maximum percentages on commissions charged by banks to retailers for the use of dataphones. Currently, the commission have been lowered[13] and will be, by 2024 almost equal as the average of commissions charged in OECD countries. [14] Moreover, the financial sector in Costa Rica has been constantly criticized as being collusive and organized as an oligopoly, as has the Association of Costa Rican Banks, that was against the Central Bank lowering said commissions and have mentioned their intention to file a suit before the Costa Rican Courts. [15]

Explicit Discrimination of Foreigners in the following markets: **Energy:** In Costa Rica, at least 35% of the capital of cooperatives and companies that sell their energy to the Costa Rican Electricity Institute (ICE) must be Costa Rican, in accordance with the "Law that Authorizes Autonomous or Parallel Electricity Generation", No. 7200**. Maritime Zone:** The Maritime Zone in Costa Rica is public. The State grants concessions for its development and administration. However, the Law restricts foreigners from having more than 51% ownership in entities with concession rights. There is an exception to this principle with regards to the concessions granted (without discrimination of nationality) to the project developed by the Costa Rican Tourism Institute (ICT) known as "Polo Turístico Papagayo" or *Golfo de Papagayo Tourism Development* (a project of 1,658 hectares) located in Culebra Bay, Guanacaste. [16]

5. Public Procurement and Distribution of Pharmaceutical Products

Public Procurement: Both, the current and the new public procurement law (that enters into force on December 1, 2022) include free competition of both national and international bidders without any distinction regarding nationality as a fundamental principle and prohibit any unjustified restrictions on free participation. However, it is worth mentioning that the law (both of them) include as an exception to this principle of free competition the possibility of

[13] Costa Rican Central Bank Press Release, available at https://www.bccr.fi.cr/comunicacion-y-prensa/Docs_Comunicados_Prensa/CP-BCCR-004-2022-BCCR_fija_nuevas_comisiones_maximas_para_tarjetas_pago.pdf

14 https://semanariouniversidad.com/pais/nuevas-y-menores-comisiones-de-datafonos-entran-a-regir-pese-a-rechazo-de-asociacion-bancaria/#:~:text=Costa%20Rica%20manten%C3%ADa%20tasas%20superiores,es%20un%201%2C75%25.

15 https://semanariouniversidad.com/pais/bancos-llevaran-a-los-tribunales-la-fijacion-de-comisiones-realizada-por-el-bccr/

[16] https://www.ict.go.cr/en/our-work/golfo-de-papagayo-tourism-development.html

public entities have directly execute contracts between them, which in practice means that whenever there is a public provider of the required services (telecommunications, for example) the contracting entity contracts the service directly to the public provider without carrying out a public tender. This is a usual practice that goes against free competition and there are no indications that may suggest that this situation is going to change in the short term. Currently, there is a great agitation around public work contracts since the prosecutor's office of the republic is carrying out the investigation of the "*Cochinilla*" case, in which several of the most important public work contractors were accused, as well as public officials, of carrying out anti-competitive acts in public work tenders, they were accused of fixing the tenders in order to obtain better prices as well as bribe public officials to get an anticompetitive treatment, the case remains under investigation.

Distribution of pharmaceutical products: According to the General Health Law, drugstores are responsible for the import, storage, distribution, and wholesale of pharmaceutical products that are sold to the public through pharmacies. Although the law provides two mechanisms (parallel imports and compulsory licenses) to increase competition in the sector, in practice its enforcement has been impossible by the definition given to establishments which has been included in the regulations. Due to the fact that it is required for the importation to be exclusively from a laboratory located abroad, this makes it almost impossible to find a third party in a country from which to import at a lower price, since this third party must necessarily be a branch of the titular laboratory, and therefore its pricing scheme obeys the interests of its parent company. This situation has implied that in practice the products are imported directly by agreement between the pharmaceutical house and the drugstores and often exclusively by a single drugstore (a situation that is left to the free decision of the parties). In cases where, in practice, there is an exclusive distribution of a product in the country, the situation obeys to a commercial reality of the market, however the regulations do not allow the existence of monopolies in the distribution of products, so the existence of exclusivity agreements would be anti-competitive and could lead to the imposition of fines for its participants, a potential interested party could not be denied market participation on the grounds of the existence of exclusive distribution agreements. Recently, the new government announced a decree that aims to facilitate the parallel importation to achieve greater competition and reduce the price to the consumers. Despite the above, critics have indicated that the decree is not enough and that legal reforms are required to allow importation by any party (not only drugstores) and also to regulate prices directly. For several years, the situation of the high price of medicines in the country has been raised in the public discussion and there are voices that clamor for the state to directly regulate the prices and even bills have been proposed. There are currently several bills in discussion in that regard.

II. EL SALVADOR

1. Introduction

Competition Law in El Salvador has been subject to 3 amendments since its entry into force in 2006. The last amendments were approved in November 2021. The main purposes of the amendments were to adapt the Competition Law to the Administrative Procedures Law. Among the most relevant modifications were the expansion of the Superintendency's faculties and the inclusion of the use of technological means in the procedures handled by the authority.

This demonstrates an effort of the authority to update and periodically review the regulations considering current economic circumstances to protect the correct functioning of the market.

In El Salvador, the current legal framework for competition is mainly comprised of the Competition Law and its regulations, the Central American Competition Regulations. However, the Constitution contains specific reference to prohibition of monopolies and exceptions thereof, as will be detailed below. At the same time, several regulations include in their articles, provisions related to competition rules such as the Organic Law of Civil Aviation, General Electricity Law, Telecommunications Law, General Maritime Port Law, Public Administration Procurement and Contracting Law, Special Law on Public-Private Partnerships, Law to Facilitate Financial Inclusion and the Law for the Promotion, Code of Commerce and Protection and Development of Micro and Small Enterprises.

El Salvador ratified the Association Agreement between Central America and the European Union on July 13, 2013, entering into force on October 1, 2013. Subsequently, on December 10, 2020, El Salvador signed the Central American Competition Regulation, which entered into force in the country as of March 10, 2021, without reservations.

2. Competition Authorities (article 279 of the EUCAAA)

The competition authority in El Salvador is the Superintendency of Competition (SC). According to Article 3 of the Competition Law, the Superintendency is a public law institution which has its own legal personality, as well as administrative and budgetary *autonomy*. The highest authority of the Superintendence is the Board of Directors, which is formed by the Superintendent and two Directors, who are appointed by the President of the Republic (Art. 6 of the Competition Law). The institution has its own budget which for 2022 is of $2,661,308.00 US dollars. [17]

The Superintendency of Competition exercises its faculties through the Superintendent of Competition and its Board of Directors. Among the faculties granted to it by the Competition Law are the following: (i) review any circumstances in which competition in the market may be affected, as well as handle any claims or investigations regarding the infringements to the competition law; (ii) request from any economic agent, national or foreign authority any necessary collaboration; and establish coordination mechanisms with other regulatory entities, (iii) authorize, reject, or condition requests for economic concentration.. Furthermore, several laws grant powers to the Superintendency of Competition, to intervene in specific markets such as the aviation and electricity markets.

The Superintendency of Competition of El Salvador has signed memorandums of understanding with institutions in other countries among them are the following: Peru, Mexico, Panama, Costa Rica (SUTEL), and Ecuador.

In relation to the agreements that the Superintendency has signed with other entities, it has included within the provisions of the signed agreements, rules related to the exchange of non-confidential information. For example, the agreement between El Salvador and Costa Rica, regulates that the parties, to the extent compatible with their legislation, must provide to the other party any significant information on anticompetitive practices that may be relevant or

[17] Data taken from the transparency portal of the Superintendence of Competition available at https://www.transparencia.gob.sv/institutions/sc/documents/presupuesto-actual

justify the enforcement measures of the competition law of the other party. Similar provisions are found in the agreement with Panama and the other agreements signed between countries of the region. To that effect the Superintendency has sought to establish mechanisms that enable and facilitate the exchange of information between the parties according to art. 281 of the Central America-European Union Association Agreement.

3. Anticompetitive Conducts and Concentrations (article 279 of the EUCAAA)

Agreements/Cartels: These types of conducts are defined as "agreements between competitors". Article 25 of the Competition Law prohibits the 4 types of agreements seen as Hardcore Cartels in international doctrine: price fixing, restrict output, submit collusive tenders, and divide markets. The law also offers a leniency program. Fines applicable to conducts such as these could be set for up to USD$18,250,000.00, depending on the severity of the infringement. On July 5, 2018, the Superintendency of Competition sanctioned the companies Constructora Gaitán, S. A. de C. V., and Perforaciones Vivas, S. A. de C. V. for having fixed prices in a public bidding process conducted by the Ministry of Justice and Public Security. On May 8, 2019, the Superintendence of Competition fined Droguería Americana, S.A. de C.V. and C. Imberton, S.A. de C.V. [18] for agreeing on gross wholesale distribution prices of the drugs Cataflam, Diovan and Lamisil, the amount of the fine was USD $171, 000.00 for Droguería Americana and $228,000.00 for C. Imberton. The proceeding was instituted ex officio, based on the indications found in previous actions carried out by the Superintendency, which were initiated based on information submitted by the National Directorate of Medicines related to the price behavior of certain economic agents participating in the wholesale distribution of certain medicines.

Abuse of Market Power: These conducts are described as "anticompetitive practices between non-competitors". The Law describes a series of conducts, but it is only seen as a series of examples of these types of conducts, and therefore allows for other conducts to be considered as anticompetitive. Among the conducts listed by the law, it is possible to find; a) Creation of obstacles to the entry or to the expansion of competitors. b) Actions with the purpose of limiting, preventing or displacing competition c) Lowering prices below costs to eliminate or avoid competition.; d) The sale or provision of services in a certain part of the territory at a price different from that offered in the rest of the country, with the objective of affecting competition in that geographical sector. The maximum fine is the same for cartels: a maximum of USD$18,250,000.00, depending on the severity of the infringement. On September 18, 2019, the company *Digicel, S.A. de C.V.* was sanctioned for having committed the anticompetitive practice of abuse of dominant position in the market of national and international call termination, imposing a fine of USD $375,000.00. [19] The case was initiated by the complaint of the company TVC Network, S.A. de C.V., who informed about Digicel's refusal to allow interconnection to its network for international traffic with the purpose of terminating national and international calls in Digicel's network, despite the fact that TVC complied with the indispensable requirements to obtain the interconnection in accordance with the Telecommunications Law and its regulations. Digicel based its decision on the fact that the negotiation for national and international traffic could not be done in parallel, however, it was determined in the process that Digicel incurred in an anticompetitive practice for having

[18] Board of Directors of the Superintendence of Competition. Resolution of May 8, 2019 in the process of reference SC-020-O/PI/R-2017. Retrieved from SC-020-O/PI/R-2017 - ResoluciónSC - Sitio Oficial SC

[19] Board of Directors of the Superintendence of Competition. Resolution of September 18, 2019 in the process of reference SC-036-D/PI/R-2017. Retrieved from SC-036-D/PI/R-2017 - ResoluciónSC - Sitio Oficial SC

hindered the entry of new competitors or the expansion of the existing ones in the market of wholesale international call termination services. In both cases there is no record of a judicial appeal of the resolutions.

Concentrations: Mergers involving the combination of total assets exceeding 50,000 annual urban minimum wages in the industry (US$ 219,000,000.00) or total revenues exceeding 70,000 annual minimum wages (US$ 262,800,000.00) must file for prior authorization from the Superintendency. Since its formation, the Superintendency of Competition has imposed 14 sanctions for abuse of market power and 44 sanctions for agreements between competitors. In the last four years, about 6 cases of agreements between competitors have been sanctioned, specifically related to price fixing. The fines imposed in these cases were from $3,046.50 to $228,000.00 U.S. dollars. Regarding the abuse of market power, in 2015 five telephone companies were sanctioned for having abused their dominant position by having created obstacles to market access against competitors. The fines for each sanctioned company ranged from $237,000.00 to $592,500.00 U.S. dollars.

4. Public companies or companies holding special or exclusive rights, including designated monopolies (Article 280 EUCAAA).

Article 110 of the Constitution of El Salvador determines that *no monopoly may be authorized except in favor of the State or Municipalities when the social interest makes it indispensable*. At the same time, it establishes in its second paragraph that monopolistic practices are prohibited. Therefore, the State is prohibited from authorizing the existence of monopolies except for those in favor of the State directly aimed at protecting the social interest only when it is indispensable. The Salvadorian State has not authorized or endorsed the existence of state monopolies to date in application of the exceptions under article 110 of the Constitution. However, there is a decentralized entity, the National Administration of Aqueducts and Sewerage (ANDA), which enjoys subsidies from the State for its operation. At the time of its creation, the aqueducts and sewage systems that were owned by the State were transferred to ANDA. However, there are other potable water distributors that operate in the country in a smaller percentage, such as the Water Boards (community systems) and distribution through the Municipal Mayors' Offices. [20]

Article 2 paragraph 2 of the Competition Law determines that the only activities excluded from the application of the Competition Law are those economic activities that the Constitution and the laws reserve exclusively to the State and the Municipalities. In this sense, the Municipal Tax Law establishes in article 130 that certain services are reserved to be rendered directly by the municipalities, such as public streets cleaning and ornamental services.

In El Salvador, there is no regulatory discrimination against foreigners in the energy market. At the same time, in practice, activities whose objective has been to restrict market access to other energy distribution companies have been sanctioned, as in the case of Distribuidora de Electricidad del Sur, S.A. de C.V., Compañía de Alumbrado Eléctrico de San Salvador, S.A. de C.V., and AES CLESA y compañía, S. en C. de C.V., were sanctioned in 2007 for practices aimed at denying entry to the energy distribution market to Empresa Distribuidora Eléctrica Salvadoreña (EDESAL) for a fine of $17,040.00. This allowed EDESAL to become part of the

[20] Instituto Universitario de Opinión Pública (s/f). La Población salvadoreña opina sobre el derecho humano al agua. Available at https://www.uca.edu.sv/iudop/wp-content/uploads/Bolet%c3%adn-de-Agua.pdf

electricity distribution companies in the country, which by 2016 occupied 0.8% of the distribution market in the municipality of Santa Ana.

In the agricultural sector, the law does not expressly discriminate against foreign companies however, it imposes various requirements with which its products must comply that make it difficult for foreign suppliers to enter the country. However, in the market of wheat flour import and production, actions have been taken against entry barriers generated by economic actors such as the case of MOLSA and HARISA in the flour production and distribution market, which in 2008 were fined $1,971,015.16 and $2,061,406.20 US dollars, respectively, for having adopted a market division agreement. Such anticompetitive practice was reaffirmed in court on May 23, 2017 by the Contentious Administrative Court.

The Public Administration Procurement and Contracting Law (LACAP) determines a regulatory discrimination in certain cases, since it establishes that at the request of the contracting institution and according to the bidding conditions, priority may be given to contracting with domestic micro, small and medium-sized companies. This, subject to the comparison of goods manufactured and/or produced in the country with foreign ones. The latter relates to the provisions of Articles 30 and 31 of the Law for the Promotion, Protection and Development of Micro and Small Enterprises, which establishes that the State shall encourage the participation of MSEs under equal conditions in government procurement, as well as that the offers of MSEs shall be taken into consideration in contracting and acquisitions. However, the award must be based on the decision to hire the MSE, demonstrating the adherence of the offer to the contracting conditions issued by the institution, i.e., it cannot be an arbitrary decision.

5. Public Procurement and Distribution of Pharmaceutical Products

Public Purchases: Article 26 of the Public Administration Procurement and Contracting Law (hereinafter LACAP) regulates that bidders, awardees, or contractors are banned from entering into agreements that restrict free trade among themselves or with third parties, in case such situation arises they must inform the Superintendence of Competition. Furthermore, as per article 1 of LACAP, regulates the need for procurement and contracting to be governed by principles of free competition. In El Salvador in the past four years the Superintendence of Competition has sanctioned only one case related to public procurement, in which it was declared that the companies Constructora Gaitan and Perforaciones Vivas, S.A. de C.V. committed the anticompetitive practice of price fixing in public procurement processes in a bidding procedure carried out by the Ministry of Justice and Public Security. In 2020 a series of investigations were initiated by the Attorney General's Office to the Minister of Finance, Minister of Health and Minister of Agriculture and Livestock. This was due to questioned purchases for more than 4 million dollars, including the awarding of a contract to one of the relatives of the Minister of Health21. Nevertheless, there are no records that inform that the Superintendency has initiated parallel investigations.

Distribution of pharmaceutical products: In El Salvador, the distribution and sale of medicines can be carried out through laboratories, drugstores, pharmacies and natural or legal persons duly registered in the specific registry (Art. 27 of the Drugs Act). The law does not include express restrictions to competition; however, it establishes the existence of maximum prices for sales to the public. Sellers need an authorization for the importation of

[21] Meléndez, S. (November 15, 2020). Revista Factum. Attorney General's Office investigates more than $155 million in government purchases during quarantine. Retrieved from https://www.revistafactum.com/fgr-compras-covid/v

drugs. An important characteristic of the market identified in 2003 and 2008 was the existence of drugstore chains owned by the same owners of laboratories and drugstores, with vertical integration in many participant markets. Therefore, in 2008, 42 chains with a total of 669 pharmacies commercialized 80% of the drugs in the country. In 2019, the Superintendence of Competition sanctioned the companies Droguería Americana, S.A. de C.V. and C. Imberton S.A. de C.V., for fixing the gross wholesale distribution prices of 3 medicines. Although article 26 literal b) of the Law of Competition sanctions exclusivity agreements, the Study on the Characterization of the Drug Sector and its Conditions of Competition in El Salvador of the United Nations determined in its study, that one of the entry barriers in the Salvadoran market was constituted by the relations between the international laboratories, Salvadoran drugstores and laboratories and the different modalities of use of the patents of invention. It was also observed that international laboratories associate with Salvadoran companies for the manufacture of several lines of products of their property, to be manufactured and commercialized through the channel of the Salvadoran company. With respect to the distribution of pharmaceutical products from international companies, there are agreements with companies that sell pharmaceutical products to wholesalers, pharmacies, supermarkets, and convenience stores, mostly without a prescription. To date, there is no record of a sanction from the Superintendence of Competition regarding these practices in the pharmaceutical industry.

III. GUATEMALA

1. Introduction

The EUCAAA marks an important step forward in the relationship between the two regions. However, despite the obligation to have an adequate Competition Framework in accordance with Chapter VII of the EUCAAA, Guatemala is falling short. It is the only country without a *special* competition law in Central America. To this date, Bill 5074 (the "Competition Bill") has not been approved yet. Congress opened a first debate on April 2018 after years of ample discussions from various sectors of the economy including a previous bill (Bill Nr. 4426) that was archived by Congress. However, no further discussions have taken place.

It cannot be affirmed that Guatemala does not have any competition related provisions as these exist albeit, precariously, in scattered laws. The Political Constitution of the Republic of Guatemala contemplates fundamental aspects regarding competition and market economy, such as: the duties of the State to protect the market economy and prevent practices that restrict competition and that, therefore, are detrimental to the interests and welfare of consumers (prohibition of monopolies, for example). These conducts are in turn prohibited by the Criminal Code, which typifies and punishes with monetary fines and imprisonment, practices harmful to competition and the welfare of consumers.

In the same way, the Commercial Code of Guatemala establishes in Book II, Title II, the norms that relate to "The Protection of Free Competition" (articles 361 to 367), which establish the prohibition of conducts and acts that may affect the rights of competitors and consumers, such is the case of unfair competition. Article 361 states: "*All companies have the obligation to enter into contracts with any party that may require their products and services, and they must abide equal treatment among the diverse categories of consumers.*".

Notwithstanding the above, it was not possible to identify any case brought before the courts claiming a violation to such article 361 based on competition grounds. Instead, there is much case law based on unfair competition analyzed in Guatemala solely from the protection of the rights of a company A that is being affected by the acts of company B, without determining existence of dominant positions or market power, etc.

Guatemala approved the Central American Competition Regulations, which entered into force in March 2021. Here, Guatemala recognized that the country's competition laws were comprised by the following (in addition to the aforementioned): Public Procurement Law, Law on Hydrocarbons, Law for the Commercialization of Hydrocarbons, General Law of Telecommunications, Banks and Financial Groups Law, Law for Insurance Activities, as well as "*any other that law related to competition notified to COMIECO*". However, the focus in these laws is not to allow or promote competition in such sectors, but rather, these are laws that restrict competition in those regulated sectors. These types of laws are sometimes presented as laws to incentivize a sector, but instead they foster privileges, monopolistic practices and oligopolies.

2. Competition Authorities (article 279 of the EUCAAA)

Currently, due to the lack of a competition law in force, there is no designated competition authority to promote, supervise and establish sanctions with regards to anticompetitive practices. The Competition Bill proposes the creation of a **Superintendency of Competition** in charge of defending and promoting free competition, as well as to prevent, investigate and punish anticompetitive practices with authority in the territory of Guatemala. The Superintendency will be a public entity with autonomy and independence. All governmental entities will have the obligation to support the Superintendency within their capacities. The Superintendency will be formed by the Superintended and a Directory formed by 3 members, one appointed by the Executive branch, the second by the Judicial branch and the third by Congress. The Directory will appoint the Superintendent. However, there will be an Evaluator Committee in charge of proposing the candidates of both bodies.

With regards to budget, the Competition Bill establishes that the Superintendency will have its own budget, approved by Congress and revenue generated from dues and levies established by the Directory. The Bill does not establish a fixed amount based on a particular index, such as a base salary, used in other jurisdictions which could create uncertainty as to the funds to be received by this competition authority. The Superintendency will have the authority to exchange information with other supervisory entities either national or foreigner, as well as request information. The Competition Bill also establishes that the Superintendency will be able to suggest measures for the elimination of entry and exit barriers, as well if any other restrictions that distort an efficient market.

Guatemala's Ministry of Economy created a Department for the Promotion of Competition divided into the Department of Analysis and Information and the Department for the Promotion of Competition based on the Ministry's Organic Regulations approve by Governmental Decree Nr. 170-2015 [22] and also the Vice-Minister's office was created in 2000, which includes amongst its functions, the promotion of competition and protection of

[22] https://www.mineco.gob.gt/direcci%C3%B3n-de-promoci%C3%B3n-la-competencia

consumers. [23] The Department for the Promotion of Competition assisted in 2005 in the drafting of the competition in 2005 bill[24] archived later by Congress.

3. Anticompetitive Conducts and Concentrations (article 279 of the EUCAAA)

Agreements/Cartels: Currently, article 130 of the Constitution establishes the following: *"Monopolies and privileges are prohibited. The State shall limit the operation of companies that absorb or tend to absorb, to the detriment of the national economy, the production in one or more industrial branches or of the same commercial or agricultural activity. The laws shall determine what relates to this matter. The State shall protect the market economy and shall prevent associations which tend to restrict the freedom of the market or to the detriment of consumers."* The Criminal Code in Article 340 establishes the crime of monopoly [25] in connection to this constitutional norm and imposes a punishment of jail from 6 months to 5 years and a fine of GTQ 500.00 to GTQ 10,000.00. [26] This Article is not modified by the Competition Bill.

The Competition Bill regulates cartels or agreements as "absolute monopolistic practices". The Bill regulates only 4 types of agreements[27] which are the practices identified in international doctrine as Hardcore Cartels: 1) Price Fixing; 2) Division of markets; 3) Restriction of Output. [28]These types of anticompetitive conducts are declared as absolutely void and thus, the Competition Bill uses the *per se* rule to assess these practices. Infringement of absolute monopolistic practices will be punished with a maximum fine of 200,000 minimum non-agricultural daily salaries. [29] A minimum, however, is not established. [30]

The Competition Bill also includes a new article in the Criminal Code (article 450 A) "Collusive Practices", but it only refers to collusive tenders. This article states that offerors, bidders, or participants in public bids who collude or coordinate their offers or agree to refrain from presenting offers or participate in such processes, will be punished with 1 to 6 years of prison and a fine of up to 10% of the "offer presented at the public bid". [31] However, it is not clear as to which "offer presented at the public bid" will be the parameter to impose the economic fine. This does not create certainty, which is vital in criminal law. Moreover, the Competition Bill adds that those who benefited from this collusion, will be removed from the National Register

[23] Economic Commission for Latin America and the Caribbean, United Nations, General Conditions of Competition in Guatemala, 2006, p. 9.
[24] Idem.
[25] Article 340 of the Criminal Code establishes: "*Whoever, who with illicit purposes, performs acts with obvious damage to the national economy, by absorbing the production of one or more industrial branches, or of the same commercial or agricultural activity, or whoever takes exclusive advantage thereof through any privilege, or using any other means, or whoever executes maneuvers or agreements, even if these are disguised with the incorporation of several companies, to sell goods at certain prices to the obvious detriment of the national economy or of individuals, shall be punished with imprisonment from 6 months to 5 years and a fine of five hundred to ten thousand quetzals.*" The underlined text does not come from the original.

[26] Approximately USD$65.00 to USD 1,400.00 based an exchange rate of GTQ 1= $0,13.
[27] Article 5, Competition Law, Bill Nr. 5074.
[28] Organization for Economic Co-operation and Development, Reports, Hardcore Cartels, 2000, p 11.
[29] In 2022, the minimum non-agricultural daily salary is of GTQ 97.29, approximately USD$748. Therefore, the maximum fine for this anticompetitive practice is of approximately USD$2,500,000.00 (based on an exchange rate of with an exchange rate of GTQ 1 = USD$0.13).
[30] Article 117, Competition Law, Bill Nr. 5074.
[31] Article 132, Competition Law, Bill Nr. 5074.

of Public Purchases and that these sanctions are without prejudice of those established by the competition law. Consortiums that present a common bid are exempted from this norm.

The Competition Bill reforms article 341 of the Criminal Code in a substantial manner. Currently, this article penalizes 5 forms of "other forms of monopoly" that complement the crime of monopoly regulated by article 340, as explained above. Today, this article 341 indicates that the following acts are against the public economy and public interest: 1) Hoarding or subtraction of essential items, with the purpose of causing a rise in prices in the domestic market. 2) Any act or process executed to prevent or that intends the prevention of free competition in production processes or in trade. 3) Agreements or pacts entered without prior government authorization, aimed to limit the production of any item, with the purpose of establishing or holding privileges and to profit from them. 4) The sale of goods of any nature, below the production price, to prevent free competition in the internal market. 5) The export of items of first necessity without permission from the competent authority, when required, if this may cause shortages or scarcity. Those responsible will be punished with imprisonment from six months to three years and a fine of two hundred to five thousand Quetzals. [32] The Competition Bill proposes to modify this article 341 by eliminating section 2,3, and 4 and keeping only sections 1 and 5 related to hoarding and export of items of first necessity. Punishment thereto remains the same.

Abuse of Market Power: The Competition Bill introduces the relative monopolistic practices as those agreements, conducts, contracts, covenants, decisions or practices of one or more economic agents that individually or jointly have a dominant position in the same relevant market, with the purpose or effects in the relevant market *or in a related market* of unduly exclude or displace its competition, or to substantially prevent their access thereto o to grant exclusive advantages to one or several economic agents. It is worth pointing out that Bill proposes not only to take into account the relevant market but also, "related markets". This could create an issue with the enforcement considering that this is not common in competition law and tools or tests to determine these would also need to be developed since effects are usually measured in the relevant market. The Bill describes 15 practices among which are, imposition of prices, conditions, discrimination, margin squeezing and predatory pricing. The law also includes as an anticompetitive practice the use of profits received from a sale of goods or provision of services by an economic agent in order to finance the losses from the sales of another good o service, either in the relevant market or in a related market. Another practice is to unreasonable refuse the access or entry of an economic agent to a guild or professional association or business chamber, that is essential to effectively participate in the market. [33]

These practices will be an infringement to the competition law if: 1) the economic agents have a dominant position in the relevant market; 2) the conducts are performed in connection to goods or services related to the relevant market; 3) that the conducts have exclusion effects in the relevant market or in related markets. It also adds that the practices will be anticompetitive if the Superintendency proves that the practices generate a detriment in the efficiency of markets that distort the process of free competition and produce anticompetitive effects that have an impact on consumer welfare, market supply and availability of products. These last paragraphs could seem redundant and confusing. [34] The Law allows practices that aim to establish cooperation in research of new technologies or are acts stemming from international

[32] Approximately, USD$25 to USD$650 (based on an exchange rate of with an exchange rate of GTQ 1 = USD$0.13).
[33] Article 7, Competition Law, Bill Nr. 5074.
[34] Article 8, Competition Law, Bill Nr. 5074.

treaties approved by Congress, or are temporary to comply with public policies, natural emergencies, or *protection of vulnerable groups*. Conducts executed by Agriculture Cooperatives[35] The Superintendency my approve such practices based on technical and legal criteria. [36] Infringement of relative monopolistic practices will be punished with a maximum fine of 100,000 minimum non-agricultural daily salary. [37] A minimum however, is not established.

It is worthwhile noting that, anyone who files a claim against allegedly anticompetitive conducts that is evidently false or frivolous, could be fined with 200,000 minimum non-agricultural daily salary.

Concentrations: Currently, there is no obligation to notify and request approval of concentrations. The Competition Bill in Article 16 establishes that notification is mandatory and must be done pre-merger if the economic thresholds are met, which are already included in the law and are mainly related to combination of assets (exceeding 7,000 the minimum daily salary for non-agricultural activities) and the combination of income.

4. Public companies or companies holding special or exclusive rights, including designated monopolies (Article 280 EUCAAA).

Railroads: Ferrocarriles de Guatemala (FEGUA) is mandated by law to provide public railroad transportation services, auxiliary services, wharfage and other operations; FEGUA in turn owns 80% of the shares of Ferrovías de Guatemala, S.A., an entity created with mixed capital to generate projects to reactivate the country's railroad network. Ferrovías is the sole usufructuary of the country's railroad utility assets. It has the rights to operate more than 800 kilometers of railroad corridors in the country. At present, the Congress of the Republic of Guatemala is discussing new contracts for the granting of operating licenses for railroad sections, which have not been considered to be adequately transparent.

Sugar: The sugar industry exhibits a high degree of vertical integration from the cultivation and processing of sugarcane to the distribution of sugar. ASAZGUA is confirmed by 16 existing sugar mills in the country and works in coordination with the sugar trading companies, in charge of sugar export shipments, and with CENGICAÑA. ASAZGUA is a private entity separate from the public sector that, due to lack of regulations, has been able to include in their bylaws, that they will have the autonomy to regulate prices as well as establish quotas of participations among their associates. The freedom to set their prices, and in relation to studies that indicate that the profitability of sugar worldwide shows low levels, allows ASAZGUA to compensate said drop with profitability in the local market and by limiting the participation of foreign or national actors who wish to import sugar by setting high tariff rates and limited import quotas.[38]

Poultry: The country's poultry industry represents 11.3% of the total production of the agricultural sector, only behind coffee and sugar. There is a high degree of vertical integration that covers the entire production cycle, and the market is monopolized by 2 companies that

[35] Article 8, Competition Law, Bill Nr. 5074.
[36] Article 9.6), Competition Law, Bill Nr. 5074.
[37] In 2022, the minimum non-agricultural daily salary is of GTQ 97.29. Therefore, the fine for this anticompetitive practice is of USD$1,250,000 (based on an exchange rate of with an exchange rate of GTQ 1 = USD$0.13).
[38] Superintendency of Banks, Guatemala, Department of Macroprudential Regulation and Supervision of Standards, The Sugar Market, 2016.

control about 75% of the total industry. This sector still has 2 years left of protection, since by 2024 a total liberalization of trade tariffs must take place according to the CAFTA-DR.

Alcohol: The Law on Alcohol, Alcoholic and Fermented Beverages in Guatemala dates to 1948. Its main regulations fundamentally refer to technical specifications in the production processes and, in theory it pursues free competition in this market, however, the law includes restrictions and prohibitions that hinder competition, such as establishing that manufacturers cannot produce more than 33% of the national production. The production of alcoholic beverages presents a classic picture of oligopoly in the country, the activity is carried out by four companies that are part of the same economic group. Said companies are organized under ANFAL, whose main objective, per their bylaws, is to seek fair prices for the products and their proper unification. The limitation of competition is observed with the existence of a tariff of 40% and 30% for the importation of rum and other liquors, respectively. ANFAL thus imposes product prices, has the decision power to "endorse" companies that want to enter the rum production market and related alcohol products and also establish the tariffs for the import of related products.

Other markets that under control of entities with special rights are Beer, Cement, Fertilizers, and Television.

5. Public Procurement and Distribution of Pharmaceutical Products

Public Procurement: According to the International Commission against Impunity in Guatemala (ICIG), Guatemala has seen many and serious cases of corruption when it comes to public procurement which extends to the whole public system and from the central government to municipalities. [39] According to the ICIG, and based on the information gathered, it could be concluded that public works and purchases seek the private benefit before addressing the needs of the people[40] and that there has been a process to learn how to avoid the public procurement law, how to establish bogus companies, comply with formal requirements and hide ill-gotten money[41]. The Information System of Contracting and Procurement of the State of Guatemala (GUATECOMPRAS), which operates through the platform www.guatecompras.gt, is a system made to ensure transparency, certainty, efficiency, and competition at public procurement processes. It is a public database, unrestricted and free, and must be used by all regulated entities (public or private entities that manage public funds) for purchases, sales, contracts, leases or any other form of acquisition. If properly maintained and used, GUATECOMPRAS could help prevent corruption and provide officials, journalists, and other sectors of society in general with an effective means to monitor state contracts and contracting mechanisms. However, GUATECOMPRAS currently fails to fulfill its purpose of generating transparency to a large extent. The failure of GUATECOMPRAS does not aid in solving the serious problem of public purchases when considering the enormous amount of money at stake, which can be a source not only of large profits, but also of political influence for the companies that access this market.

Distribution of Pharmaceutical Products: The Trade-Related Aspects of Intellectual Property Rights -TRIPS- grants patent protection for products and processes for 20 years, likewise Guatemala allows the patenting of products and processes for 20 years according to

[39] International Commission against Impunity in Guatemala, United Nations, Thematic Report, Guatemala: A Captured State.
[40] Idem, p. 8.
[41] Idem, p. 100

the provisions of the Industrial Property Law (Decree Number 57-2000). More than 600 pharmaceutical products and processes are patented in Guatemala. Guatemalan regulations related to intellectual property have been a contentious legislative issue. One of the problems is the approval and the rules on "test data exclusivity" have also been modified many times. While the Guatemalan Congress established test data exclusivity for a period of fifteen years for each patented drug, after the approval of the Free Trade Agreement between the United States of America, Central America and the Dominican Republic (DR-CAFTA) in 2005, the exclusivity was modified to a term of five years. Through this norm, the protection obtains a five-year term and a new type of "administrative monopoly" is established, even when the patent has expired, since this protection has an adverse effect on "generic" drugs, normally of a more accessible cost for the general population, since they cannot be registered in the country because they cannot use the information on efficacy and safety provided to the Department of Regulation and Control of Pharmaceutical Products by large laboratories or those with recognized brands.

To import into the country, pharmaceutical companies must demonstrate to the Department of Regulation and Control of Pharmaceuticals that their drugs are proven safe and effective through clinical studies and various trials. In contrast, producers of generic drugs must demonstrate bioequivalence to brand-name drugs, show that they work in the same way. Normally, generic drug manufacturers prove safety and efficacy by referring to the results of clinical trials already produced by the equivalent brand-name drugs. However, in Guatemala, generic companies are prohibited from using or referring to data from the "author's clinical trials" of the drugs during the period of time in which they are protected (five years). Another mechanism that negatively affects the competition of "generic" drugs in practical terms is the suspension of an application for registration (or sanitary license) as a precautionary measure under a judicial action to protect the intellectual property of a drug. This can happen because a system is in place whereby the patent office (Intellectual Property Registry) and the sanitary registration office (Ministry of Health) work in direct contact with each other and with the patent holders. This means that, if a company wants to apply for registration of the generic version of a drug, the national offices are obliged to inform the holders of a patent and the corresponding test data about the initiated procedure. Finally, another mechanism that may affect the freedom of competition in the pharmaceutical sector in Guatemala are border measures. These measures regulate customs authorities to prevent the entry of a generic drug into the national market if the drug enjoys legal protection in Guatemala.[42]

IV. HONDURAS

1. Introduction

The Law for the Defense and Promotion of Trade (Decree No. 357-2005) was created as a result of the Credit Agreement for Trade Facilitation and Productivity Improvement between the World Bank and the Government of Honduras. Its objective is to reduce anti-competitive conducts and improve the investment climate in the country. With the entry into force of Decree 357-2005, the CDPC was created, with focus on three main aspects: investigations for violation of the law, control of concentrations and the execution of sectorial studies. [43] Since its enactment, the Law for the Defense and Promotion of Competition has not suffered major

[42] National Pharmaceutical Profile. Published by the Ministry of Public Health and Social Assistance of Guatemala in collaboration with the Pan American Health Organization/World Health Organization (PAHO/WHO).
[43] https://www.cdpc.hn/

changes, only one reform in 2015. The Government's competition policy has been relatively passive in recent years. At the national level, efforts have been made to forge alliances between the CDPC, institutions from the public sector such as the Supreme Court of Justice, the National Banking and Insurance Commission, the National Telecommunications Commission and some civil associations such as the National Anti-Corruption Council. At the international level, the CDPC is a member of the International Competition Network, the Ibero-American, Latin American and Central American Competition Networks, and the Inter-American Competition Alliance.

The Competition Framework is comprised of 1. Law for the Defense and Promotion of Competition (Decree 357-2015) and its amendments; 2. Regulations for the Law for the Defense and Promotion of Competition (Legislative Agreement 001-2007); 3. Regulations of the Administrative Clemency Program or Procedure for Cases of Restrictive Practices and Conducts. Since its creation, the CDPC has issued 3 normative resolutions and 2 official circulars: 1. 04-CDPC-2014-YEAR-IX: Resolution on new thresholds for notification of concentrations. 2. 04-CDPC-2012-YEAR-VII: Regulatory resolution Art. 13 LDPC regulation. 3. 005-CDPC-2021-YEAR-XV: Resolution adjusting fines for inflation. 4. Circular No. 01-2015-SG: Fee for verification of economic concentrations. 5. Circular No. 1-SG-CDPC-2022: Payments of Economic Concentrations Verification Fee in business days.

The State of Honduras, within the framework of the Council of Ministers of Economic Integration, approved without reservations Resolution No. 441-2020 (COMIECO-XCIII) containing the Central American Regulations on Competition, which entered into force on March 10, 2021. The regulation has not been published in the official gazette and an application manual for the regulation is being worked on by the Competition Commission.

2. Competition Authorities (article 279 of the EUCAAA)

The CDPC operates as an autonomous institution with legal capacity, with functional, administrative, technical and financial independence. The CDPC is integrated by 3 commissioners who have the role of public officers who shall be appointed for a term of 7 years. The CDPC focuses on 2 areas: Law Enforcement, which refers to sanctioning procedures, economic concentrations, recommendations or opinions, and other established infractions, and the second is Competition Advocacy, which includes the activities carried out in relation to the promotion of a competitive environment in economic activities. [44]Article 34 of the Law for the Defense and Promotion of Competition establishes the CDCP 's functions.

In the exercise of its functions, the Commission has signed several agreements with public sector institutions, civil society, competition authorities of countries such as Nicaragua, Panama, Paraguay and Ecuador, as well as institutions of higher education. In general terms all these agreements establishes that the parties are not obligated to provide confidential, reserved or sensitive information by the parties or the competent authorities of their respective jurisdictions in accordance with the applicable legislation. If provided, public officers must maintain full confidentiality of the information supplied in connection with the activities carried out under the agreement.

[44] Idem.

3. Anticompetitive Conducts and Concentrations (article 279 of the EUCAAA)

Agreements/Cartels: Agreements or cartels are known as "restrictive practices prohibited due to its nature" and are void in accordance with article 5 of the Law and the economic agents that participated in these practices will be punished from a civil or criminal stance, as applicable, even if such agreements did not have any effects. The prohibited agreements are the ones identified as Hard-Core Cartels: i. Price fixing; ii. Restriction of Output; iii. Submit collusive tenders; iv. Division of markets. The Leniency Program in Honduras was approved in 2015. Fines per economic agent is of 3 times the amount of the profit obtained. If it is not possible to determine the profit, a fine of 10% of the gross profit in sales of the preceding fiscal year will be set. In case of a second offense, the fine will be twice the amount of the last fine imposed. If the fine is not promptly paid, the CDCP may charge with an additional fine from US$70.64 up to US$ 3,532.37 (exchange rate of L. 24.55) per day for up to a maximum of thirty calendar days.[45] The enforcement of cases concerning this type of conduct has been low. The CDCP has investigated 2 cases where fines were imposed in 2013 and 2014. However, since then, no further cases have been investigated. [46] The CDCP main web page those do not show activity of any type of either resolution, investigations, provisional measures, or any type of information after 2015. [47] Both cases of cartels date from 2013 and 2015 and refer to the pharmaceutical and sugar markets, both cases concerning price fixing agreements.

Abuse of Market Power: Anticompetitive conducts under this category are identified as "restrictive practices prohibited due to their effects" by article 7 of the Law for the Defense and Promotion of Competition. These are the agreements, contracts, covenants, combinations or conducts that were not included in article 5 of the law (agreements), that restrict, diminish, damage, impede or vulnerate the process of free competition in the production, distribution, supply or commercialization of goods and services. Among the practices described by the law there is: imposition of conditions, tying, restrictions to territory, volume or clients, boycott, as well as "any other act or negotiation that the CDPC considerers that restricts, diminishes, damages or impedes or vulnerates the process of free competition in the production, distribution, supply or commercialization of goods and supplies". The legal provision, therefore, accepts a *numerus apertus* for this type of conduct. The fines imposed in for these types of anticompetitive practices are the same as for cartels. There have been 2 cases investigated and where fines were imposed in the telecommunications market and beverages market (against *Amnet de Honduras* and *Cervecería Hondureña*). No other cases have been solved.

Concentrations: The Law for the Defense and Promotion of Competition defines economic concentrations as the taking or change of control in one or several companies through shareholding, management control, merger, acquisition of ownership or any right over shares or equity or debt securities that cause any type of influence in the company's decisions or any act or acts by virtue of which shares, equity, trusts or assets are grouped among suppliers, customers or any other economic agent. Before having their intended effects, economic concentrations must be notified to the Commission by the economic agents and may be subject to verification. Concentrations that require approval must be notified to the CDPC if they surpass the thresholds established by the CDPC based on: 1. The amount of

[45] I.e., the highest fine that can be imposed under this scenario is of USD$ 105, 971. 00.
[46] COMPAL, Performance Evaluation of National Agencies Defending Competition Participating in the COMPAL Program in Impact Terms on the Markets, 2018, p 18.
[47] https://www.cdpc.hn/?q=www.resolu_pac2015

assets. 2. Participation in the relevant market; and 3. Turnover. The process may be initiated ex officio or at the request of a party, and the decisions adopted by the Commission may be: Favorable, Prohibited or Authorized with conditions. In case of untimely notification of a concentration transaction, failure to deliver or delay in the delivery of the information requested by the Commission, a fine will be applied to the offender in accordance with the rules of successive fines of article 41, i.e., fines from US$70.64 up to US$ 3,532.37 (exchange rate of L. 24.55 per USD$1.00) for up to a maximum of thirty calendar days. Maximum Fine: USD$117,500. In total since 2007, the competition authority has authorized 99 concentrations of which 27 were authorized subject to the fulfilment of conditions and none were rejected.

In the Telecommunication market it is mandatory that the transactions in or between operating companies that provide services authorized by CONATEL be submitted to CONATEL's approval prior to take effect. Such operations include: 1. Merger of companies. 2.Acquisition of shares resulting in a total ownership equal to or greater than 10%. Takeover or change of control of the administration, assignment or change of effective control, acquisition of ownership or any other right over shares or capital participations or any other act by virtue of which shares, social parts or assets are legally grouped. 3. CONATEL must be notified but no prior approval required of the acquisition of a shareholding of less than 10%.

4. Public companies or companies holding special or exclusive rights, including designated monopolies (Article 280 EUCAAA).

The Honduran Constitution establishes that monopolies, monopsonies, oligopolies, hoarding and similar practices in industrial and commercial activity are prohibited. Also, the Constitution establishes that temporary privileges granted in the form of scientific, literary, artistic or commercial property rights, patents of invention and trademarks will not be considered private monopolies. Notwithstanding the above, the national company for electric energy or "*Empresa Nacional de Energía Eléctrica (ENEE)*" was incorporated as an autonomous body responsible for the generation, commercialization, transmission and distribution of electricity**.** ENEE's Constitutive Law did not expressly prohibit the coexistence of the state-owned company with private companies and allowed private companies to operate in the generation and distribution sub-sectors, leaving ENEE with the exclusive rights on transmission and limiting the generators and distributors to connect to ENEE's transmission network. It is important to mention that eventually, as ENEE expanded its transmission network, it acquired private distributors until it established a Public Monopoly. There has been a tendency of price escalation, and energetic crisis are common, hence there is pressures for the market to be opened. [48] With the entry into force of the General Law of the Electricity Industry and the signing of the Public-Private Partnership Contract between ENEE and "Empresa Energía Honduras", the most significant step was taken to eradicate the monopoly that ENEE once had; however, with the approval of the Special Law to Guarantee Electricity as a Public Good of National Security, ENEE could once again establish a public monopoly in the sector.

It is also important to consider that although it is true that there are no markets reserved by the State, each sector may have rules for the control of foreign investment in its special legislation.

[48]https://www.centralamericadata.com/es/search?q1=content_es_le:%22monopolio%22&q2=mattersInCountry_es_le:%22Honduras%22 and https://www.centralamericadata.com/es/article/home/Honduras_Sector_privado_pide_importar_energa

The Law for the Defense and Promotion of Competition does not expressly exclude any market. However, it reserves to the State, for reasons of public order and social interest, the exercise of certain basic industries, operations and services of public interest and to dictate measures and laws. It is important to consider that in both the energy market and the oil derivatives market the price is regulated by their respective regulatory commissions, therefore the price is fixed. Additionally, in the sugar industry, the CDPC has recommended economic agents to refrain from participating in meetings with State institutions whose objective is to reach agreements, conventions or written or verbal measures related to the establishment of prices for the market.

According to the sectoral study of the Competition Commission, in the agricultural sector, rice production sub-sector, entry barriers arise for the following reasons: 1. Lack of production capacity to supply domestic consumption, which forces the establishment of preferential imports at a zero tariff through protectionist mechanisms in the external market. 2. The establishment of purchase and sale agreements, since these make it possible to fix prices, production purchase quotas and the distribution of such quotas. 3. Horizontal integration, potential competitors may face an industry that operates under a coordinated strategy that does not allow competition on equal conditions.

5. Distribution of pharmaceutical products

According to the Competition Authority, there are approximately 39 laboratories, which concentrate the national distribution of medicines and 141 drugstores in charge of importing and wholesale distribution of medicines, retail marketing cover approximately 1,123 independent pharmacies and 9 pharmaceutical chains dedicated to the purchase and sale of medical products in small amounts. In recent years, a change in the level of competition has been observed, as a result of the incorporation into the market of large pharmaceutical chains that operate under the format of Drugstore and Pharma, in addition to the incursion of drugstores and laboratories in the retail sale of pharmaceutical products, through the acquisition or establishment of pharmacies. In February 2007, the representatives of pharmaceutical chains held a meeting where they reached agreements to standardize discounts in all pharmacies and pharmaceutical chains at 15% for all medications and 25% for the elderly. The foregoing forced the Competition Authority to carry out an investigation in view of the fact that said consensus contravenes the provisions of art. 5.1) and art. 7.2) of the Law for the Defense and Promotion of Competition, which include the prohibition of reaching agreements that seek to fix or establish prices. Exclusive distributions and restrictions of passive sales must be seen with caution, as the law establishes that any conduct that "*restricts, diminishes, damages or impedes or vulnerates the process of free competition in the production, distribution, supply or commercialization of goods and supplies*", could be found against the law.

V. NICARAGUA

1. Introduction

The competition framework in Nicaragua is comprised by Law No. 601 (Law for the Promotion of Competition) published in the official newspaper on October 24, 2006, and by its Regulations issued by Executive Decree No. 79-2006 of January 15, 2007. Law 601 has been

reformed in different occasions through Laws 668, 773, 840 and 868; additionally, the Regulations were also reformed in 2014. PROCOMPETENCIA, has created several guidelines related to competition matters such as notifications of economic concentrations, best practices for the detection, prevention, and sanction of collusive conducts in public purchases and competition matters for business associations. The competition authority has also issued a guideline on how to submit complaints and from 2012 to 2018 issued reports of their activities that are submitted to Nicaragua's National Assembly, which include the cases investigated, economic concentrations analyzed, economic studies, consultations, complaints filed before the agency, among others.

2. Competition Authorities (article 279 of the EUCAAA)

PROCOMPETENCIA is a public institution with its own patrimony and administrative autonomy, and its purpose is to promote and protect free competency among economic parties for the wellbeing of consumers and efficiency in the market. PROCOMPETENCIA must intervene in every act, conduct, transactions, and agreements among non-regulated markets in Nicaragua. The Directive Council is the supreme authority of the Institution and is formed by one President and three Directive Members. Each full member of the Council must have a substitute member. The President of PROCOMPETENCIA oversees the initiation of investigations on the request of a party or on its own initiative and without the need for a complaint of any kind. In addition, the President has the obligation to adopt the necessary measurements for the protection of confidentiality of the business information contained in the files of cases investigated. PROCOMPETENCIA has reported that their budget is very low creating thus a threat for the continuous and correct operation of this institution. PROCOMPETENCIA has subscribed cooperation agreements with the competition authorities of the following countries: 1. El Salvador; 2. Panama; 3 Costa Rica; 4. Honduras; 5. Mexico; and 6. Spain; as well as with institutions for superior education such as with the Central American University and the National University of Engineers. In accordance with the inform "Institutional Strategical Plan 2021 – 2025", there are in force a total of 10 Cooperation Agreements with Public Institutions from Nicaragua, including Prosecution Authorities, General Attorney of Nicaragua, National Police and the Judicial Authorities. There is no additional information available on other agreements.

Additionally, according to Article 15 of Law No. 601, those institutions in charge of regulating specific markets, have the authority and exclusive jurisdiction to know, instruct and resolve anti-competitive practices, unfair competition, economic concentrations and in general on any other practice, act or conduct determined in the Competition Law between economic agents of markets subject to their regulation. In other words, according to this article, PROCOMPETENCIA does not have jurisdiction over those cases. In this type of cases, PROCOMPETENCIA may only issue opinions as public documents and give advice to the regulatory institutions. Some of the regulatory institutions are as follows: Ministry of Transportation and Infrastructure, Ministry of Education, Ministry of Agriculture, Ministry of Energy and Mines.

3. Anticompetitive Conducts and Concentrations (article 279 of the EUCAAA)

Agreements/Cartels: These types of conducts are prohibited by Article 18 of Law 601 and are identified as "Practices among Competing Economic Agents" and correspond to: price fixing, distribution or sharing of markets, output restriction, collusive tenders, which

correspond to Hardcore Cartels, and also adds a fifth prohibition to celebrate agreements to eliminate other companies of the market or restrict their access trough other firms from their position of buyers or sellers of finished products. Law No. 601 provides a leniency program in the Article 48, stating that economic agents that inform to the authority of its participation in any anti-competitive practice, past or current, may be exempted to the imposing of the applicable sanctions. However, there is not information that confirms if this program has been used yet. Penalties for committing these types of conducts are comprised by an economic fine between 100 minim wages to maximum 10,500 minim wages. However, if PROCOMETENCIA concludes that a case is particularly grave, the fine can be based on the net annual sales of the responsible party ranging between 1% to 10%. The only case of cartels in Nicaragua processed before PROCOMPETENCIA has been the fixing of the interest rate of credit cards (Classic Card, Gold Card, Platinum Card) in the period between July 2007 to April 2010 by Private Banks of Nicaragua (BDF, BAC, CITI-BANK, BANCENTRO, BANPRO, BANEX, PROCREDIT), in this case the economic agents were sanctioned to pay a fine of 300 minimum wages and ordered the immediate termination of the anticompetitive practice.

Abuse of Market Power: With regards to these type of conducts, Law 601 in Article 19 states that these are "Practices among Non-Competing Economic Agents" and relate to agreements, covenants, or combinations between and among non-competing economic imposing: exclusivities; conditions, tying, refusal to negotiate, discrimination, boycotting, and predatory pricing. The economic agent responsible for imposing these conditions must have a dominant position in the relevant market. Further, it also must be proved that these conducts are done with respect to the goods or services of the relevant market or related thereto and these practices must restrict or limit the access of competitors or displace them and in any event, these must cause a damage to the interests of consumers. Economic fines for this type of conducts range from 25 minimum wages to a maximum of 8000 minimum wages. If the conduct is grave or serious, PROCOMPETENCIA may impose instead a fine of 1% to 6% of the responsible party's net annual sales.

According to the information published on PROCOMPETENCIA's website from 2009 to 2016, 31 cases have been processed for anticompetitive practices *and unfair competition conducts*, out of which 67.74% were resolved by the institution, 19.35% were dismissed by the parties and 12.90% were not processed.

Concentrations: Concentrations reaching the following thresholds must request prior authorization: i) When economic agents have a participation of 25% of the relevant market; ii) When Economic agents have a combined gross income equal or superior to 642,857 minimum wages. PROCOMPETENCIA may prohibit or authorize partial or totally the concentration. If a concentration is not notified, a fine of 100 minimum wages up to 600 minimum wages can be imposed.

Regarding economic concentrations, PROCOMPETENCIA has processed a total of 20 cases between 2009 to 2019, the 100% of the cases were authorized with conditions.

4. Public companies or companies holding special or exclusive rights, including designated monopolies (Article 280 EUCAAA)

Articles 68, 99 and 104 of the Nicaraguan Constitution states that the Government must guarantee the freedom of enterprise and that economic activities are guaranteed –by the State- without more limitations than the stablished in the laws for social or national interest. The

Political Constitution of Nicaragua also establishes that it is the State's responsibility to guarantee control over goods and services and to prevent speculation and the monopolization of basic goods of consumption. The State shall guarantee the promotion and protection of the rights of consumers and users through the relevant legislation on the matter.

The markets for infrastructure in Nicaragua such as potable water distribution may be considered as a natural monopoly. E.g., ENACAL is the public company for the distribution of water and ENATREL is the public company for the distribution of energy. Other public companies that may be considered as a natural monopoly are **Energy:** ENEL; ENIPLANH; ENIGAS; ENICOM and ENIMINAS. **Transportation:** ENABUS; ENABIN and ENTRACAR.

5. Public Procurement and Distribution of Pharmaceutical Products

Public Procurement: In accordance with Law No. 737 for Public Procurement, approved on October 19, 2010, and its Regulations, Decree No. 75-2010 approved on December 13, 2010 foreigners, natural and legal entities are enabled to participate in public procurements by registering as a supplier of the State and complying with special requirements to prove their legal capacity. Therefore, we consider there is not legal limitations for foreigners compared to nationals.

We requested information to PROCOMPETENCIA about the situation of public procurement in Nicaragua and they only informed us that they have a Guide of Good Practices for Public Procurement in Nicaragua and additionally, informed us that there is currently a request for legal advice from a company, for considering the existence of restrictions to participate in public procurements processes before the Ministry of Health (MINSA). This case is still in process, so there is no information to be included in this report.

Finally, it is important to consider the political and social situation in Nicaragua, which has caused that currently, there are no printed newspapers in the country, as well as the impediments and burdens faced by independent journalists and people who do not agree with government policies, to investigate and publish situations that may affect the competition in the country caused by State´s impediments. Therefore, access to this type of information is limited.

Distribution of Pharmaceutical Products: In accordance with the Law No. 292, Law of Medicines and Pharmacies approved by the National Congress on April 16, 1998 and its Regulations, Executive Decree No. 6-99 approved on January 25, 1999, there is no impediment for competitors to the distribution of medicines. In addition, Article 7 of the law establishes that for the manufacture, import, export, distribution, commercialization, prescription and dispensing of medicines prior authorization and sanitary registration from the Ministry of Health (MINSA) will be required. PROCOMPETENCIA authorized the concentration between "GSK" and "PFIZER" in 2019, for the market of distribution and commercialization of over-the-counter peripheral analgesics in tablet form for adults, for the relief of headache, muscle pain and fever. This case was authorized with conditions. Additionally, in relation to anticompetitive practices, there in 2013 there was a case of "Farmacia Gurdian" and "Kielsa, S.A." for alleged anti-competitive practices, in that case PROCOMPETENCIA resolved that there was no violation of the alleged anti-competitive practice of predatory practices by Kielsa, S.A, but the resolution has a recommendation of PROCOMPETENCIA to the Ministry of Industry and Commerce Development (MIFIC) to create discount policies between medicine

distributors and pharmacies, further, PROCOMPETENCIA recommended the reform of the Law of Medicines and Pharmacies to encourage all the doctors in the country to use generic products. With respect to **exclusive distributions and restrictions to passive sales** these must always treated with caution to avoid matching the restrictions established in the law. Article 19 of the Competition Law expressly prohibits, the unjustified agreement for the exclusive distribution of goods or services between economic agents that are not competitors with each other; or when the supplier or distributor of a product, sells only under the condition that the retail purchaser does not purchase or distribute competing products. There is also a general restriction to impose conditions of any kind. However, for these practices to be considered anticompetitive, the parameters established in the law must be met, i.e., the economic agents must have market power with regards to the relevant market, the contract covers products or services that are part of the relevant market and these contracts or agreements must restrict the competition, limit the access to competitors or displace said competitors in prejudice of consumer welfare.

VI. PANAMA

1. Introduction

Panama has a strong consumer protection and competition law framework, including constitutional provisions that explicitly establish that any combination, contract, or any action that tends to restrict or impede free trade and competition and that has monopolistic effects to the detriment of the public is prohibited in commerce and industry. Likewise, free economic competition is established as a responsibility of the Panamanian State.

Law 45 dated October 31, 2007 (hereinafter "Law 45") establishes the regulatory framework for consumer protection and defense of competition in Panama. This Law has been ruled by Executive Decree 8-A dated January 22, 2009, and Executive Decree 46 dated June 23, 2009. The Competition Authority has also issued some guidelines, such as the guide for the legal collaboration between competitors, guide for the control of economic concentrations and the guide for competition audit. Additionally, the Economy and Finance Minister ordered the publication of the Central American Competition Regulation by Resolution No. 46 of March 1st, 2021 and came into force on March 10, 2021. This Resolution was published in the Official Gazette No. 29243 of March 17, 2021, and no reservations were included in such Resolution.

2. Competition Authorities (article 279 of the EUCAAA)

Description: ACODECO was created by Law 45. The ACODECO is a decentralized public entity, with its own legal personality, autonomy in its internal regime and independence in the exercise of its functions. However, regarding the execution of the assigned budget, ACODECO is subject to the control of the General Comptroller of the Republic.

According to Law 45, ACODECO's main organizational structure is comprised of an Administrator, who will exercise the legal representation of the institution, a National Directorate of Free Competition, and a National Directorate of Consumer Protection, as well as technical and administrative units required in the exercise of its functions.

At the judicial level, the free competition and consumer affairs are handled by the Eighth and Ninth Courts of the Civil Circuit of Panama and concerning appeals by the Third Superior Court

of Justice of the First Judicial Circuit of Panama. In other provinces there are also specialized courts that handle this matter privately.

Functions and powers: According to Law 45, ACODECO'S main free trade and competition capacities are:

1. Establish coordination mechanisms with other State entities for consumer protection and for the prevention of restrictive competition practices.
2. Promote free competition practices among economic agents, associations, educational institutions, non-profit entities, civil society organizations and the Public Administration, through which it may recommend, through technical-legal reports, the adoption or modification of any procedure or requirement of any sector of the national economy or carry out studies to strengthen competition in the market.
3. Establish Corporate Compliance Programs in order to prevent restrictive competition practices in the different markets, ensuring their most efficient operation, thus guaranteeing the superior interests of consumers.
4. Investigate and verify monopolistic, anti-competitive or discriminatory practices by companies or entities that render public services, in accordance with the provisions of said Law and in accordance with the regulations and sectoral laws applicable to the public service in question. For this, the Authority will request the support and collaboration of the technical staff of the National Public Services Authority (hereinafter "ASEP").

Cooperation Agreements and Exchange of Information: Some of the most relevant Cooperation Agreements executed by the Competition Authority with other public entities to facilitate the mutual exchange of information and/or documentation that may contribute to the identification of facts or conditions that limit free economic competition are:

- Insurance and Reinsurance Superintendency, dated August 21, 2015
- Civil Aviation Authority dated April 12, 2019.
- General Attorney for Administration dated January 25, 2019.

The Competition Authority has also signed regional cooperation agreements for the exchange of information and experience in the application of competitive laws. Some of these cooperation agreements signed by ACODECO in Central America region are:

- Agreement with Guatemala's Attention and Assistance to the consumer Directorate of the Ministry of Economy, dated May 31, 2016.
- Letter of intent with the Ministry of Economy and Commerce of Costa Rica, dated September 14, 2016.
- Agreement with the Commission for the Defense and Promotion of Competition of the Republic of Honduras dated October 10, 2017.
- Agreement with "Pro Consumidor" from Dominican Republic, dated June 5, 2018.

3. Anticompetitive Conducts and Concentrations:

Agreements: Cartels or Agreements are regulated by Executive Decree No. 8-A of January 22, 2009. Articles 2, 13 and 14 and by Law 45, articles 13 and 16. Hardcore cartels (as defined by the OECD) are expressly prohibited by Article 13 of the Law 45 of October 31, 2007. A clemency program is established in Article 104 of Law 45: "The Authority may, in cases in

which the company that is the first to provide evidence that eventually leads the Authority to act in court for the alleged performance of absolute monopolistic practices, waive or reduce the payment of any fine or sanction. that could otherwise have been imposed, provided that this economic agent is not the market leader and is not the instigator of the practice." The regulation establishes two different kinds of fines:

- In the case of absolute monopolistic practices, with a fine of up to one million dollars (USD1,000,000.00).
- 2. In the case of illicit relative monopolistic practices, with a fine of up to two hundred and fifty thousand dollars (USD250,000.00).

Abuse of Market Power: Article 16 and 19 of Law 45 states that to determine whether an economic agent has substantial power over the relevant market, the following factors will be considered:

1. Its participation in this market and its ability to set prices unilaterally or to restrict supply in the relevant market without competing agents being able, effectively, or potentially, to counteract said ability. 2 The existence of entry barriers to the relevant market and the elements that, foreseeably, could alter the barriers and the offer of other competitors. 3. The existence and power of competing agents. 4. The possibilities of access of the economic agent and its competitors to sources of inputs. 5. Its recent behavior. 6. Other factors established by executive decree.

Prohibited conducts that are considered abuse of market power are defined by Article 16 (relative monopolistic practices) of Law 45 as "Any predatory act carried out unilaterally or in concert by an economic agent, tending to cause damages or to remove a competitor from the relevant market, or to prevent a potential competitor from entering said market, when such act cannot reasonably be expected to obtain or increase in profits, but by the expectation that the competitor or potential competitor will withdraw the competition or abandon the market, leaving the agent with substantial power or a monopolistic position over the relevant market."

Since abuse of Market Power is considered a relative monopolistic practice, it is sanctioned with a fine of up to two hundred and fifty thousand dollars (USD250,000.00).

According to Article 124 of Law 45, anti-competitive conducts are exclusively handled through judicial processes, the last instance of which is the Third Superior Court of Justice. Considering that the Law establishes that sanctions can be published on the website of the competition authority, the following cases have been published in the last three (3) years: 1. ACODECO vs. the National Union of Customs Brokers of Panama: The Third Superior Court of Justice confirmed the ruling by the Ninth Circuit Court against the National Union of Customs Brokers of Panama, for infringement of the Article 13, numeral 1, for the commission of the absolute monopolistic conduct of arranging, agreeing, or exchanging information tending to fix the minimum price of customs brokerage services in Panama. 2. ACODECO vs. Refinería Panamá, S. de R.L: The Third Superior Court of Justice confirmed the ruling issued by the Ninth Circuit Court against Refinería Panamá, S. de R.L., for infringement of the Article 16, numeral 9 Law 45, for the practice exercised by the defendant, which results in substantial power in the market, given the system used to dispatch fuel to tankers of wholesale companies. The judgement ordered the company to cease the use of the quota or shifts system for dispensing gasoline, which constituted an abuse of the market power. ACODECO vs. a group of laundry services companies: The Third Superior Court of Justice revoked the resolution of the Ninth

Circuit Court and found guilty a group of laundry service businesses for fixing prices for ironing shirts and trousers.

Concentrations: Concentrations are regulated on Chapter VI of Executive Decree No. 8-A of January 22, 2009, which defines it as the merger, acquisition of control or any act by virtue of which companies, associations, shares, partnerships, trusts, establishments or assets in general are grouped, which is carried out between suppliers or potential suppliers, between clients or potential clients, and other economic agents that are competitors or potential competitors among themselves.

Although in Panama it is not mandatory to obtain an approval before the concentration, companies can voluntary request such approval to ACODECO. In such cases, if a favorable resolution is issued, the concentration cannot be challenged, except if approved under false declaration or incomplete information provided by the economic agent. On the other hand, concentrations that have not been subject to prior verification could be challenged up to 3 years after the closing of the transaction. In cases of concentrations carried out without prior approval, if there is a subsequent analysis and the authority determines the concentration to be harmful to the market, it may order the de-concentration or establish corrective measures and if is determined that an illegal relative monopolistic practice has occurred, it may establish a fine of up to two hundred and fifty thousand dollars (USD250,000.00).

In the past three years, according to ACODECO's management report dated February 2022, a total of three (3) prior verifications were requested. For 2021, one prior verification was filed, and for 2020, two prior verifications. As for 2022, no prior verifications of economic concentrations were filed for the months of January and February 2022.

Notwithstanding the above-mentioned report, in March 2022, through resolution No. DNLC-MAC-005-2022 of March 16, 2022, the merger of the telecommunications companies Cable & Wireless and Claro Panama was authorized. This authorization was approved under some conditions, such as each company must operate for 10 months after the notification date of the resolution; to keep brands, stores, sales channels, and sales forces separate; among others.

4. Public companies or companies holding special or exclusive rights, including designated monopolies (Article 280 EUCAAA).

The Political Constitution of Panama establishes in article 265 that public monopolies can be established by law for imported or not produced articles in the country. In such cases, the State will indemnify in advance the people or companies whose business have been expropriated. Article 295 of the Political Constitution of Panama also states that any combination, contract, or any action that restricts or obstructs free trade and competition and has monopolistic effects in detriment to consumers is prohibited.

Panama has several public companies which include: 1. Tocumen International Airport, S.A. 2. Panama-Pacific Agency. 3. Panama Canal Authority. 4. Panama Maritime Authority. 5. National Bingo. 6. Civil Aviation Authority. 7. Urban Cleaning Authority. 8. Electric Generation Company, S.A. 9. Electric Transmission Company S.A. 10. National Markets Company of the Cold Chain S.A. 11. National Highway Company S.A. 12. National Institute of Aqueducts and Sewers. 13. Agricultural Market Institute. 14. National Charity Lottery. 15. Panama Metro S.A.

Exclusion of Markets: In Panama, according to article 3 of Law 45, the competition law is not applied to the economic activities that the Political Constitution and the laws reserve exclusively to the State and have not been granted in concession. Additionally, Article 6 states that any acts, agreements, alliances, associations, conventions, contracts or any other carried out by economic agents, whose objective is to increase, save or improve of the production and/or distribution of goods or services or promote technical progress or economical and that generate benefits for consumers, or the market are excepted from the application of Law No. 45, provided that it consists of 1. The exchange of technical information or technology. The establishment and/or joint use of infrastructure, equipment, resources or production facilities and technology. 2. The establishment and/or joint use of collection facilities, storage, transportation, and distribution. 3. That the product of said acts be exported.

Express Discrimination of Foreigners in the following markets: Retail: The constitutional provision regarding retail states: "ARTICLE 293. They may only engage in retail trade: 1. Panamanians by birth. 2. Individuals who, upon the entry into force of this Constitution, are naturalized and are married to a Panamanian or Panamanian national or have children with a Panamanian or Panamanian national. 3. Panamanians by naturalization who are not in the previous case, after three years from the date on which they obtained their definitive letter. 4. National or foreign legal persons and foreign natural persons who, on the effective date of this Constitution, were carrying out retail trade in accordance with the Law. 5. Legal persons formed by Panamanians or by foreigners authorized to exercise it individually in accordance with this article, and those that, without being constituted in the manner expressed herein, exercise retail trade at the time this Constitution enters into force. Foreigners not authorized to engage in retail trade may, however, have shares in those companies that sell products manufactured by themselves." Despite the current validity of this constitutional provision, in practice the application this article is not strictly enforced, but rather it has been used by competitors as an instrument of dissuasion to prevent larger retail business enter the Panamanian market (supermarkets, department stores). **Transportation:** In relation to public transportation, a legal restriction for bus and taxi drivers was enacted by Law 146 of April 15, 2020, when establishing that license permits required for such activities may only be granted to nationals. Hence, public transportation drivers must be Panamanians. **Logistics:** The Decree Law 1 of 2008, established that customs brokers must be Panamanians, restricting the entrance of multinationals dedicated to the processing commercial activities at the customs authorities.

5. Public Procurement and Distribution of Pharmaceutical Products

Public Procurement: Law 153 of 2020 states that foreigners, both natural and legal persons, may participate in public procurement, without any distinction regarding nationality. The legal limitations established for public procurement are applied indistinctly to national and foreigners. Beyond legal analysis, some public contracts have been accused of favoring entities linked to the government or the public sector. This shows a serious corruption problem and money laundry situations. This is the case of the Brazilian construction company Odebrecht, that paid millions of dollars in bribes to access contracts or other benefits in Panama in the period 2010-2014, according to United States justice authorities. Other Latin American countries were also affected by the Odebrecht scandal. On May 20, 2022, Luis Enrique and Ricardo Martinelli Linares, sons of former Panamanian President Ricardo Martinelli, were sentenced to three years in prison by a Brooklyn Court, for being behind the scheme set up in Panama to receive money from the Brazilian multinational Odebrecht.

Distribution of Pharmaceutical Products: The distribution of pharmaceutical products in Panama works as a free market system. However, any company that wishes to engage in the distribution of pharmaceutical products must obtain a special license issued by the National Directorate of Pharmacy and Drugs of the Ministry of Health. The obtention of this license is a bureaucratic and burdensome process that facilitate entry barriers and obstructs competition. Therefore, in recent years, different initiatives have been presented to the National Assembly of Panama seeking to establish a price regime for medicines to reduce their costs to the public. Such is the case of current Draft Law 208 of February 2nd, 2022, which aims for sale prices of medicines to the public to be equal to the effective cost paid by the pharmacy or establishment plus a single fixed sum as maximum intermediation cost. The Explanatory Memorandum of Draft Law 208 indicates that, among others, it is difficult to access the market due to the bureaucratic process required to register a new pharmaceutical company and obtain the corresponding license. This creates an entry barrier to this market which in turn, contributes to higher prices. The Memorandum estimates that the *few* economic agents currently operating in the pharmaceutical market have a gain margin of approximately 75% of the cost of the product from its shipment to its sale to the public.

On the one hand, public protests and pressure groups have been recently objecting such high prices and generating thus the discussion on this topic and promoting legal initiatives such as Draft Law 208. On the other hand, the Panama Chamber of Commerce has rejected any measure that includes regulating prices as it could discourage foreign investment and harm consumers. The Competition Authority of Panama has not investigated any anticompetitive conduct on this market just yet.

Exclusive distributions agreements, regardless of the market, are expressly described as an anticompetitive conduct by Panamanian Law, more specifically, these are relative monopolistic practices. If the prerequisites established by Law Nr. 45 (Norms on the Protection of Consumers and Defense of Competition) are met, i.e., if the economic agent or agents have market power over the relevant market, the exclusive agreement could be anticompetitive. Economic efficiency is the only criteria that would unqualify these agreements as anticompetitive and this efficiency is determined once the net effect of the conduct in the market is analyzed. ACODECO must balance the pro-competitive advantages of the exclusive distribution agreement versus the anticompetitive disadvantages or restrictions to the competition that it would cause. Therefore, the analytical proof is based on the total social result, meaning that the costs and benefits are equalized to safeguard the interests of consumers and generate a net gain to society. [49] Furthermore, relative monopolistic practices are not only those specifically described in the Law, but rather, all those acts that unreasonably damage or obstruct the process of free competition in the production, processing, distribution, supply or commercialization of goods and services and if these acts cannot be justified in terms of economic efficiency. Therefore, **restrictions to passive sales** in this market could also be considered damaging to competition, if the before mentioned conditions coincide.

VII. CENTRAL AMERICAN COMPETITION REGULATIONS

The Central American Competition Regulations ("the Regulations") were adopted within the legal-political framework of the Central American Integration System and the Protocol to the General Treaty of Central American Economic Integration (Protocol of Guatemala). The

[49] ACODECO Guide on Relative Monopolistic Practices

Protocol along with the Council of Ministers of Economic Integration (COMIECO), have under their competence matters related to the Central American Economic Integration and, as such, the approval of the administrative acts of the Economic Subsystem. The Regulations were approved by COMIECO on December 10th, 2022 and was effective by March 10th 2021. All the Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama) are parties to this agreement ("the Member States") which responds to the obligation to adopt common dispositions to avoid anticompetitive practices and promote free competition. The adoption and implementation of the Regulations were an essential step in the process of integration and liberalization of trade in the region.

This integration process is gradual one and does not necessarily move on the fastest track. There are several challenges faced by Member States starting from the disparity of the laws in each country (or the lack thereof in the case of Guatemala) and the different levels of growth and strength of each of the competition authorities, as well as the different priority given to this topic by each of the countries' political agenda. Consequently, the Regulations' objective is only the **promotion of regional competition** and the establishment of **cooperation mechanisms** and therefore, the Regulations do not regulate supra-national or regional integrated norms to investigate, pursue and punish anticompetitive regional conducts or establish processes to approve or reject concentrations that could have effects on a regional level. As such, the Regulations created a **Competition Committee**, that is not equal to a regional competition authority, but rather the Committee responds to the objective of the Regulations and is, therefore, the technical body in charge of creating and implementing cooperation mechanisms and promoting competition amongst Member States. The Committee was not created to pursue and investigate anticompetitive conducts on a regional level.

According to the Regulations, the Committee shall be responsible for promoting competition at the regional level, through the following activities: a) preparing recommendations on best practices in competition matters; b) issue opinions or recommendations on competition matters, in cases where it is deemed appropriate or at the request of COMIECO, on draft regulations and laws currently in force at the regional level; c) analyze, from the point of view of regional competition, the recommendations or opinions that any national competition authority has issued and informs thereof to the Committee; d) the preparation of regional market studies on the characteristics and state of competition in sectors of special relevance and common interest; e) promote, direct and carry out monitoring work on Central American markets in the area of competition; and, f) any other initiative to promote knowledge and culture of competition, compliance with competition laws and socialize the work of the Committee. The recommendations, reports, opinions and studies issued by the Committee will not be binding.

The Regulations copy several of the articles included in the Association Agreement between Central America and the European Union, in particular Article 279 (Principles) whereby Member States recognize the importance of free competition and therefore declare that agreements between competitors, abuse of market power and concentrations that could hinder competition are not compatible with the Regulations. It also copies Article 290 of the Association Agreement that regulates public companies or entities with special or exclusive rights. However, the Regulations do not include the obligation of Member States to ensure that discrimination is not implemented by these public companies or entities with special or exclusive rights, which in contrast, is included in the Association Agreement. Furthermore,

the Regulations highlight the importance of cooperation to promote competition at the regional level. Consequently, the following cooperation mechanisms will be implemented: notifications on enforcement activities, consultations, exchange of information, technical assistance, and joint trainings, all in accordance with the laws of each Member State, who keep their autonomy to make their decisions and agree on bilateral agreements.

The Committee is on its early stages of development. According to an interview conducted with an official of Costa Rica's Ministry of Trade, negotiation amongst Member States tend to be arduous due to the contrast in their competition laws and their different stages of their maturity. Currently, COMIECO is discussing the Committee's Operations Manual and there have been scheduled 3 meetings per Semester to negotiate this Manual and discuss other topics, but it is considered that it might take more than 6 months to finalize the Manual. The Pro Tempore Presidency of the Committee is currently held by Guatemala.

VIII. FINAL REMARKS

CR: Despite being one of the first Central American countries to have approved competition laws, the maturity of competition law in Costa Rica is still in process and with this, great weaknesses are evident for the country to efficiently guarantee its citizen and markets an adequate regulation and application of public regulatory law. While it is true that Law 9736 has introduced many necessary changes by attacking weaknesses in the legislation, its approval is still recent and, in addition, the past 2 years marked by the pandemic crisis of Covid19 have slowed down the process. Outside the active merger control sector, case law of cartels and abuse of market power (from either administrative or judicial resolutions) is not particularly strong when analyzing the volume of resolutions. However, the stronger budget and new institutional organization of COPROCOM, as well as the more dissuasive sanctions and tools such as the leniency program, open the possibility of a better scrutiny and application of the competition law. Against this, however, there are regulated markets and exceptions to the competition law that evidence a disparity and therefore, a weakened enforcement of the law. It is also necessary that the competition authorities carry out a better economic analysis in their cases to ensure an adequate interpretation and application of the competition framework. Despite having the possibility of issuing opinions and market studies, the strength of the competition authorities in any case, and even with the reforms, is highly limited considering that their opinions are not binding (and some believe they should not be). It will be necessary to wait for the fruits of the innovations introduced by Law 9736 to take place, as well as the efforts taken on an international level - that could take more years to materialize- such as the Central American integration process, the Central American Competition Regulation, and the country's participation as a member of the OECD.

GT: In Guatemala, lack of a competition law and authority renders a very weak supervision system (despite assuming several internationally commitments to do so e.g., Chapter VII of the EUCAAA, as well as within the context of the Central American System of Integration), but also because the few existing norms that relate to competition are not technically strong enough nor have these been enforced from a strict competition point of view, but rather from unfair competition affecting only the involved parties without considering the economy, the markets or consumers. Attempts to pass a special law of competition have been made for years resulting in a previous bill being archived by Congress. The current Competition Bill has not received any strong attention for the past 4 years showing the inexistence of a strong, real, assertive competition policy. The Competition Bill proposes criminal punishments for those entering into collusive tenders, which would seem as a logically consequence for Guatemala

when considering the internationally known corruption issues of the country's Ministry of Communications, Infrastructure and Housing and the public works and infrastructure market. Competition in public procurement was not based on the objective evaluation of the offer and the real capacities and experience of the offering companies, but rather, the lack of regulations and control gave way to the payment of commissions and serious corruption. [50] Moreover, the parameter to apply the economic sanction - as an additional punishment to time in prison- is not clear, which could create enforcement issues. Guatemala's context must also be read by considering the existence of numerous companies and private associations with special rights that concentrate enough power to be able to regulate and dictate how such markets operate. Therefore, Guatemala is not a country where competition enforcement exists, and years will be most possibly needed for this to be materialized.

HND: Honduras has a competition framework for almost 18 years. However, the competition authority has not been very active when it comes to investigating and imposing penalties to cartels and abuse of market power, contrary to concentrations. Fines are equal when it comes to either cartels or abuse of market power. Even if monopolies are prohibited in Honduras, the national company of electric energy ENEE, has been acting as a de facto monopoly for the production, commercialization, transmission and distribution of energy despite recent reforms in 2013 that in theory, allow more freedom in this market. Nevertheless, these improvements are counteracted by the excessive regulation of the market, and many believe that these could be the reason that will prevent the reversal of a "monopolistic tradition and culture" of more than 50 years.

PA: Competition policies were established in Panama, for the first time, through the enactment of the Law 29 of 1996 and from that moment the regulation and competition practice evolved to the current law that was enacted in October 2007 witch, according to OECD[i], is consistent with many international competition best practices. The main criticism to the Panamanian law is that ACODECO is legitimated to administratively investigate anticompetitive practices but is not competent to impose any fines directly, it must sue in court to determine the existence of such practices and only once it leaves the judicial phase, the process returns to ACODECO to be sanctioned. The problem is that currently this judicial phase can take several years, creating an incentive for breaking the law due to the lack of consequences. A possible solution to that problem could be the implementation of a special administrative system, to investigate, decide, fine and impose corrective measures that can be, further challenged before the courts.

[50] International Commission against Impunity in Guatemala, United Nations, Thematic Report, Guatemala: A Captured State, p. 42. "*The result of these dynamics was the corruption of the system of public works and its deterioration in both quality and quantity*."