Paraguay

Chamber of commerce:
Camara y Bolsa de Comercio de Asuncion
Estrella 550
Asuncion
Paraguay
Tel: +59 521 493 321
Fax: +59 521 440 817
Email: camabol@uninet.com.py
Web: www.ccparaguay.com.py

Defending competition in the Paraguayan market

Jorge Figueredo-Klein and Kiantar Betancourt
Vouga & Olmedo
Asuncion

Casa Grüter, a small domestic grocery store chain, created quite a commotion in Paraguay when it accused its distributors into boycotting them. According to publications in local newspapers, the larger supermarkets had supposedly told numerous domestic distributors they would stop doing business with them if they continued doing business with Casa Grüter. The proprietors of Casa Grüter say they were being targeted because of their low prices achieved through selling goods with a lower profit margin.

Casa Grüter had little hope of stopping the practice, outside of leaking the news to the press, because Paraguay remains one of the few countries in Latin America without a Competition Law. However, the recently Defense of Competition bill (DOC bill) submitted to the Parliament is positioned to change this reality.

In 2003, the Ministry of Industry and Commerce (MIC) commissioned an European consultant to draft a bill for the country's first competition laws. In July, 2008, the House of Delegates passed the bill during the last session of the 5 year term, without any discussion. Business leaders from various industries decried the potential law, saying that it was too harsh and could be manipulated for political and economic gains due to weaknesses in its design. The Senate rejected the bill based partly on the promise from business community that they would improve the old bill. The DOC bill is the result of this effort. As the only significant draft of legislation of its kind, early signs point that the DOC bill could pass in the near future.

Competition law

The DOC bill was modeled after similar legislation found in the Mercosur, United States, European Union, and UNCTAD model guidelines. The current DOC bill makes several improvements over the 2008 bill rejected by the Senate, concerning anti-competitive conducts, abuse of dominant position, mergers control, and most importantly, autonomy of the regulatory body.

The drafters kept both consumer and business interests in mind and also took account of Paraguay's unique market situation and national commercial policies; i.e. he country's position as a land-locked country nestled between two of the continent's strongest economies (Brazil and Argentina), subject to the unstoppable flow of their goods, coupled with a vibrant black market, and local industries trying to grow large enough to compete with others in the regional market.

The DOC bill restricts anti-competitive conduct, modeled after the UNCTAD guidelines, using the rule of reason as opposed to the per se rules in the previous bill. Under the old bill, certain restricted conduct would have had little to no effect on competition but would still violate the law. The DOC bill focuses on only restricting conduct that effectively harms competition, giving business more operational freedom than the previous bill.

The DOC bill also applies the rule of reason to firms that possess a dominant position in the market. Under the old bill, any business with a 30% market share was considered to have a dominant position and had to operate with many overly burdensome restrictions. A blanket 30% rate fails to convey the realities of the Paraguayan market, where a domestic business trying to compete regionally may need a large market share at home to survive.

For instance, a Paraguayan company with a 50% share of in the Paraguayan market may still be quite small compared to a Brazilian or Argentinean company with only a 10% market share in their respective countries.

The DOC bill gives the enforcement authority the flexibility to consider each individual market, along with additional factors, to determine what market share percentage should be considered a dominant position. Businesses are not punished for their dominant position, only for their abuse of that position.

The old bill made mergers and acquisitions difficult, requiring reporting and approval from the Ministry of Industry and Commerce before mergers or acquisitions would be allowed to take place. The DOC bill raises the minimum threshold for such reporting. A business would only report the merger or acquisition when it raised their market share over 40% or gross income over 120.000 times the mandated monthly salary (US$ 38 Millions). It does so to decrease government intervention in mergers and acquisitions that would not have a negative effect on competition or the market.

The DOC bill places enforcement authority in a new autonomous entity called the National Commission of Competition (Conacom). The previous bill gave sole enforcement authority to a mid-level office within the MIC. The private sector unanimously voiced concern that this structure could be abused, motivated by political or other forces rather than by concern for the market.

The Conacom's structure helps relieve these worries because its agency independence and the election process, which involves a board comprised equally of public and private sector representatives that should oversee the process to create a short-list of qualified candidates (the President of the Republic chooses the commissioners from the short-list), better ensures it will possess the requisite expertise and autonomy to successfully fulfill its duties.

Conclusion

The MIC asked the US FTC and the UNCTAD Competition Policy Branch for assessment of the DOC bill. Upon reviewing the legislation, both generally agreed that such draft has a balanced approach and complies with most of current standards in competition legislation, suggesting few changes. Hearings at the Lower Chamber are going to be held during the third quarter of 2010.

Politicians, business community and consumers agree that passing the DOC bill will bring Paraguay's competition laws on par with its neighbors while helping improve the transparency, predictability, and viability of its growing competitive market. This will be another of many recent positive steps aiding in the development of the country by creating a better business culture and environment.

Financial and corporate

Recommended firms
Tier 1
Estudio Juridico Gross Brown
Moreno Ruffinelli & Asociados
Fiorio Cardozo & Alvarado
Mersan Abogados
Peroni Sosa Tellechea Burt & Narvaja
Vouga & Olmedo

The world's demand for soy has made Paraguay an increasingly important bread basket for the world. The nation's low sophistication of infrastructure - as well as legal structure - has proved a self-regulating factor on the economy, fuelling a modest but positive growth pattern largely untainted by external fiscal woes. Even through the banking crisis the nation saw a steady increase of foreign players looking for land to grow produce and graze cattle.

And with any economy propped up on a single industry, the threat of disaster for Paraguay lies just beyond the next drought. Legal sources say the government has already taken steps to protect its cash crops and cash cows, and is beginning to consider ways the economic landscape can be diversified.

Leading lawyers report the Paraguayan lawmakers have proposed broad reforms to anti-competition measures and are drafting new rules governing water resources and environmental requirements. Additionally, the government is currently putting in place the framework for a concession process with private entities. Sources also say the largely unregulated microfinance sector is due to get its own distinct regime.

The rising tide of foreign investment is promoting competition in several key sectors of Paraguay's economy. Activity in the country's airline industry picked up in 2009 when Taca added Asunción to its regular flight schedule, joining Brazil's Gol Airline and Argentine Aerolíneas as the lone competitors to Tam, the country's domestic airline. Lead attorneys report mounting inquiries by global players interested in establishing routes to the nation.

Sources in the legal community say the most relevant financing transaction in recent history came in the $100 million Tupi cement plant, developed by a consortium led by Brazilian cement producers Votorantim and Camargo Correa. Attorneys expect support work triggered by the project to trickle into the country's important *barcaza* industry, which builds the specialised bulk barges that carry soy, grain and soon cement to market down the Paraguay River.

Paraguay's laconic economy has generated a set group of equally competent and cooperative lawyers, easily sharing the small amount of transactional work in the market. But commentators note a new generation of lawyers is returning from studies abroad, and predict their ambitions fuelled by the country's growth will bring some competitive spirit to the negotiating table.

Estudio Juridico Gross Brown

While contending that Gross Brown does not represent all the banks in Paraguay, competitors note the firm represents the biggest ones in terms of assets. "They have a more important practice in that area, I am sure," remarks one rival, "and are able to charge very good fees."

Rivals consider partner Jorge Gross Brown the best known name in the banking community, with close ties to the most active multinational institutions In Paraguay. Recent clients of the firm include Rabobank and BBVA, which last April received a $30 million four-year loan from IFC to boost lending in Paraguay's agricultural and small-business sectors.

While packing exceptional weight in the transactional market, peers note the firm lacks several key practice areas that would characterise it as a full-service firm. But the firm includes on its corporate client list heavies like Chinese soy importer Noble Grains, Brazil's Petrobras, and local TV station Paravisión.

Leading lawyers

Atilio Gómez Grassi
Eduardo Javier Gross Brown
Jorge Rafael Gross Brown

Fiorio Cardozo & Alvarado

"Good competitors help us a lot," says one Paraguayan lawyer of rival firm Alfio, "so we have to thank them." Not only are the partners considered "likeable persons" and adept practitioners, peers point to the firm's impressive client list with some of the most active foreign corporates in Paraguay, like ExxonMobil, McDonalds and Louis Dreyfus.

While noting the firm's size limits the scope of its capabilities, one peer states: "They only need to make the decision to grow." Partner Juan Fiorio earns praise in the market as an adept labour counsellor as well as corporate law practitioner. But competitors say the star of the firm's transactional work is partner Rafael Alvarado, who also holds a particular expertise of Paraguay's unique maritime regime.

Leading lawyers

Rafael Marcelo Alvarado Pérez
Juan Bautista Fiorio Giménez

Mersan Abogados

While noted for work in banking and finance, one peer says Mersan "has a stranglehold on taxation law." Commentators note the firm's cornering of the tax market provides a steady stream of revenue, allowing partners to pick and choose the transactions they participate in.

Carlos Mersan earns notice as a statesman in tax law as well as an adept negotiator in financial matters. "We have been working together in many cases," remarks one competitor, "and he is very good."

Leading lawyers

Carlos T Mersan

Moreno Ruffinelli & Asociados

Governmental connections can quickly devaluate in an unstable political market, but one rival attorney noting Moreno Ruffinelli's highly placed contacts says, "Nothing has changed in the last 20 years." Commentators say the firm's slim profile attracts a good portion of the local corporate market, but add the firm has a growing roster of young talent that is "a good reference" in the legal market.

Competitors point to founding partner José Antonio Moreno's experience as ambassador to Brazil and minister of foreign affairs as the credentials of a senior statesman. But peers contend that Moreno maintains a presence in arbitration matters and commercial transactions.

"A good professor like Moreno is always somebody who is very active - not retiring or going onto pension," notes one rival.

Leading lawyers

José Antonio Moreno Rodríguez
José Antonio Moreno Ruffinelli

Peroni Sosa Tellechea Burt & Narvaja

No other team of lawyers comes recommended by rivals for their stellar individual reputations as the partners of Peroni Sosa Tellechea Burt & Narvaja. The firm is commended by peers for its "modern structure and good growth strategy," as well as its impressive showing of international corporates and financial institutions on their client roster, including Agro group Cargill.

Market feedback holds partner Guillermo Peroni is a leader in government contracts, and maintains close contact with a loyal group of clients. "He keeps a very good relationship with people, and promotes the law firm very well," says one rival, adding, "In that respect I think he is successful."

Leading lawyers

Esteban Burt
Guillermo F Peroni
Antonio Tellechea Solis

Vouga & Olmedo

A firm competitors say is "hitting increasingly in the market with good clients," Vouga lays claim to some of Paraguay's most important international players like ADM, Time Warner and Brazil's Petrobras. Rivals contend the firm is structured as "a kind of dual law firm under one name," with distinct practice groups around lead partners Gustavo Olmedo and Rodolfo Vouga.

Considered mainly by peers a strong corporate firm, Vouga has the lion's share of work for busy local Banco Regional, which the firm helped close its acquisition of ABN Amro locally at the end of 2009. Peers mention the firm also sees a share of work with multilateral lenders, microfinance institutions and Paraguay's growing airline industry.

Paraguay's dominant business of agriculture supports many sub-sectors like farmland management and river barge fleets, as well as a highly specialised insurance industry. Last year the firm helped ADM incorporate its insurance subsidiary Agrinational as the first player in the market solely dedicated to the agricultural field.

Leading lawyers

Gustavo Olmedo
Rodolfo Vouga