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## **The COMPAL Programme**

**An analytical approach to strengthen institutions and capacities in the areas of competition and consumer protection policies in Latin America**

**Geneva, April 2008**

\* Further information about the COMPAL Programme can be found at <http://compal.unctad.org>. Your comments will be greatly appreciated. Please send them to [compal@unctad.org](mailto:compal@unctad.org)

The opinions contained in this document are those of the COMPAL Project Management Committee (PMC, Geneva) and do not necessarily reflect those of the United Nations.

## Executive Summary

This document summarizes the major components of the COMPAL Programme and the changes occurred since its inception in 2005. This document attempts to cover two major objectives: First, to provide the reader a clear picture on how to understand the COMPAL Programme according to its level dimension, i.e. Macro, Mezzo and Micro. The latter serve to explain the Programme from an aggregated to a disaggregated level. Second, to explain the evolution of the COMPAL country (at Mezzo level) objectives over the period 2005 – 2007.

The document also includes recent findings from the External Technical Evaluation on the Programme<sup>1</sup>, carried out during the second half of 2007. In this connection, it was found that, at mezzo level, the COMPAL Project for Bolivia experienced major changes in its country objectives; The projects for Costa Rica and Nicaragua did not register changes (merely some activities as explained in the present document); the Project for Peru did register minor changes with regard to it's the country objectives, whereas the Project for El Salvador experienced minor changes with respect to the first country objective under the Project.

The structure of the document is organized as follows: the first section deals with the three above-mentioned dimensions to understand COMPAL. Then, each section is dedicated to beneficiary countries as follows. The second section deals with the Bolivian's development of facts since 2004 up to the present time. The third, fourth, fifth and sixth sections deal with Costa Rica, El Salvador, Nicaragua and Peru, respectively. The last section provides a brief summary of the lessons from COMPAL implementation and way forward.

UNCTAD is grateful to the Swiss State Secretariat for Economic Affairs (SECO), the Swiss Competition Authority (COMCO) and the national institutions participating as beneficiaries for their support to the COMPAL Programme

It is expected that basis on the experience of the implementation of this Programme, the preparations for a COMPAL II proceed by deepening activities and components and a reinforced commitment from the part of beneficiary countries. Moreover, it is hoped that other similar technical assistance projects can be organized for other countries and regions.

### COMPAL main stakeholders

SWITZERLAND:

<http://www.seco.admin.ch>  
<http://www.weko.admin.ch/index.html?lang=en>

BOLIVIA:

<http://www.produccion.gob.bo/vce/vce.php>

COSTA RICA:

<http://www.coprocom.co.cr>  
<http://www.consumo.go.cr>

EL SALVADOR

<http://www.sc.gob.sv>  
<http://www.Defensoria.gov.sv>

NICARAGUA:

<http://www.mific.gob.ni>

PERU

<http://www.indecopi.gob.pe>

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<sup>1</sup> External evaluation of the COMPAL Programme. SECO.

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## List of abbreviations and acronyms used in this report

ACP	Anti-competitive practices
AOPs/POAs	Annual Operative Plans
CAFTA-DR	Central America-Dominican Republic-United States Free Trade Agreement
CLP	Competition Law and Policy
COMCO	Competition Commission, Switzerland
COMPAL	Programme on Strengthening Institutions and Capacities in the Area of Competition and Consumer Protection Policies. Cases of Bolivia, Costa Rica, El Salvador, Nicaragua, and Peru
COPROCOM	Commission for the Promotion of Competition, Costa Rica
DGCTM	General Directorate for Competition and Market Transparency, Nicaragua
FTA	Free Trade Agreement
INDECOPI	National Institute for the Defence of Competition and Intellectual Property, Peru
ITPA	International Technical Programme Advisor
MIFIC	Ministry of Industry and Trade, Nicaragua
MINEC	Ministry of Economy, El Salvador
MOU	Memorandum of Understanding
NPC	National Project Coordinator
PMC for a country	Project Management Committee, composed of UNCTAD and the relevant NPC
PMC	Programme Management Committee, composed of the five PMCs for each COMPAL beneficiary country
SDC/CDE	Strategic Direction Committee/ Comité de Dirección Estratégica
SECO	State Secretariat for Economic Affairs, Switzerland
SIRESE	Sectoral Regulation System, Bolivia
TOR	Terms of Reference
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme

## Section I: The three levels of the COMPAL Programme

### I. Introduction: Approaching and understanding COMPAL

#### *What is COMPAL?*

1. The COMPAL Programme is a three-year Technical Assistance Programme on Competition and Consumer Protection Policies supported by SECO (Switzerland), that provides assistance to five beneficiary countries, i.e., Nicaragua, Costa Rica, El Salvador, Peru and Bolivia. This UNCTAD-led programme implemented with National Project Coordinators (NPCs) from each beneficiary country, involves the establishment and/or strengthening of capacities in various institutions dealing with competition and consumer protection policy issues. In addition to providing support at national level, the Programme promotes the exchange of experiences among beneficiary countries so as to maximize the benefits resulting from the planned activities. The ultimate goal of UNCTAD capacity building in this field is to provide developing countries with tools to promote competition in their markets and to enhance consumer welfare through lower prices, better quality and a wider variety of choice for consumers.

#### *The specific value-added from UNCTAD coordination of the Programme.*

2. Thanks to UNCTAD long-standing experience on Competition Law and Consumer Policies and its international exposure on these issues, as well as its capacity building, programmes, the planned activities of the Programme can be dealt in an efficient and effective manner. Given the large number of activities involved in the Programme, and the commonalities among beneficiary countries, the Programme has taken advantage of economies of scale gained for the benefit of all COMPAL stakeholders. Tangible results of this comprehensive Programme include: research and analysis on competition and consumer protection law and policies, adoption / strengthening of legal and regulatory frameworks, activities of competition advocacy, assistance in law enforcement, support to public policies including MDG goals, training activities, institution building, developing thematic networks with Universities, training centres, and promotion of cooperation initiatives between beneficiary countries and other countries and regions. UNCTAD extensive contacts and thematic networks developed throughout Latin America increases the likelihood that in case of any disruption (e.g. high staff turnover in competition and consumer protection agencies, changes regarding consultancy assignment), measures will be adopted accordingly. Moreover, UNCTAD has promoted the use of the Spanish language as a basis for communications at the level of the Programme Management Committee (PMC<sup>2</sup>), and in the preparation of documents and reports of the activities. However, it has also ensured English communications to international stakeholders and for outreach purposes worldwide.

#### *The two sets of inputs from UNCTAD to COMPAL*

3. In addition to the foregoing, there are two sets of inputs that UNCTAD provides to COMPAL. The first one is the analytical support to the Programme activities<sup>3</sup>. UNCTAD professional expertise along with that of

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<sup>2</sup> UNCTAD puts forward the institutional framework of the Programme Management Committee (hereinafter PMC), comprised by the Programme Manager, the General Assistant and the Assistance to the PMC. Among others, this team has the following managerial responsibilities: (i) providing overall supervision to the Programme by managing its budget. The management and control of the master budget is undertaken by UN administrative and financial procedures by using its system (IMIS) and according to UN regulations; (ii) undertaking monitoring activities in accordance with UN regulations and procedures as well as the operational framework put forward herein; (iii) assisting each NPC in the development of their work plans and strengthening NPCs' role and other functions as required; (iv) promoting cooperation among institutions engaged in the Programme activities; (v) in coordination with the donor, revising the set of planned activities every year taking into consideration accomplishments and expected circumstances; (vi) assisting in the design, on methodological aspects and implementation of studies, reports, publications and other materials with the support of key technical Programme personnel; (vii) assisting in the revision of legal frameworks of each beneficiary country; (viii) preparing the Mid-term Global Report and the Final Global Report.

<sup>3</sup> UNCTAD activities support the efforts of developing countries in their fight against anti-competitive behaviour in domestic markets, as well as responding effectively to a range of anti-competitive practices in international markets that impair or nullify the benefits expected from developing countries' participation in dynamic export sectors and market liberalisation. In the context of this Programme, the major analytical and knowledge transfer-related activities are: (i) ensuring the analytical coherence of the whole Programme; (ii) acting as resource persons and delivering presentations/papers/policy recommendations as required by the Programme's substantive activities providing advice to NPCs on the choice of international and regional consultants; (iii) designing and supervising training programmes and support materials, providing feedback on commissioned reports, papers, and any other

the International Technical Programme Advisor (ITPA) have been key elements to ensure substantive components in the Programme. The second set is the overall supervision of the Programme, which draws on UNCTAD experience in managing and implementing development programmes, specifically in the area of Competition Law and Policy (CLP). In view of the country-by-country approach envisaged for each objective, the National Programme Coordinators (NPCs) play a crucial role in achieving the Programme objectives. To this end, UNCTAD coordinates with NPCs in order to ensure that the Programme objectives and activities are included in their national plans, and also in the plans of action of other local partners' work programmes.

4. Therefore, taking into account not only the aprioristic feature of UNCTAD but also the two set of inputs provided through COMPAL as a whole, if one is to approach and understand the functioning of the COMPAL programme, it should be linked to both above-mentioned set of inputs. Having said that, in what follows, COMPAL organizational approach is described in an analytical manner, by virtue of putting forward a tri-dimension scheme based on three levels of analysis that can be drawn from the experience gained from COMPAL since its inception in January 2005.

## **II. Why does COMPAL require "three levels" of analysis?**

### *The Genesis of the COMPAL Programme*

5. The genesis of COMPAL saw its underpinnings in Phase I (September 2003) related to the assessment of needs and priorities of a selected group of countries (seven at the time) in the areas of competition and consumer protection. During that Phase, the pressing needs of each (potential) beneficiary in the field of competition and consumer protection law and policy were explored. In addition, it was found useful to determine the degree of commitment to the Programme from the part of the main stakeholders. This is a key to ensure a proper implementation of the Programme a local level.

### *The outcome of Phase I of the Programme*

6. Phase I (need assessment phase) of COMPAL provided a clear picture of the level of development of seven selected Latin American countries at the time (Bolivia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Peru), in terms of the culture of competition and consumer protection. Thus, a number of facts were drawn from this phase starting from the common historical background of these countries, the practical commonalities and potential and established synergies amongst them that could actually be the *raison d'être* of this UNCTAD intervention.

### *A first approach to COMPAL*

7. Therefore, COMPAL I (Phase II of the Programme) was launched as a concrete outcome with a comprehensive approach resulting from the initiative put forward in September 2003 (launching of Phase I). There are various reasons to explain why a programme such as COMPAL, comprising five projects and more than 70 activities need to be evaluated from various angles. Indeed, a first dimension could be the to consider the valuable inputs provided by COMPAL three major components: first, the substantive component that has set the basis to the work on strengthening competition and consumer policies' institutions in the five beneficiary countries; second, the managerial-financial component necessary to ensure the implementation of the activities and third, the logistic component that it is essential to deliver on time the procurement and administrative processes required to execute every activity accordingly.

### *A second approach of COMPAL*

8. In addition, a second approach to COMPAL can be based on the type of components, projects and activities organized according to the aggregated/disaggregated level. As mentioned, the above-mentioned

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published material; (iv) in coordination with donors, revising the set of planned activities every year on the basis of accomplishments and anticipated circumstances; (v) encouraging cross-country exchange of experiences among the Programme beneficiaries, as appropriate, (vi) providing technical advice in specific cases, notably in legislation and implementation; (vii) disseminating findings from the Programme in international fora; (viii) passing on to beneficiary countries new information, data, experiences, and best practices on the implementation of competition and consumer protection laws and policies; (ix) in coordination with local counterparts, produce a series of research studies/reports with a specific format, in Spanish language in order to reach all sectors of the population in beneficiary countries.

three levels can be identified as follows: first, the Macro level: COMPAL is a comprehensive programme composed by a set of country projects; a series of cross-cutting issues and lessons from experience-sharing amongst beneficiary countries. . UNCTAD oversees the appropriate implementation of the whole Programme and ensures the validation of the general strategy of the programme by the Strategic Direction Committee (SDC) composed also by the Swiss Cooperation (SECO and COMCO) and the International Technical Project Advisor (ITPA). Furthermore, UNCTAD ensures the appropriate balance between substantive issues and the overall management arrangements. Second, the Mezzo level, whereby the overall performance of the country projects is analyzed taking into account the performance encompassed in the activities carried out by the whole country project. This exercise carried out by the PMC in Geneva. Finally, at the Micro level, each activity is deemed as an independent strategy with its own level of performance and impact at local level (e.g. the academic programmes in Costa Rica - activities CR.1.4. & CR.2.4. or the sectoral studies in Peru - Activity P.1.1.)<sup>4</sup>

#### COMPAL at macro Level

9. As mentioned, at macro level, COMPAL promotes experience-sharing initiatives and synergies amongst them. This exchange takes place despite the different degree of development in terms of competition and consumer protection. It is well known that the process of developing a culture of competition is continuous and even developed agencies need to learn about competition law and policy (CLP) and its linkages with other policy issues. There are various steps involved in the process of developing CLP<sup>5</sup>. At the outset, countries such as Costa Rica and Peru were considered more advanced as they had a competition agency established. They have been sharing their experiences and expertise thanks, among others, COMPAL since 2005. (e.g. activity P.2.2 under the Peru's competition agency internship programme, other COMPAL beneficiaries participated supported by Peru's allocated budget from COMPAL as per the Memorandum of Understanding - MOU<sup>6</sup> - ). This graduality can be also appreciated in the field of consumer protection. All countries have a consumer protection law and policy and develop their own programmes according to their national priorities.
10. The criteria to evaluate the macro level should be initiated by understanding the functioning and structure of the so-called "Programme Management Committee" (hereinafter the PMC). The reason is because there are key actors that play a pivotal role in this scheme: first, UNCTAD (whose two inputs were described above); and, second, the NPCs with their decisive and active role as described before. Also, the division of labor between them within the PMC has been clearly stated<sup>7</sup>
11. Indeed, at macro level, UNCTAD provides COMPAL the institutional framework for the PMC which is composed, at the level of Geneva, by an UNCTAD senior professional who assumes full responsibility for the success of the Programme, on behalf of the Executing Agency. Besides the role of overall supervision, monitoring, coordination with NPCs and the donor, reporting, etc. the Programme Manager ensures COMPAL outreach at national and international level. This has contributed to the worldwide recognition of COMPAL as a possible model for other similar programmes. In carrying out its functions, the Programme Manager is supported by the General Assistant (GA) to the PMC<sup>8</sup>. The GA to the PMC assists the NPCs, on a continuous basis, ensuring that activities are implemented and resources are properly allocated. More recently, in view of the increasing complexity of the Programme activities, an additional Programme Assistant has joined the team. The Assistant to the PMC supports the Programme Manager with regard to, among others, project management, administrative procedures and outreach activities. In

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<sup>4</sup> In order to facilitate the processes of the implementation of the COMPAL Programme, the PMC, Geneva has assigned specific codes to each activities.

<sup>5</sup> For further reading, please see Alvarez, A.M. and Horna, P. : Implementing Competition Law and Policy in Latin America and the role of Technical Assistance. Chicago Kent Law Review (forthcoming)..

<sup>6</sup> MOU of the Project for Peru.

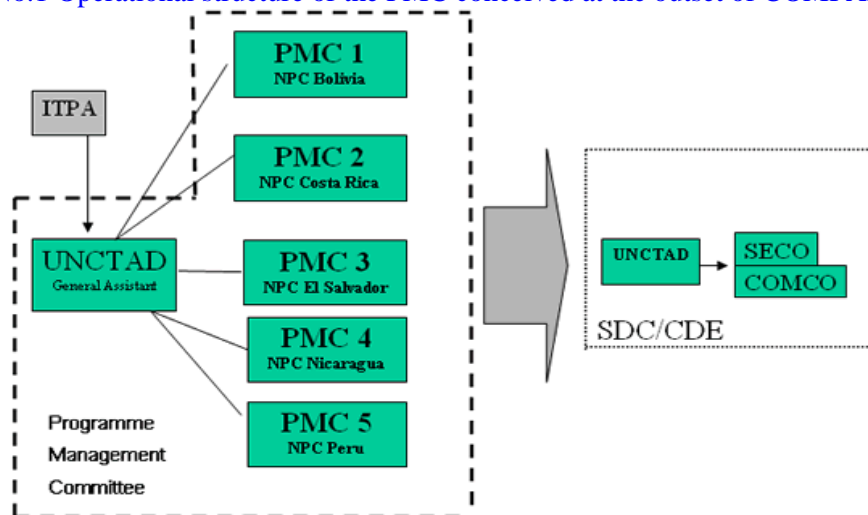
<sup>7</sup> The division of labour between UNCTAD and the NPCs was clearly stated at the outset of COMPAL through the **manual of the PMC**.. Taking the first level, (NPCs) and their local institutions will be primarily responsible for undertaking the proposed activities in the specified time frame. UNCTAD's main role will be that of facilitating and supporting local partners in meeting their objectives. In doing so, UNCTAD will ensure that the objectives and activities of COMPAL are part of the plans of the local institutions.

<sup>8</sup> See below the role of the Programme Manager and the General Assistant to the PMC.

view of the challenges of the Programme as a whole and each Project in particular, the PMC - Geneva has taken several initiatives to improve the quality of outputs and the processes. On their side, at country level, each government provide institutional support by appointing one or two NPCs in each beneficiary country dedicated to competition and consumer protection issues. In Bolivia, Nicaragua and Peru the NPC is centralized in only one institution. In Costa Rica and El Salvador two different institutions play the role of NPC.

12. The PMC has the main responsibility of executing COMPAL in a coordinated manner at country level. As stated in the COMPAL manuals<sup>9</sup>, the NPCs have had specific functions under the PMC as they are responsible for the implementation of the planned activities at local level in accordance with the agreed time schedules discussed at the beginning of each year. In addition, the PMC- Geneva, has been working in close coordination with the NPCs and both share managerial responsibilities, each one at its own geographical location. This has ensured a proper monitoring of the activities and financial support in accordance with the UN regulations and procedures. The PMC has ensured the preparation of the Annual Operative Plan (AOPs / POAs) and their revision when required. UNCTAD has guided the preparation and implementation of the AOPs / POAs and has provided support to local institutions in achieving each project objective (mezzo level).
13. The participants of the PMC, both country and Geneva-based, participate in annual and mid-term review meetings of the Programme. These meetings have represented an opportunity to hold discussions with the donor, to revise the set of planned activities every year taking into consideration what has been accomplished and the local circumstances. Some documents were also issued at the level of the PMC, Geneva, such as the one entitled "Proceedings for recruiting and selecting national, regional and international consultants, experts" and the guidelines for undertaking COMPAL sectoral studies. All these documents can be seen at the COMPAL site, i.e. <http://compal.unctad.org>.
14. Furthermore, the SDC/CDE provides general guidelines to the Programme and ensures that COMPAL ultimate goals are achieved. The local Swiss representatives also participate on behalf of SECO. In what follows, the interaction between SDC and PMC is illustrated:

Graph No.1 Operational structure of the PMC conceived at the outset of COMPAL in 2005



SDC	Strategic Direction Committee
ITPA	International Technical Programme Advisor – International Expert
General Assistant	Expert to assist UNCTAD and all PMCs at national level
NPC	National Project Coordinator – appointed by the COMPAL beneficiary country.
PMC	Project Management Committee at national level.

<sup>9</sup> See the full English version of the COMPAL Manuals

15. Having explained the functioning of the COMPAL PMC as well as its interaction with the SDC, if one is to evaluate COMPAL at its macro level, a number of elements should be taken into consideration. This may include, among others, management arrangements; goals of the operational structure; efficiency; implementation; coherence with the Swiss Central American Strategy; sustainability; identification of success, difficulties and lessons learned. Moreover, with regard to the implementation scheme, the PMC has also a key role in executing cross-cutting activities (e.g. the monitoring meetings both annually and at mid-term where beneficiary countries exchange their experiences). The following provides a general overview of each COMPAL country project, i.e. at Mezzo level.

#### COMPAL at mezzo level

16. As mentioned before, the mezzo level refers to the country-by-country approach adopted by COMPAL since its inception, whereby five project management committees (PMCs) corresponding to the beneficiary countries, interact within the so called PMC (see above the operational structure at graph No. 1) Indeed, there are five national projects that implement the Programme. Each committee is composed by UNCTAD and the NPC<sup>10</sup> (depending on the nature of the activity). In this sense, the main function of each committee is to execute country project activities, thereby ensuring the successful, timely, and cost-effective implementation.

17. At this level, the Programme Manager has had managerial responsibilities regarding the overall supervision of each country project in order to ensure their full coherence with the goals of the Programme and that they proceed in accordance to plans, in an efficient and orderly fashion. At the mezzo level the overall country performance is examined. This may involve analyzing aspects such as objectives, absorption capacity of each project, country objectives set as per the UNCTAD - SECO Trust Fund project document prepared in October 2004. The GA to the PMC plays a key role by ensuring continuous contact with each NPCs, providing inputs, commentaries to their reports, taking initiatives to improve workflows, keeping records of their achievements and backing their proposals.

18. In view that country circumstances are subject to change, each Project needs to reflect them. This may include institutional changes, new government priorities, turnover of personnel among others. Adaptability, flexibility and innovative capacity have been a cornerstone of the COMPAL Programme. This way the Programme complies with UNCTAD technical assistance strategy as set out by the Trade and Development Board in October, 2003<sup>11</sup>. The PMC - Geneva<sup>12</sup> in coordination with NPCs is regularly reporting on any change.

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<sup>10</sup> NPCs are government officials responsible for competition and consumer protection policy matters. They are the final beneficiaries of the COMPAL programme and usually are directors of competition agencies or divisions within the ministries of industry and trade or other assigned officials. NPCs, acting as experts on competition and consumer protection issues participate in the preparation of terms of reference for studies, reports, seminars and workshops throughout the COMPAL Programme and coordinate activities with other PMC members. NPCs assume the responsibility of making COMPAL activities part of their institutional plans, thereby ensuring the sustainability of the Project at the national level after its completion. Furthermore, the COMPAL Programme is also promoting the participation of the civil society in all activities.

<sup>11</sup> UNCTAD's technical cooperation will have the following features: It will be demand-driven, based on beneficiaries' needs; It will be designed and implemented in such a manner as to ensure the ownership of the beneficiaries and to be supportive of national development efforts; Programme design, formulation and implementation will be carried out in close consultation with beneficiaries and donors; The main thrust will be to target long-term development needs such as human and institutional capacity; Particular attention will be paid to the goal of sustainability of projects and programmes; With a view to increasing the effectiveness and enhancing the impact of technical cooperation activities, a well sequenced approach will be adopted in the formulation and implementation of programmes and activities; and The programmes will be designed and implemented in cooperation with international and regional agencies providers of trade- and investment-related technical cooperation, and in partnership with academia, the business community and NGOs

<sup>12</sup> As can be seen from the list of annexes (57) of the present document, there are a constant number of reporting activities during the whole year of implementation, that is to say, annual operational plans, six-month reports, national annual reports. These reports have allowed the COMPAL key programme personnel to reflect the changes in the implementation of the Programme.

### COMPAL at micro level

19. At this level, each activity is regarded as an independent strategy with its own level of performance and impact at local level (e.g. the sectoral study on used clothing in Bolivia- Activity B.1.2 (old classification) or the training seminars for lawyers and judges in El Salvador - activity Es.1.4.). The Programme Manager and the GA to the PMC provide substantive commentaries to all these activities in order to ensure that they match with the goals of the Programme and that they have an impact at country level. The main function of the GA to the PMC is to ensure on a continuous basis that each activity is properly implemented in accordance to the AOPs/POAs approved each year; similarly and to the revised version(s) agreed at the mid-term and yearly review meetings. On the whole, each activity should proceed, as planned, in an efficient and orderly fashion. The GA to the PMC maintains regular contact between the Geneva-based PMC and the NPCs and the GA to the PMC ensures that the budget is carried out in line with the UN administrative and financial procedures using the UN internal management information system (IMIS). In this regard, budget expenditures and control of procurement procedures are conducted in accordance with UN regulations. As COMPAL is a challenging Programme, the PMC Geneva is constantly revising procedures and taking initiatives such as introducing introduce guidelines, etc. This has facilitated the enormous amount of work. Since mid - 2007 these functions are shared with the COMPAL assistant to the Programme.
20. It is worth noting that there is a set of criteria that should be applied when assessing COMPAL activities at micro level. In this regard, the donor has provided the following set of criteria for evaluation:<sup>13</sup>
- Examination of every activity as an independent strategy: examine its level of performance and its impact at local level;
  - Examination of the pertinence of the activities with the objectives of the programme set at the beginning;
  - Examination of the exchange of experiences/ activities between the different beneficiary countries (synergies, duplications, learning effect);
  - Examination of whether the activities often had to be adapted and for what reason;
  - Examination of difficulties which have occurred during the implementation and formulate recommendations for improvement in order to reach the objectives.
21. Last but not least, the above-mentioned set of criteria should be applied with the full participation of intermediate beneficiaries (e.g. NPCs) as well as final beneficiaries (e.g. consumers; judges, competition lawyers, users, etc, etc). Hence, it should advisable that at the micro level, the assessment should be based on existing primary sources within the beneficiary country in which the activities have been performed accordingly.

## **Section II: Changes on the Bolivian country objectives, activities, indicators and outcomes during the lifespan of COMPAL**

(Dec 2004 - July 2007)

This sections aims to portray succinctly the evolution of Bolivia in the framework of the COMPAL Programme. The initial phase of the COMPAL Programme has coincided with a period of political turmoil in Bolivia that paved the way to elections, in which a democratically elected President was appointed in January 2006. The following provides general overview on the Project and how the resulting changes in the mode of delivery in the case of Bolivia.

The status quo in 2004...

22. At the outset of the COMPAL Programme in 2004, Bolivia did not have a comprehensive law on competition. Previous attempts in 1997, 2000, and 2003 to issue an economy-wide competition and consumer protection law were not successful. Other concerns were raised about the costs and bureaucratic

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<sup>13</sup> External Evaluation of the COMPAL Programme (SECO).

implications of adopting such a law. Moreover, internal conditions and turmoil in recent years have not contributed to the adoption of a competition and consumer protection law.

23. Despite the foregoing, COMPAL in Bolivia started its activities with the progress made by the regulatory sectors led by SIRESE (System of Sectoral Regulation) that oversees five specific sectors of economic activity (essential services, electricity, hydrocarbons, transport, and telecom), chaired by separated superintendencies. In this regard, each Superintendency had indeed multiple legal mandates, including promoting and protecting competition is one. In particular, the law covering SIRESE contains a single paragraph on competition-related matters, and regulations implementing the latter have yet to be elaborated. Hence, there was at the outset of COMPAL, one major country objective with five activities, summarized in Box No. 1.

Box 1: Country objectives of Bolivia as set out in 2004

**OBJECTIVE 1:** To strengthen the capacity of SIRESE to deal with anti-competitive practices and supporting domestic stakeholders who favour the adoption of the "Draft Law to Safeguard Competition and Consumer Protection.

Activities:

- B.1.1. Undertake a dissemination campaign to raise the profile of SIRESE regarding its competition and consumer protection roles in five regulated sectors (basic sanitization, electricity, hydrocarbons, transport, and telecom).
- B.1.2. Prepare five case studies for five selected sectors on the existence of anti-competitive practices and sectoral enforcement actions that affect the degree of competition. Once anticompetitive practices are identified and analysed in these case studies, policy recommendations will be made to enhance SIRESE's ability to remove or reduce the negative impact of such ACPs. Such case studies will prove to be useful at preliminary stages of investigations into alleged anticompetitive practices.
- B.1.3. Train officials from SIRESE, the Ministry of Economic Development, and Ministry of Foreign Affairs on general aspects of Competition Law and Policy and employing evidence from five sectoral case studies carried out in B.1.2.
- B.1.4. Establish and implement three academic programmes in collaboration with INDECOPI on Competition and Consumer Protection including the conclusion of agreements with foreign universities.
- B.1.5. Organize internships at COMCO (for officials of SIRESE and the Ministry of Economic Development).

24. Accordingly, COMPAL established for Bolivia a number of indicators and outputs to be put in place during its implementation. The major goal was to put in place a strategy to advocate for the adoption of the competition law in Bolivia. Thus, two major outcomes established were, first to provide more institutional and capacity building activities to SIRESE and second to increase the number of positive factors to adopt a competition law in the country. The indicators were established as seen in table 1:

Table 1: Outcomes and indicators agreed in 2004

Outcomes set out in 2004	Original Indicators
Enhanced capacity of SIRESE to deal with anti-competitive practices and promote competition	- New methods to promote competition introduced in the five Superintendencies of SIRESE
Increased constituency favouring the adoption of a competition law	- Introduction of competition law and consumer protection in the curricula of national universities - Number of newspaper articles on competition - Increased awareness/support from the private sector for competition law and policy - Number of proposals to the Parliament on

### The progress made in 2005 and 2006 in Bolivia

25. During 2005, a substantial progress was made particularly as regards the first outcome which was devoted to the strengthening of SIRESE. In this sense, a Strategic Communication Plan for SIRESE was finalized and two officials from the institution participated in the COMCO internship programme.<sup>14</sup> As for the second outcome, a sectoral study on second-hand clothing was carried out with the support of a national consultant. The beneficiary of this activity was the Ministry of Economic Development (which was replaced by the Ministry of Production and Micro-enterprise, the current coordinator). In addition, an official from the Ministry of Economic Development participated as third intern in the COMCO internship programme. Overall, Bolivia advanced in strengthening human capacities during 2005, thereby promoting exchange of experiences in the areas of competition and consumer protection issues.
26. During 2006 and despite sudden political changes in Bolivia, efforts have been made to adapt the COMPAL planned activities to the new circumstances and priorities. During the transition period, the national coordination, represented by the Ministry of Foreign Relations in coordination with the Ministry of Development, and SIRESE highly contributed to that endeavour and demonstrated their constant compromise to the Programme. After the first annual meeting in La Paz to assess the first year of COMPAL (January 2006), the priority was to conclude a new plan of action based on the progress made in 2005 and the new set of priorities provided by the new administration. Once the plan of action for 2006 was agreed, there was another obstacle: the scarcity of potential highly-qualified national consultants, as well as the availability of data to undertake sectoral in-depth studies.
27. The country's new administration commitment to advance with COMPAL support in the areas of competition and consumer protection was evidenced by the participation of the Vice-minister of Trade and Exports in the Seventh Session of the Intergovernmental Group of Experts on Competition Law and Policy, held in Geneva, November 2006. A delegation of four Bolivian government officials attended the meeting in Geneva and the PMC Geneva organized a donor-NPCs meeting (31 October - 2 November 2006), where the Bolivian commitment to the country project was shown.<sup>15</sup>

#### March 2007: major changes to the country objectives under COMPAL

28. With regard to Bolivia, the main outcome of the Second Annual meeting held in Costa Rica (March 2007) consisted in the adoption of new country objectives for Bolivia to adapt the Project to the new priorities. As a result, a set of country objectives were agreed and confirmed by the newly appointed NPC, at the level of the Vice-ministry of Trade and Exports. The new set of country objectives and activities are summarized below in Box No. 2.

#### Box 2: New country objectives of Bolivia as set out in 2007

**OBJECTIVE 1:** To promote and disseminate the role of the defence of competition and consumer protection. It will be identified potential sectors that promote competitiveness and consumer protection.

#### Activities:

- B.1.1** Undertake sectoral in-depth studies that assess the impact of implementing competition and consumer protection policies

<sup>14</sup> An important country lesson from COMPAL relates to the successful participation of the three Bolivian interns in COMCO over the period April-December 2005. COMPAL interns were fluent in the languages required by the COMCO Internship Programme (French or German). The degree of participation of the interns in COMCO assignments and in discussions held when analysing specific competition cases was highly praised. The first two interns are currently transferring experiences in home institutions, the experience they have gained. Moreover, the Ministry of Economic Development has encouraged the second intern to help implement COMPAL activities and to share his knowledge with his work colleagues.

<sup>15</sup> More information about the IGE meeting, see at <http://www.unctad.org/Templates/Meeting.asp?intItemID=4069&lang=1>

B.1.2. Organize sensitization programmes at massive level on topics regarding competition and consumer protection issues.

B.1.3. Organize training programmes so as to create the technical and judiciary capacities regarding the issues of competition and consumer protection matters.

OBJECTIVE 2: To prepare a draft bill on competition (anti-monopoly legislation) and consumer protection issues

Activities:

B.2.1. & B.2.3. Assessment of the legal texts on competition, unfair competition and consumer protection. Prepare a proposal to insert institutional arrangements into the legal proposal.

B.2.2. Organize sensitization programmes at massive level on topics regarding competition and consumer protection issues in major cities in Bolivia

B.2.4. Establish and implement three academic programmes in collaboration with INDECOPI on Competition and Consumer Protection including the agreements concluded with foreign universities.

OBJECTIVE 3: To establish a "reference group" in order to implement and monitor objectives No. 1 and 2

Activities:

B.3.1 Undertake an UNCTAD field mission to Bolivia

29. The following summarizes the Project achievements since the new objectives (and activities) were adopted at the meeting held in Costa Rica. First, to appoint a national focal point in charge of support the Project for Bolivia. The professional appointed is to be responsible to undertake major functions with regard to the implementation of the agreed activities B.1.2., B.1.3 and B.2.2. In addition, a Reference Group supporting the project at local level (objective 3) is established under the auspices of the Vice-ministry of Production and Micro-enterprise; it is integrated by representatives from local institutions interested in developing a competition and consumer protection culture at country level (e.g. the newly created Superintendency of Enterprises). The establishment of a Reference Group responds to the need to promote coordination among the diversity of actors from the government, the civil society and the representatives from the donor side involved in COMPAL activities at local level. Moreover, it also reflects the changes implemented by the new Bolivian administration, where the creation of the Superintendency of Enterprises is an example.

The objectives of the Reference Group.

30. The Reference Group will be responsible of capacity and institutional building in the areas of consumer protection and competition policies in Bolivia. It will also establish the guidelines necessary for the adoption of legislation on consumer protection and restriction of disloyal competition in Bolivia, which will protect economic agents from unlawful monopolies and cartels' behaviour. Furthermore, the Group aims monitoring and implementing measures to sustain COMPAL activities in the short, medium and long run. For more details on the Reference Group, please refer to the Manual of Organization and Functioning of the Reference Group (Manual de organización y funciones del Grupo de Consulta).<sup>16</sup> An UNCTAD Mission to Bolivia was organized October 2007 with the purpose of strengthen the Project implementation and support in the development of a competition law. At the occasion, UNCTAD staff met the Reference Group.

The new set of indicators and outcomes (March 2007- March 2008)

<sup>16</sup> See full version in Spanish of the document at the COMPAL Extranet site. available with private code at [http://www.unctadxi.org/templates/Page\\_7173.aspx](http://www.unctadxi.org/templates/Page_7173.aspx)

31. Accordingly, Bolivia has suggested the changes on the indicators and outcomes for the record and correspondent assessment. It is envisaged that this new set of indicators should guide the implementation of the activities in the second half of 2007 and beyond. See table No. 2

Table No. 2

New Outcomes set out in 2007	New Indicators to be assessed
Increased awareness on the role of competition and consumer protection policies to competitiveness in specific sectors	- New sectoral in-depth studies finalized - Disseminated events organized with a number of participants -
Increased constituency favouring the adoption of a competition law	- Introduction of competition law and consumer protection in the curricula of national universities - Number of newspaper articles on competition - Increased awareness/support from the private sector for competition law and policy - Number of proposals to the Parliament on competition law and policy related issues

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ring 2007 an independent evaluation assessed the outcomes of the mezzo level for Bolivia. The results can be cited as follows:

*"(...) With regard to the first outcome defined in 2007, the assessment of the related indicators gave following conclusions: Firstly, one study related to the second-hand clothes was presented in February 2006. Secondly, two disseminating events took place in 2007. Thirdly, anti-competitive practices related to the delicate existing economical and political situation have been the object of intensive discussions in 2007: This shows an increased awareness of the public with regard to competition and consumer protection policies.*

*With regard to the second outcome - the increased constituency favouring the adoption of a competition law - the assessment of the related indicators suggested the following: Firstly, there is no reliable information in relation with the number of universities having introduced competition and consumer protection law in their curricula, but there is at least one university which has done it. Secondly, six newspaper articles related to competition and consumer protection law and policy were published in 2006 and 2007. Thirdly, the participation of the national chamber of commerce and the Industries' National chamber to the consultative group for the COMPAL Programme is a sign of increased awareness and support of the private sector for competition law and policy. Fourthly, the COMPAL Programme has been included as a principal part of the competition and consumer protection policies being included as a principal part of the competition and consumer protection policies being part of the AOP at the Ministry level.*

*As to the country objectives, the Bolivian National Project experienced significant changes. The activities conducted during the first two years were, for most of them, only very partially completed so that it is difficult to assess if they contribute to fulfil the unique objective set in 2004. Moreover, the objectives set in 2004 only focused on competition, leaving aside the issues of consumer protection, a choice that can lead to misinterpretation as to the goals of the COMPAL Programme. As for the objectives set in 2007, the same remark applies but for the third objective which is almost fulfilled since the Reference Group exists and is working in a committed way. The political and structural reforms will not be implemented before 2008. It is questionable whether the COMPAL Programme will achieve some outcomes by the end of the Programme..."<sup>17</sup>*

<sup>17</sup> External Technical Evaluation of the COMPAL Programme. SECO.

### Section III: Some changes in the COMPAL implementation in Costa Rica

The status quo in 2004...

33. At the outset of COMPAL in 2004, Costa Rica already had institutions in charge of competition and consumer protection issues; this represented a positive factor to receive assistance under the Programme. Soon after, El Salvador enacted its competition law<sup>18</sup> and Nicaragua did it in 2006<sup>19</sup>: Indeed, at the signature of the MOU with Costa Rica, this was the only Central American nation that had its own competition law and enforcement regime in spite of the existence of important public service monopolies that operate in the telecoms, energy, oil, and gas sectors<sup>20</sup>.
34. Nevertheless, the Costa Rican competition authority (hereinafter COPROCOM) faced various challenges. First, despite its enforcement record, the activities of COPROCOM were known or supported by the Costa Rican society. COPROCOM needed to enhance its profile and, in particular, its pro-consumer activities among political leaders, the media, and in the universities. Second, COPROCOM has no rights to review mergers and acquisitions, which is a serious omission to its legal mandate and compromises its ability to challenge the exercise of market power. Third, to date insufficient resources have forced COPROCOM to be selective in the choice of sectors to investigate, necessarily leaving other sectors unexamined. Fourth, conservative judicial rulings that limit the ability of state agencies to influence the terms upon which they affect commercial freedom are a constraint. In addition, promoting enhanced competition into those sectors where publicly-owned firms operate is proving to be difficult. It is worth noting that public services, legal monopolies, and municipal activities are currently exempt from the national competition law. Therefore, during the need assessment phase, a number of potential anti-competitive practices associated with certain publicly owned monopolies were identified. It was argued that difficulties in tackling the latter contributed to upset the spread of a competition culture in Costa Rica.
35. It is worth noting that COPROCOM has received support from competition agencies and other institutions from Mexico, Canada, and Spain, as well as from other entities, including, the UN Economic Commission for Latin American and the Caribbean (ECLAC), in the form of seminars, internships and other types of cooperation. With the COMPAL Programme, Costa Rica is supported with a full-fledged national project with specific country objectives necessary to develop its capacities to ensure a wider implementation of the law. Hence, COMPAL focused on two major country objectives, which were as follows:
- To broaden the scope for the enforcement of the competition law and improve the internal work processes of COPROCOM
  - To strengthen the enforcement of the national consumer protection law and improve the internal work processes of the consumer protection agency

In detail, each of these objectives had activities and sub-activities that were submitted to the donor and beneficiary country accordingly. The following Box No. 3 summarizes it, as follows:

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<sup>18</sup> See *infra* Section IV.

<sup>19</sup> See *infra* Section V.

<sup>20</sup> In telecoms for instance, the only permitted operator of telecommunications services is the Costa Rican Energy Institute (ICE). Arguably, this has resulted in a distortion of prices, which are quite high according to international standards. ICE also operates in the electricity sector where it has a monopoly in the transmission of electronic current. Even though ICE can face competition in the generation of current (rivals are allowed to have a total market share of no more than 30% according to a law passed in 1995), competitors must sell their power to ICE's distribution arm. Naturally, the vertically integrated nature of ICE's operation in the energy sector has raised concerns about abuse of market power.

### Box No. 3

**OBJECTIVE 1:** To broaden the scope for the enforcement of the competition law and improve the internal work processes of COPROCOM

Activity CR.1.1 Raising awareness of competition law among consumer associations, the media, and policy makers.

CR.1.1.1. Preparation and publication of easy-to-read materials on the benefits of competition laws, which draw upon analysis of past enforcement cases.

CR.1.1.2. Organisation of a workshop on the nature and benefits of competition law and its enforcement. Separate workshops will target consumer associations, the media, and national policymakers

Activity CR.1.2 Raising awareness of competition law and policy among state officials that regulate sectors and that manage state procurement matters.

CR.1.2.1. Preparation of a report, drawing where possible on actual cases and examples, of the means by which competition law principles can be introduced with sectoral regulatory practices and in state procurement procedures. This publication will also include a description of the benefits of introducing competition disciplines into these state practices and procedures.

CR.1.2.2. Organise one training workshop on the importance of competition law and principles, one for officials in state regulators and one for state procurement officials.

Activity CR.1.3 Training COPROCOM officials.

- Participation in internships at COMCO.

Activity CR.1.4 Plan and execute a course to train 3–4 lecturers per Costa Rican university in competition law and consumer protection laws. The overall goal is to enable these lecturers to teach students in these universities about these subjects. The activity will include the preparation of teaching materials, course curricula, and essential readings.

Activity CR.1.5 Proposals for revising the national regulations implementing Costa Rica's competition Law.

CR.1.5.1. Prepare a report on the comparative strengths and weaknesses of Costa Rican competition law and its enforcement, including the possibility that this report is periodically updated. Policy proposals are to be presented afterwards.

CR.1.5.2. Formulation of a precise statement (report) of the proposed amendments to the competition regulations and organisation of a seminar to explain them to regulators and government officials.

Activity CR.1.6 Enhancing the internal work processes of COPROCOM.

CR.1.6.1. Preparation of a report that benchmarks COPROCOM's administrative practices with that of peer and best-practice enforcement agencies, and includes recommendations for COPROCOM's managements.

CR.1.6.2. Undertake measures to facilitate ISO 9000 certification for COPROCOM.

CR.1.6.3. Preparation of manuals and investigative guidelines for investigation by COPROCOM that will systematise its procedures. Where appropriate, these manuals would also be disseminated to the private sector also.

Activity CR.1.7.. Establishing and applying a methodology to measure the economic benefits of implementing competition law.

CR.1.7.1. Preparation of a methodology, for as many different types of competition law as possible, to estimate the economic consequences of enforcing competition law.

CR.1.7.2. Application of the methodology prepared in activity to four enforcement cases.

**OBJECTIVE 2:** To strengthen the enforcement of the national consumer protection law and improve the internal work processes of the consumer protection agency

Activity CR.2.1 Elaboration of a manual that shows how the enforcement agency can implement a system to certify and/or recognizing best practices by firms, which can encourage the latter to regulate their own behaviour.

Activity CR 2.2 Completion and publication of a leaflet that describes the means by which consumer protection policy is implemented in Costa Rica and that includes many examples drawn from actual cases.

Activity CR 2.3 Organise a training workshop on selected aspects of consumer protection matters, making reference to other nations' practices and gives special attention to the financial sector.

Activity CR 2.4 Arrange a training programme in Costa Rica for university lecturers on the context and enforcement of consumer protection law, including discussing course curricula and teaching materials.

Activity CR 2.5 Prepare a report that compares Costa Rica's consumer protection law with those of similar developing countries, and to include reform proposals and an evaluation of the merits of enacting a combined consumer protection and competition law

Activity CR 2.6 Arrange a training course in Costa Rica for officials in the consumer protection agency on (i) the principles of consumer protection law, and enforcement, (ii) methods to conduct market research, and (iii) investigative and enforcement techniques.

Activity CR 2.7 Elaboration of a manual for the organisational, investigative, and enforcement techniques for officials in the consumer protection agency that meet ISO 9000 standards and measures to obtain ISO 9000 certification.

Activity CR 2.8 Preparation of a report that proposes a methodology to estimate the costs and benefits of enforcing consumer protection law, including measurable indicators of the enforcement agency's impact and efficiency and identification of the skills and software necessary to implement the proposed methodology.

36. As a result of these activities and sub activities, COMPAL submitted to the donors a number of indicators in accordance to the promised outputs referred in the Project document as of 29 October 2004.

Table No. 3

Costa Rica: Outcomes	Indicators
Greater awareness and support for the competition law and consumer protection policy	<ul style="list-style-type: none"> <li>- Number of newspaper articles on competition and consumer protection</li> <li>- Number of interventions in the Parliament regarding enhanced competition, notably in regulated sectors</li> <li>- Increased competition in regulated sectors and state procurement procedures</li> <li>- Increased support from the private sector for competition and consumer protection measures</li> <li>- Introduction of competition law and consumer protection in the curricula of national universities</li> </ul>
Enhanced legal regulations guiding the implementation of the competition law	- New regulations revised and adopted
Improved internal work processes of COPROCOM and the consumer protection division	- New methodology to measure economic benefits of implementing competition law and consumer protection applied

	<ul style="list-style-type: none"> <li>- Recommendations on best-practices implemented</li> <li>- ISO 9000 obtained</li> <li>- Realisation of a consumer-survey</li> </ul>
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The evolution of the country objectives and activities during 2005, 2006 and first semester of 2007...

37. As can be seen in Box No. 3 and table No. 3 the country objectives for Costa Rica set out in 2004 have basically remained the same. However, as a result of the revision of the activities in the COMPAL annual meetings (Managua, 2006 and San Jose, 2007) some activities emerged, were added or in some cases, simply deleted in accordance to the country's objectives.(see the blue font activities in the above table and box) Indeed, there are basically three major changes as regards the activities:

- As for activities CR.1.4 and CR:2.4, the component referred to the academic programme in Costa Rica, those activities were merged due to the local circumstances of the Costa Rican academia in which universities combined the lecturing of competition and consumer protection issues.<sup>21</sup>
- As regards activities CR.1.6.1. CR.1.6.2. and CR. 2.7. which are basically activities related towards meeting ISO 9000 standards. They were removed from the Project for Costa Rica because it was thought to start some activities regarding the preparation of Manuals as it is the case of the Manual of Best Practices (under activity CR.2.1.) In addition, Costa Rica has reached certification provisions whereby the National Institute for Laws and Regulations (Instituto Nacional de Normas - INTECO) allows to adopt a norm called "Costa Rica qualifies - Costa Rica califica".
- In turn, a new activity regarding "miracle products" for the consumer protection was added in the pipeline of activities.

38. Besides the changes described in the previous paragraphs, on the whole, the progress in the implementation of the activities during 2005, 2006 and part of 2007 was perceived as positive, both as regards their impact and the measures put in place to ensure sustainability (e.g. the manual of best practices – Activity CR.2.1.)

39. As regards the results of the evaluation carried out at mezzo level for Costa Rica, the technical evaluation concluded with the following remarks:

"...It is unanimously considered that the Costa Rican objectives of the COMPAL Programme were developed in response to the existing needs and gaps in the country. The small adaptations that occurred in their correction through the planned activities contributed to its success by adequately responding to the changes of circumstances and to the new findings acquired during the implementation. Interviews of representatives of the various interested circles and institutions – among others the academic, the judicial and the legislative bodies as well as the regulated sectors, bar associations, business chambers, SMEs, NGOs and consumers – have confirmed that the dynamics created by the COMPAL Programme has largely contributed to the highlighting of the competition and consumer protection issues, so that these efforts have produced greater results over the last three years than during the time that has elapsed since the adoption of the relevant statutes (10 years or more depending on the statute). More than 93% of the interviewed direct or indirect beneficiaries stated that the COMPAL Programme fostered knowledge on the competition and consumer protection issues in new sectors and enabled to implement more and better organizational procedures. Moreover, during the COMPAL Programme, amendments of the actual legislations regarding consumer protection and competition were drafted and put in consultation with all sectors, including the Parliament. The bill of amendments of the competition law should be presented before the Congress in 2008 and has the full support of the Executive Branch who supported and expressly recognized the benefits of the COMPAL Programme for the society at large. Moreover, the central government recognized the importance of the

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<sup>21</sup> This is not necessarily the case of El Salvador, in which despite that COMPAL has envisaged a component of the academic programmes to be implemented in the second half of 2007, Salvadorian Universities do NOT consider the lecturing of these issues in a combined or integrated approach.

## Section IV: COMPAL implementation in El Salvador

The status quo in 2004...

40. At the outset of COMPAL, El Salvador experienced a well defined strategy towards market liberalization. Indeed, during the 1990s the country liberalized many sectors and privatized some state enterprises. This scenario was appropriate to discuss the possibility of adopting a competition law. As a result, during 2004, the debate on the need of a competition law came in the forefront.<sup>23</sup> In addition, given the overwhelming priority devoted to consumer protection by the government of El Salvador, in 2004 prior to the establishment of the agency, an Ombudsman for the Consumer was established.<sup>24</sup>
41. Despite clear the promising achievements described above and after the need assessment carried out during 2003 and 2004, El Salvador clearly stated a number of priorities and needs in the areas of competition and consumer protection aiming at strengthening competition culture in the country so as to favour the adoption of the future competition law.<sup>25</sup> As a result, COMPAL in El Salvador focused on two major country objectives, which were the following:
- To facilitate the adoption of the law through the analysis of anti-competitive practices in selected sectors and dissemination of the findings to a wide audience of policy makers and media
  - To strengthen consumer associations at the national and local levels
42. In detail, each of these objectives had activities and sub-activities that were submitted to the donor and beneficiary country accordingly. The following Box No. 4 summarizes them:

### Box No. 4

**OBJECTIVE 1:** To facilitate the adoption of the law through the analysis of anti-competitive practices in selected sectors and dissemination of the findings to a wide audience of policy makers and media

**Activity ES.1.1** Undertake five studies (medicaments, milk, chicken, freight, land services) of the extent and effect of anti-competitive practice in five selected sectors using a methodology that could be subsequently used for ACP investigations.

**Activity ES.1.2** Organise a seminar (parliamentarians, senior government officials, media representatives, private sector) to highlight the costs of ACPs (using, among others, the evidence found in the studies in activity 7.1.) and the case for state action as a means to facilitate consensus building for the adoption of a national competition law and policy.

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<sup>22</sup> External Technical Evaluation of the COMPAL Programme.

<sup>23</sup> In fact, a Competition Promotion Commission was established within the Legislative Assembly to consider draft proposals for a competition law, which was expected to adopt a competition law soon after. This Commission held in 2004 a seminar on the possible contents of a competition law and there is a growing recognition for state measures in the following areas: horizontal inter-firm agreements, abuse of a dominant position, and merger review.

<sup>24</sup> The purpose of that governmental office is to protect consumers' rights; a function that will be made easier once proposed amendments to national law are passed that will permit the Ombudsman to impose sanctions. These initiatives demonstrate a clear desire on the part of the national authorities to improve the well being of consumers

<sup>25</sup> The Report on El Salvador (prepared under phase I) identified, among others, concerns were raised about potential price fixing in the markets for petroleum and sugar. For full details on the National Report for El Salvador carried out in 2003 - 2004 see the COMPAL website at <http://www.unctadxi.org/Sections/DITC/COMPAL/docs/Informes%20de%20Competencia/InformeDeCompetenciaELSALVADOR.pdf>

Activity ES.1.3 Organise seminars, attended by producers and consumers, on the benefits of promoting competition in El Salvador and using the evidence found in activity ES.1.1 One seminar would be held in the capital, one in the east and one in the west of the country.

Activity ES. 1.4 Train judges and lawyers on the content and objectives of competition law in a one-day workshop.

Activity ES.1.5 Participate in internships at COMCO (for El Salvadorian Officials that are involved in competition and regulatory issues).

Activity ES.1.6 Design and execute three training programmes on competition law, its enforcement, and related issues for university lecturers, judges, and practicing lawyers, including the UNCTAD Model Law as a template for a future national law and policy.

Activity ES.1.7 Formulate a plan to include competition law and consumer protection law in the curricula of national universities. This plan would involve training university lecturers on such matters and on the relationships between these laws and other existing economic laws.

OBJECTIVE 2: To strengthen consumer associations at the national and local levels

Activity ES.2.1 Organise four workshops for consumer and business people targeting four regulated sectors (with a substantial, potential impact on the living standards of the poor). The role of the Consumer Ombudsman should be explained on that occasion. Municipal leaders will be invited.

Activity ES.2.2 Strengthen local consumer associations

- At the neighbourhood level, organise working meetings with local leaders to raise awareness of consumer protection issues and to identify promising leaders of consumer associations.
- Having identified promising leaders of consumer associations, plan and execute a training programme for these leaders that cover the following matters: Management and financing of consumer associations; strategies for participating in administrative proceedings; skills to undertake market investigations and analyses; and, marketing and promotion.
- Prepare proposals to amend the national consumer protection law so as to bring it up to international standards, and organisation of a seminar to discuss the proposals with national legislators.

43. The above-mentioned country objectives were partially changed at the time of signing the memorandum of understanding with the beneficiary country (January 2005). The reason was that the adoption of the Competition Law took place in 26 November 2004<sup>26</sup>. As a result, the country objective No. 1 changed from his original text: “To facilitate the adoption of the law through the analysis of anti-competitive practices in selected sectors and dissemination of the findings to a wide audience of policy makers and media” to the following “to facilitate the implementation of the recently adopted competition law through the sensitization of the importance of competition policy and the development of training programmes for universities (academics), media, productive sector and the personnel of the competition authority.”<sup>27</sup>

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<sup>26</sup> Since 1989, El Salvador has adopted a series of structural reforms aimed at achieving macroeconomic stability and promoting economic growth, improvements in the general welfare of society, and reductions in poverty. In addition, an ambitious programme was implemented to modernise the public sector, including the privatisation of public services, opening trade, tighter budgetary controls, implementing concessions and decentralisation of the State, adoption of the American dollar for internal transactions, amongst others. The above-mentioned reforms have resulted in a favourable macroeconomic environment: low real interest rates, low percentage of inflation, and a considerable diversification of exports. However, some external and internal shocks have negatively affected the country in recent years, which have been reflected in the slow growth rate of GDP, which puts pressure on continuing the process of state reform. Source: Six-month report submitted by El Salvador, June 2005.

<sup>27</sup> See the primary source: Memorandum of Understanding amongst UNCTAD, Switzerland and the government of El Salvador (Ministry of Economy) signed in January 2005. Spanish version

44. In accordance with these activities and sub-activities, COMPAL submitted to the donors a number of indicators in accordance to the promised outputs referred in the Project document as of 29 October 2004. The following table shows this information.

Table No. 4

El Salvador: Outcomes	Indicators
Greater awareness and support for the competition and consumer protection law and policy	<ul style="list-style-type: none"> <li>- Number of policy recommendations with effective implementation</li> <li>- Number of newspaper articles on competition</li> <li>- Number of proposals to the Parliament on competition</li> <li>- Increased awareness/support from the private sector for competition law and policy</li> <li>- Introduction of competition and consumer protection law and policy in the curricula of national universities</li> <li>- Measurable progress towards the adoption of the Competition Law achieved (changed)</li> </ul>
Improved institutional infrastructure available to consumers and greater awareness	<ul style="list-style-type: none"> <li>- Local consumer association playing a greater role</li> <li>- Number of administrative proceedings and market investigations</li> <li>- Revised consumer protection law</li> <li>- Realisation of consumer-surveys</li> </ul>

45. Accordingly, some of the title of the activities changed as the competition law was already enacted. Finally, the final indicator of the first outcome namely: “measurable progress towards the adoption of the Competition Law achieved” changed due to the underlying reason of the prior existence of competition law in El Salvador.

*The progress of the COMPAL activities for El Salvador during 2005, 2006 and first semester of 2007...*

46. As stated in the Global Annual Report 2005, El Salvador advanced significantly during 2005 due to the national commitment from the part of the public authorities towards competition and consumer protection issues<sup>28</sup>. A number of activities were implemented, particularly those related to provide legal status to consumer associations – activity ES.2.3.1. (as regards the indicator: “Local consumer association playing a greater role” and the dissemination of the revision of the consumer law – activity ES.2.3.3. (as regards the indicator “Revised consumer protection law”)

47. As for 2006, a major fact was the establishment of the competition authority for El Salvador since 1 January which represented an effort from the part the Government of El Salvador to implement the current legislation in place since November 2004. Thus, not only competition advocacy activities were implemented but also the components concerning the sectoral in-depth studies were use in ex-officio investigations for that agency. (See the indicator regarding “Number of administrative proceedings and market investigations”), In addition, new sectoral studies were launched such as the pharmaceutical sector.

48. The progress registered by the Project in El Salvador is significant. The competition authority became also more dynamic as regards COMPAL activities. They undertook a revision of the COMPAL Guidelines for

<sup>28</sup> GAR 2005 stated: “(...) the national government is currently supporting the dissemination of the Law and plans on establishing a Superintendency of Competition in early 2006. With respect to consumer protection, the government is clearly committed to support this area as a means of safeguarding the rights of consumers. In this connection, a Presidential Commission for Consumer Protection was established as an autonomous entity. This Commission seeks to implement a consumer protection policy through education, information, and citizen participation. In addition, the Commission is currently engaged in a proposal to reform the current Law for Consumer Protection. These two factors show that promoting competition and consumer protection are in line with the underlying priorities of the public authorities (...)”

Sectoral studies due to the some difficulties reported in 2006.<sup>29</sup> Moreover, they are currently carrying out a three-phase sectoral in-depth study on the pharmaceutical sector.<sup>30</sup>

49. As mentioned, a major issues at macro level is the support to cross – country activities. In this regard, at the latest meeting of COMPAL, and as a result of the studies on the pharmaceutical sector for El Salvador, other national NPCs from Costa Rica and Peru expressed the usefulness of carrying out a regional sectoral study on medicines.<sup>31</sup>
50. The foregoing has been also endorsed by the external evaluation carried out during 2007 to the COMPAL Programme. In this regard, the following full quotation of the findings at mezzo level for El Salvador is self-explanatory:

*"The following findings can be made based on the outcomes and indicators of the El Salvadorian National Project. The greater awareness of the competition and the support of the consumer protection law and policy can be ascertained in the following indicators: In 2005, the average of administrative proceedings relating to the consumer protection was about 350 per month. Since then, this number increased to 848 per month in 2006 and even 1'461 per month in 2007. During the same period, a total of 13 market studies were conducted in the most problematic sectors, whereas before the COMPAL Programme no such study was undertaken. While no consumer surveys were done before the COMPAL Programme, two surveys were prepared within the COMPAL Programme. Similarly, the number of complaints filed for violation of the competition law and the number of articles in newspapers relating to competition issues have been increasingly frequent. Moreover, since the adjustment of the activities of the COMPAL Programme to the agenda of the Competition Superintendence, a competition culture has been created.*

*In this context, the competition issues are now a regular theme treated in the media and economic agents know the problems and the remedies offered by the legal system. The consumer associations play a more important role by conducting education campaigns and counselling community members*

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<sup>29</sup> It is worth noting that UNCTAD started in August 2006 a revision of the COMPAL Guidelines (see the Web source document. "Brainstorming: How to improve the impact of the COMPAL sectoral studies A diagnosis and suggestions after one and a half years" (September, 2006) available at the Extranet of COMPAL (access with code) in the following URL: [http://www.unctadxi.org/templates/Page\\_1641.aspx](http://www.unctadxi.org/templates/Page_1641.aspx)

<sup>30</sup> See the latest minute of the II Mid-Term review meeting of the COMPAL Programme (Geneva, 20 July 2007), whereby the national coordinator for competition explained the current situation of the study on medicines: Mrs. Celina Escolán expressed the following: "Regarding the second point, El Salvador replied that the study on medicaments had three stages. The first stage referred to the conditions of competition in the sector, the second stage focused on analyzing the structure of these markets of Medicaments for Cardiovascular, Respiratory and Gastrointestinal diseases and on understanding the scheme of price formation in the market of the three medicaments in the first stage. In the third stage, a third study focusing on the competitive bidding of these medicaments in hospitals would be desirable, given that all public hospitals comply with the Law of Contracts and Acquisitions of Public Administration that obliges them to organize competitive bidding to purchase these medicaments. It was also expected to rely on information about prices in Central America and the U.S. ....".

<sup>31</sup> See the following quote: "...Then, the delegate of Costa Rica commented on the study of medicaments. Indeed, there is a study of medicaments showing that the highest prices are recorded in Costa Rica. Therefore, the topic can bring together competition and consumer protection agencies in the whole region to exchange information on prices. It will lead to evaluate the idea of organizing sectoral studies at the regional level. The exchange of information is fundamental, as there are many sectors where the conclusions can be valid at a regional level. This is a pertinent time to think in terms of the region and the idea of the Central American Group and Panama is appropriate. Currently, some regional studies on air transport are being planned. (...)Peru agreed with Costa Rica. Indeed, it was suggested that the next step for COMPAL is to undertake cross-sectoral studies. Along this line, INDECOPI examines the price formation for a selected group of medicaments. This information can be shared with other beneficiary countries to COMPAL. Within INDECOPI (Management of Economic Studies), restriction as regards to confidentiality is not a big issue, since public information is used in the analysis. A link between academic programs was mentioned: INDECOPI organizes nine (9) summer courses that last one month and are addressed to students in the last year of university. At the beginning, the public targeted were exclusively economists. Then, there was a common module for lawyers and economists, so that a later stage the specialization would be respected. Nevertheless, it is fundamental to examine with detail the selection process of students. Given that they are differences in the quality of education in the public and private universities, the selection method is expected to change in order to guarantee some degree of fairness and "democratic access to knowledge", so that IQ tests and psychological tests would be retained. A question on the sustainability of academic programs was raised. The clear answer is that sustainability can be guaranteed through agreements with universities, so that they will include these programs in their curriculum.. See **Ibid** at page 7.

*with respect to the material and procedural aspects of the legislation. They stand for a vivid example of the citizens' participation in the care of their own interests, fighting against traditional abuses (low quality, overpricing, inexact weight, misinformation etc.).*

*Furthermore, the new statute introduced a series of improvements such as an alternate means of settling disputes, a better sanction system, the introduction of provisional measures, and the creation of a decentralized autonomous and modern institution represented by the Consumer Protection Agency of the Government of El Salvador.*

*According to the interviewed stakeholders, the country objectives were clearly stated. As already mentioned above, opportune intervention was made in adjusting the COMPAL Programme after the adoption of the Competition Law at the end of 2004. The objective and the related activities were efficiently changed in time to adapt to the local needs and context. As far as the National Project was related to policy and structural reforms, it was carried out successfully. For example, a new law on consumer protection was adopted and, in collaboration with the Ombudsman for Consumers, ten new consumer associations were founded which actively and successfully contribute to the development of consumer rights in El Salvador.<sup>32</sup>*

## **Section V: COMPAL implementation in the Project for Nicaragua**

*The status quo in 2004...*

51. At the outset of COMPAL, the Nicaraguan government was about to pass a competition law (end 2004) and establish a competition agency in 2005. Taking into account the findings of Phase I concerning price-setting agreements operating in the flour, oil, and sugar markets, with direct implications for the purchasing power of the poor, sectoral in-depth studies in the cooking oil and flour markets were carried out in 2005.<sup>33</sup> Indeed, the Nicaraguan government had the following objectives with respect to the development of a national competition policy:

- To pass the competition law as soon as possible;
- To develop a consultation process with stakeholders concerning the promotion of competition;
- To develop the institutional capacity to implement competition policy;
- To hold workshops and conferences on means to protect consumers;
- To train national officials in consumer protection policy and competition law.

52. Notwithstanding this clear political will to implement competition policy in the country, Nicaragua faced challenges precisely to adopt the competition law and establish the competition agency due to the lack of external support at that time to prepare the implementation of the competition law or the establishment of the competition authority, or promote consumer protection. At that point, COMPAL proved to be extremely important to address these concerns. focusing on two major country objectives, which were as follows:

- To contribute to the establishment of an efficient competition authority
- To strengthen the state and non-state organizations that promote consumer protection in Nicaragua

53. In detail, each of these objectives had activities and sub-activities that were submitted to the donor and to the beneficiary country accordingly. The following Box No. 5 summarizes it:

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<sup>32</sup> External Technical Evaluation of the COMPAL Programme. SECO

<sup>33</sup> Other sectors thought to be affected by cartels include milk and beverages. Vertical agreements are thought to be important influences in the prawn and crayfish processing sectors. The perceived degree of competition is very low in the transportation sector, which is particularly important for many exporters and the rural population. Government measures to tackle anti-competitive practices and to promote measures are seen as being fairly weak in Nicaragua.

Box No. 5

OBJECTIVE 1. To contribute to the establishment of an efficient competition authority

Activity N.1.1 Bolstering the dissemination of the competition law. Undertake 6 studies (electricity; comestible oil, cement, cellular phone, flour, public transport) of selected markets that will result in Policy recommendations as to the priorities for implementing the competition law.

- Training national stakeholders (public and private) on the content of the future competition law and the manner in which it will be implemented.
- Evaluate the effect of the competition law's enactment on regulated sectors and disseminate the findings.
- Organise a six-month course for fifteen university lecturers on the law and economics of the new competition statute. This course would include the creation of manuals and the design of courses for university curricula.

Activity N.1.2 Measures to establish a modern competition enforcement agency.

- Prepare a report, organise tour visits, and a Regional Seminar on the experiences of four similar Latin American economies (Costa Rica, Panama, Peru and Colombia) that have established a Competition Agency.
- Preparation of recommendations for the functional structure and organisation of the competition agency, including its relationship with other governmental bodies, by an international/national consultant.
- On the basis of other nations' experience, and with reference to local needs and conditions, define terms of reference for the new staff of the Competition agency.
- Organise and execute a training programme for officials in the new competition agency on best practices in Competition Law enforcement, including organisational matters, case management, and investigative techniques.
- Organise and execute a training programme for judges on competition law matters, the role of enforcement, and the role of economic evidence.
- Participation in internships at COMCO

OBJECTIVE 2. To strengthen the state and non-state organisations that promote consumer protection in Nicaragua

Activity N. 2.1 Raising awareness of Consumer Protection Matters.

- Preparation and implementation of a strategic plan to incorporate consumer protection issues into schools, and raising awareness of these issues through the media.
- Preparation and implementation of a plan to create one advisory centre for consumers in a national university and local enforcement offices in selected municipalities.
- Undertaking surveys of selected important purchases by consumers, so as to enhance comparisons of quality and service by consumers. Dissemination of these surveys findings through the media, the university-based service center, and the delegated consumer protection offices would follow.

54. As a result of these activities and sub-activities, COMPAL submitted to the donors a number of indicators in accordance to the promised outputs referred in the Project document as of 29 October 2004. The following Table No. 5 summarizes that information. .

Table No. 5

Nicaragua: Outcomes	Indicators
Greater awareness and support for the competition law and policy	- Number of policy recommendations with effective implementation - Number of newspaper articles on competition

	<ul style="list-style-type: none"> <li>- Number of proposals to the Parliament on competition</li> <li>- Increased awareness/support from the private sector for competition law and policy</li> <li>- Introduction of competition law and consumer protection in the curricula of national universities</li> </ul>
Establishment of the competition agency	<ul style="list-style-type: none"> <li>- Competition agency established by end 2007 (provided the Law is passed)</li> <li>- Recommendations on the functional and organisational structure implemented</li> <li>- TORs for the new staff implemented</li> <li>- Staff skills to manage basic investigations and enforcement measures in place</li> </ul>
Improved institutional infrastructure available to consumers and greater awareness	<ul style="list-style-type: none"> <li>- Advisory center for consumers established</li> <li>- Local enforcement offices established</li> <li>- Consumer protection issues introduced in schools</li> <li>- Realisation of consumer-surveys</li> </ul>

*The evolution of the country objectives and activities during 2005, 2006 and first semester of 2007...*

55. Nicaragua has progressed significantly during 2005 and 2006 as regards the indicators set out in 2004, For instance, during 2005 a series of commitments contained in the complementary agenda to CAFTA – DR were performed, particularly as regards the enactment of some laws and regulations related to the regulated sectors. This was part of a wider national plan to be carried out by the National Assembly and the Executive Branch, involving a comprehensive strategy aiming at improving the level of competitiveness and strengthening of human resources of associated institutions. The adoption of a competition law (26 September 2006) for Nicaragua was a crucial outcome for the COMPAL Programme. Other key activities falling under the management of the same NPC regarding consumer protection issues were also carried out.

56. In 2006 after the adoption of the competition Law in the country, a number of activities were carried out particularly one activity regarding the institutional capacity of the future competition agency, particularly the preparation of a set of recommendations for the functional structure and organization of the competition agency, including its relationship with other governmental bodies.<sup>34</sup> Similarly, consumer protection activities were continued to carry out in accordance to the plans of action of 2006. Finally an academic programme was put in place under activity N.1.1.4

57. On the whole, the indicators for Nicaragua have not changed significantly over the period 2004 – 2007. Indeed with the undertaking of major activities in Nicaragua, the three outcomes are about to be fully achieved. For instance, as regards the first outcome: “Greater awareness and support for the competition law and policy”, the work carried out by the national coordination as been significant, particularly with sensitization seminars carried out to support the adoption of the law (Activity N.1.1.2.). In this respect, a major component is the preparation of sectoral in-depth studies (activity N.1.1.1.) in accordance to what has been agreed at the COMPAL Mid-term review meeting (July 2007).<sup>35</sup>

The results of the external evaluation made to COMPAL in Nicaragua...

58. Even though some of the objectives of Nicaragua were not actually achieved because of some specific local circumstances, the report does acknowledge a great success when Nicaragua adopted the Competition Law during 2006. The quotation may help to understand this statement:

"...The objectives were clearly stated and correspond to the needs of Nicaragua. A spark of evidence for this is that they did not change during the COMPAL Programme. As an introductory remark, one of

<sup>34</sup> See Activity N.1.2.2 & N.1.2.3. at the COMPAL Extranet [http://www.unctadxi.org/templates/Page\\_6230.aspx](http://www.unctadxi.org/templates/Page_6230.aspx)

<sup>35</sup> Recently on 20 July 2007, Nicaragua proposed changes to the Annual Operational Plan for 2007 (POA 2007) with regard to the sectoral studies.

the great successes of the National Project is the adoption of the new competition law on 26 September 2006. The process towards the realization of the first objective - the contribution to the establishment of an efficient competition authority and the implementation of the competition law - has experienced a faster development than the process towards the second one. However, the efforts towards achieving this objective have been stagnant since most of the unsettled activities were linked to the creation of the competition agency PROCOMPETENCIA. This is still pending, and apparently no initiative to adapt the activities was taken. The establishment of PROCOMPETENCIA depends on the political priorities and cannot be achieved without a strong lobbying activity from the stakeholders of the COMPAL Programme among others. As an example of the raised awareness of competition issues, a regulation regarding telecommunication was submitted to the national assembly and was scrutinized with respect to competition law..."<sup>36</sup>

## **Section VI: relevant changes in Peru's country objectives, activities, indicators and outcomes**

*The status quo in 2004...*

59. At the outset of COMPAL, Peru had some priorities as regards the strengthening of competition and consumer protection policies. Indeed, based on specific needs and priorities identified during Phase I of COMPAL<sup>37</sup> (2004), several activities were designed to support Peru's National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) in its efforts to achieve its institutional goals related to advocacy and compliance with Competition and Consumer Protection policies.

60. As a result, an initial proposal for COMPAL activities in Peru focused on three major country objectives:

- Objective No. 1: To contribute in raising awareness and in implementing the Draft Amendment to the Competition Law, as well as to improve INDECOPI's regulatory framework.
- Objective No. 2: To improve INDECOPI's capacity to implement measures aimed at consumer protection and the promotion of academic programs
- Objective No. 3: To introduce competition-related measures aimed at providing support to SMEs so they may insert themselves in the formal sector.

61. At that time, the activities and sub-activities mentioned in the table below, were designed to fulfil the proposed objectives:

### Box No. 6

**OBJECTIVE 1:** To contribute in raising awareness and in implementing the Draft Amendment to the Competition Law, as well as to improve INDECOPI's regulatory framework

Activity P.1.1 Dissemination of the draft amendment to the Competition Law.

- Publication of the Draft Amendment to the Competition Law in the Official Gazette (El Peruano) and its distribution nationwide.
- Organization of a two-day seminar for Peruvian experts and Officials on the benefits arising from implementation of the Draft Amendment to the Competition Law, including the merits of adopting a merger review regime.

<sup>36</sup> External Technical Evaluation of the COMPAL Programme. SECO

<sup>37</sup> "It should be borne in mind those barriers to starting a business remain a significant problem in Peru... This is a concern as consumer rights are thought to be less well respected in the informal sector (...) Little appreciation among the public as to the purpose and benefits of competition and consumer protection laws also impedes the effective development of pro-consumer market outcomes... INDECOPI sees a greater role for itself in competition advocacy, that is, in making the case for further reforms in the regulated sectors and in other areas of government activity."

Activity P.1.2 Preparation of a report to identify the necessary revisions to existing legal regulations and practices concerning the definition of ‘relevant market’, in support to investigations carried out by INDECOPI.

Activity P.1.3 Internships at the Swiss Competition Agency - COMCO by Peruvian officials. The dates of the internships will be fixed by mutual agreement.

**OBJECTIVE 2:** To improve INDECOPI’s capacity to implement measures aimed at consumer protection and the promotion of academic programs

Activity P.2.1 Preparation and dissemination of guides related to consumer rights in four sectors (financial services, non-banking consumer loans, electrical appliances, and tourism services).

Activity P.2.2 Training of INDECOPI officials and sectoral regulators on issues related to consumer protection, in particular standard form contracts.<sup>38</sup>

- Preparation of a report on consumer protection issues related to standard contracts, comparing Peruvian experience with similar experiences in the region on four selected sectors.
- Design and implementation of four workshops for INDECOPI officials and sectoral regulators on matters related to standard contracts.

Activity P.2.3 Identification of small consumer associations and training of their staff.

Activity P.2.4 Preparation of market studies on competition policies in selected sectors.

Activity P.2.5 Design of a methodology to measure the impact of the Free Competition Commission decisions on national markets and on consumers’ welfare.

Activity P.2.6 Training of academics.

- Design of a programme for university professors on competition law and consumer protection, as well as their implementation. INDECOPI staff and international experts would design this programme.
- Implementation of university courses on Competition Law and Policy, Consumer Protection Law, and matters related to the enforcement of these laws. Three (3) workshops would be taught by the university professors trained in the the above mentioned activity.

Activity P.2.7 Training school teachers on issues related to consumer protection, competition policy and intellectual property.

**OBJECTIVE 3:** To introduce competition-related measures aimed at providing support to SMEs so they may insert themselves in the formal sector.

Activity P.3.1 Identification of institutional factors which explain the presence of the SMEs in the informal sector.

- Undertake two sectoral studies on the legal and administrative factors which determine that firms do not insert themselves in the formal economy and the effects of informality on competition.
- Organization of training programs on Competition Law and Policy and Intellectual Property for SMEs in two selected sectors; to be taught by officials from INDECOPI, PROMPERU and PROMPYME.

62. In line with these activities and sub-activities, COMPAL submitted to the donors a number of indicators related to the outputs referred to in Project documents of 29 October 2004. Table No. 6 shows this information.

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<sup>38</sup> Standard form contracts (also known as adhesion contracts) are those contracts between parties that do not allow for negotiation.

Table No. 6

Outputs set out in October 2004	Indicators mentioned in October 2004
Greater awareness of the draft amended competition law and improved legal regulations guiding the administration of competition issues	<ul style="list-style-type: none"> <li>- Number of policy recommendations with effective implementation</li> <li>- Number of newspaper articles on the draft amendment</li> <li>- Number of proposals to the Parliament on the draft amendment</li> <li>- Increased awareness/support from the private sector for competition law and policy</li> <li>- Progress in the introduction of a merger review regime in the competition law</li> <li>- Revision of the legal regulations governing the notion of relevant market</li> </ul>
Enhanced capacity of INDECOPI and their key partners to implement consumer protection measures	<ul style="list-style-type: none"> <li>- New methods adopted to handle standard contracts</li> <li>- Consumer associations playing a greater role in four sectors (financial services, non-banking credit, electronics, and tourism)</li> <li>- Introduction of competition law and policy, and consumer protection in the curricula of national universities</li> <li>- Consumer protection issues introduced in schools</li> <li>- Application of a consumer-survey</li> </ul>
More SMEs encouraged to join the formal sector as a result of competition measures and policies	<ul style="list-style-type: none"> <li>- Implementation of new competition-related measures and policies aiming at facilitating the formalization of SMEs in 2 particular sectors</li> </ul>

The evolution of the country objectives and activities during 2005, 2006 and first semester of 2007...

63. In December 2004 and January 2005, before subscription of the MOU, several meetings were held between INDECOPI officials and COMPAL representatives. Peru's country objectives as well as the proposed activities were discussed and modified. It should be noted that in June 2004, a new Chairman of the Board of Directors of INDECOPI was appointed.
64. In particular, Objective N° 1 and the activities under it, experienced substantial modifications, which were attributable mainly to the fact that by the time the MOU was signed, activities to advance the Draft Amendment to the Competition Law, had already been executed<sup>39</sup>. On the other hand, it is important to note that objectives N°2 and N°3 did not undergo substantial modifications, but were slightly changed in accordance to INDECOPI's vision related to decentralization of consumer protection.
65. The agreed modifications were reflected on the MOU signed in January 2005 by the Swiss Government, UNCTAD and INDECOPI. Box No. 7 below presents in blue font, the objectives and activities contained in the MOU, which reflects INDECOPI's commitment to COMPAL's implementation in Peru.

#### Box No. 7

**OBJECTIVE 1:** To contribute to the institutional strengthening of INDECOPI in terms of market studies, mechanisms to obtain financial support and impact indicators.

**Activity P.1.1** Undertake three (3) market studies on competition policies, in selected sectors.

<sup>39</sup> It is worth noting that bilateral discussions on the need to amend the current competition law were held in Sao Paulo at the occasion of the UNCTAD XI. At that time, it was indeed a priority to undertake necessary steps to include merger provisions in the current competition law.

- Activity P.1.2. Organization of a two-day conference for Peruvian experts and Officials on Competition Law and presentation the sectoral studies' results (P.1.1).
- Activity P.1.3 Support to the implementation of INDECOPI's Promotion of Competition and Innovation Area.
- Activity P.1.4 Review of the mechanisms used internationally by competition agencies to obtain financial support and assessment of methodologies used in the region by peer organizations to measure the impact of their decisions on competition issues.
- Activity P.1.5 Design of a methodology to measure and assess the economic efficiencies originated by business concentrations, and evaluation of these efficiencies taking into consideration possible restrictive effects on competition produced by the concentration acts.
- Activity P.1.6 Internships at the Swiss Competition Agency (COMCO) for INDECOPI and OSIPTEL officials.
- OBJECTIVE 2: To improve INDECOPI's capacity in the implementation of a National Decentralized Consumer Protection System and to promote academic programs on competition policy and consumer protection.
- Activity P.2.1 Design of a National Decentralized Consumer Protection System and implementation of a pilot project with municipalities in Peruvian Department capitals.
- Activity P.2.2. Training of academics and officials from peer organizations on competition policy and consumer protection and organization of a contest on research in these fields
- Activity P.2.3 Undertake an assessment on consumer protection issues related to standard contracts, comparing Peruvian experience with similar experiences in the region on four selected sectors.
- Activity P.2.4 Training of school teachers (primary and secondary) on issues related to consumer protection, competition and intellectual property.
- Activity P.2.5 Training of school teachers (primary and secondary) on issues related to consumer protection, competition and intellectual property.
- OBJECTIVE 3: To support SMEs in the adoption policies related to competition, in order to promote their insertion in the formal sector
- Activity P.3.1 Undertake two (2) sectoral studies on the legal and administrative factors that prevent firms from formal activity.
- Activity P.3.2 Organization of a Seminar to promote the formal sector directed to congress people advisers, government officials, the media, and business people.
- Activity P.3.3. Organization of training programs on Competition Law and Policy and Intellectual Property for SMEs; to be taught by officials from INDECOPI, PROMPERU and PROMPYME.

66. During 2005 INDECOPI implemented several of the activities foreseen in its Annual Operational Plan for that year. Peru's National Annual Report 2005 stated that some of COMPAL program outputs, such as the ones arising from activity P.1.1., had effects on INDECOPI's actions in selected markets, including investigations that affect consumer welfare. Moreover, activity P.1.1. provided useful tools for INDECOPI's Free Competition Commission<sup>40</sup>. Likewise, activities P.1.3. and P.1.4. strengthened

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<sup>40</sup> The value added of COMPAL's in-depth sectoral studies, carried out in 2005 under Activity P.1.1., is clear. The first commissioned study on the health service market proved the capacity of consultants to make available to INDECOPI's officials, the necessary econometric tools to detect collusive practices in different markets. The second study on hydrocarbons has shown that, in a structure where vertical integration is predominant, there may be no need to analyse allegations resulting from collusive behaviour. What really matters is to develop mechanisms to assess in-depth, the structure of vertical integration using available data and to work closely with the relevant regulatory authority (OSINERG), which can impose specific provisions (such as contract templates) on the relevant economic actors within the sector.

INDECOPI's institutional development. Also, in line with INDECOPI's strategic objectives, activity P.2.1 pursued the design and implementation of a National Decentralized Consumer Protection System.

67. However, the outputs and indicators which had been set for Peru before the MOU was signed had not been adjusted. The 2005 National Annual Report indicated that it was necessary to make this adjustment, it also pointed out that it would be made at the 2006 Annual Follow-up Meeting.
68. During the First Annual Monitoring Meeting held in February 2006, the proposed Annual Operational Plan for 2006 was revised, as well as the indicators. Changes were proposed by INDECOPI, taking into account that the activities adjusted in 2005 were those included in the Annual Operational Plan for that year. In this regard, some activities were slightly modified, while others suffered a more drastic change. Specifically, due to the institutional importance given to activity P.1.5 which was planned for 2006, it was implemented directly by INDECOPI in 2005, so a new action related to capacity building on competition issues directed at SMEs was included. Also, activity P.3.3 was redesigned in such a way that it also covered the purpose of activity P.2.3 (adhesion contracts), and which was more aligned with objective N°2 (activity P.2.6). Finally, a new activity was included in P.2.3, related to information provided to consumers in four products of the financial sector.
69. During 2006 two modifications were requested: activity P.2.5 had to be modified given the administrative difficulties that were encountered in handling the financing of expenses related to training school teachers who participate in the INDECOPI Educates program, as was originally foreseen; and activity P.2.1, given that the evaluation by INDECOPI's Board of Directors of the results of the first two phases of the consultancy for the design of the Decentralized Consumer Protection System, which included a diagnostic of the municipalities capacities and institutional strengths, was not positive with regards to initiating the implementation of the Pilot Programme.
70. It is important to mention that in August 2006, a new Chairman of the Board was appointed by the newly elected President of Peru. This change did not affect the implementation of COMPAL activities in Peru and support of the program was expressed to UNCTAD by the new administration in October 2006.
71. The year 2006 saw substantive progress particularly as regards Objective No. 2, which is the consumer protection component of the project for Peru. Indeed, an innovative number of activities were carried out under objective No. 2 and was reported in the National Annual Report 2006 prepared by Peru.
72. In February 2007 at the occasion of preparation of the Global Annual Report 2006, UNCTAD carried out an overall assessment of the indicators set out in 2004. In this connection, INDECOPI introduced some clarifications as regards the indicators which are reflected in blue font in the following table No. 7:

Table No. 7

Outputs set out by Peru	New Indicators
Achieve a better implementation of the Peruvian Competition Law and Policy	<ul style="list-style-type: none"> <li>- Number of sectoral in-depth studies finalized.</li> <li>- Number of newspaper articles on the impact of sectoral in-depth studies</li> <li>- Number of studies that linked competition and innovation</li> <li>- Increased awareness/support from the private sector for competition law and policy</li> <li>- Revision of the legal regulations governing the notion of relevant market</li> </ul>
Enhanced capacity of INDECOPI and their key partners to implement consumer protection measures	<ul style="list-style-type: none"> <li>- New methods adopted to handle standard form contracts</li> <li>- Municipalities' capacity in consumer protection issues have been strengthened and are participating actively in Consumer protection activities for their communities.</li> <li>- Introduction of competition law and policy, and consumer protection in the curricula of national universities</li> <li>- Consumer protection issues introduced in schools</li> </ul>
More SMEs encouraged to join the formal sector as a result of competition measures and policies	<ul style="list-style-type: none"> <li>- Model Administrative Guidelines used by municipalities.</li> </ul>

*Results of the external evaluation made to COMPAL objectives to Peru...*

73. The following quotation is in order as regards the findings of the intervention:

*"...The following findings can be made based on the outcomes and indicators of the Peruvian National Project which were re-defined in February 2007. The first outcome is to achieve a better implementation of the Peruvian competition law and policy. The assessment of the related indicators gave the following result. First, three market studies were undertaken. One of them won an academic award for its excellence. Secondly, nine articles were published in 2006 in relation to the sectoral studies. Thirdly, no studies were undertaken that linked competition and innovation. Fourthly, many activities included dissemination of the results obtained in order to increase the awareness and the support from the private sector for competition law and policy. It is difficult to measure such an indicator. Fifthly, no modification relating to the definition of relevant market has been done so far and none is foreseen in the next future.*

*The second outcome is the enhanced capacity of INDECOPI and its key partners to implement consumer protection measures. The following indicators were assessed in relation to this outcome. Firstly, no new method was adopted to handle standard form contracts, but it is expected that a pending activity will aim at determining the apprehension and the understanding of the average Peruvian consumer. Secondly, the municipalities' capacities in consumer protection have not been decisively strengthened and municipalities are not participating actively in Consumer protection activities. According to the NPC, the strengthening of municipalities in relation to consumer protection will only take place in 2008. Thirdly, eighteen university professors have visited the first phase of a training in competition and consumer protection law. The second phase is still pending due to administrative difficulties. Fourthly, consumer protection issues were introduced to pupils, notably with a cartoon and a videogame that have been developed and have been integrated to INDECOPI's program "INDECOPI educates" to facilitate the teaching of consumer protection issues in primary and secondary schools. Fourthly, an activity achieved under the COMPAL Programme that has provided for a better implementation of the Competition Law and Policy is certainly the methodology to measure the impact of INDECOPI's decisions which will be implemented in 2008 (P.1.4).*

*The third outcome is to have more SMEs encouraged to join the formal sector as a result of competition measures and policies. The related indicator - the model administrative guidelines used by municipalities - has not materialized.*

*The objectives were clearly stated and there was enough flexibility to adapt them just before the inception of the COMPAL Programme. This change proved to be relevant and useful in order to bring the National Project in line with the government priorities. A majority of activities originally planned as well as the ones that were finally conducted were related to and contributed to the achievement of the country objectives, which correspond in turn to the country priorities in terms of competition and consumer protection. However, the changes affecting some activities are not necessarily comprehensible and it seems that sometimes they were merely related to comfort and convenience rather than to a real and objective need."<sup>41</sup>*

## **Section VII: Lessons and way forward**

74. It is well known that UNCTAD technical assistance activities respond to government's needs and priorities and COMPAL is a clear example of this strategy. As shown in this document, the bulk of the COMPAL activities have been implemented according to the agreed MOUs signed between UNCTAD, SECO and each beneficiary country in 2005.
75. This document has also shown how COMPAL components are organized according to their aggregated/disaggregated level (i.e. macro, mezzo and micro). This has represented a useful tool to undertake COMPAL activities and to evaluate them afterwards. As seen, developments in each country project have differed according to their circumstances and have adapted to their priorities. The following shows how each country experience.
76. In the case of Bolivia, circumstances at national level led to substantial changes to the activities included in the Annual Operational Plans (AOPs/ POAs) for 2005, 2006 and 2007. It is envisaged that by drawing up these planning documents in a more realistic manner, the COMPAL activities can be better adapted to the national priorities, involving a dedicated team supporting them.. In the case of Costa Rica, so far no major changes were registered as regards the planned activities. The two institutions (COPROCOM and the Consumer Protection authority) have proved to perform well as regards the implementation of COMPAL at local level. With respect to El Salvador, both institutions (the Superintendency of Competition and the Consumer Protection authority) have progressed substantially with regard the implementation of the activities. It is worth mentioning that since the adoption of the Competition Law and the establishment of the competition authority, the outcomes of the Project for El Salvador have been visible not only at local level and in COMPAL but also at the level of other regional and international fora. Changes in the activities reflect the adoption of the Competition Law, and were translated in a refinement of wording in order to adapt to the new Law and its corresponding implementation. In the case of Nicaragua, there have been no substantial changes over the period 2004 – 2007. UNCTAD has provided support to the NPC by ensuring that an assistant to the Project provides support on a continuous basis. As for Peru, minor changes were introduced in January 2005, and thereafter, in 2006 old activities were replaced by innovative ones that have increased the visibility of the COMPAL Project for Peru.
77. Perhaps the following lines serve to explain what has made COMPAL a successful technical assistance programme. Among these elements, it is possible to mention the following: adaptability, creativity and flexibility. Besides, the involvement of a diversity stakeholders thanks to the sensitization at the level of the civil society, the promotion of partnerships particularly with local Universities and training centres, the establishment of synergies with other on going local strategies on competition and consumer protection issues, the outreach activities carried out by all stakeholders and UNCTAD internal support

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<sup>41</sup> External Technical Evaluation of the COMPAL Programme. SECO

provided to the Programme. All this is in accordance with the UNCTAD technical cooperation strategy and its pro - development approach. Moreover, the continuous communication between UNCTAD staff and NPCs has been of crucial importance to the success in the implementation of the Programme.

78. Through the implementation of COMPAL, UNCTAD has foster exchange of experiences and cooperation between beneficiary countries. It is expected that this will be translated in further initiatives that would lead to promote cross – country activities and cooperation between beneficiary countries. .
79. The way forward for COMPAL looks quite promising. UNCTAD in coordination with NPCs and the donor is now in the process of preparing the strategy for COMPAL II. This new phase would certainly involve challenging activities that would be deepened provided beneficiary countries are fully commitment to each Project. Among these activities, it is worth mentioning the need to pursue the preparation studies on competition conditions in key sectors, addressing the needs in vulnerable populations and consumers. As an example, under COMPAL the following sectors have been analyzed: Flour market and cooking oil (Nicaragua), Inland transport sector (El Salvador and Bolivia), Medicines (El Salvador), Health services (Peru), Fuel oil (Peru), Financial services (Peru), Impact of imports of used clothing (Bolivia), Poultry market (El Salvador), Liquidied Petroleum Gas (GLP), Medicines market (El Salvador), Poultry, Dairy Products, Basic Grains and Medicines (Nicaragua). In some countries, the findings have been translated into public policies.
80. Furthermore, COMPAL has also provided inputs for other successful activities and cooperation efforts. With regard to the former, the results of the Programme are used as background material for the preparation of the Peer Review on the Costa Rica Competition Law and Policy to be discussed at the UNCTAD Intergovernmental Group of Experts in July 2008. In Peru, following the preparation of the study on Competition in the Hydrocarbons sector prepared by INDECOPI in 2006, the monitoring of the sector has been carried out using a methodology known as “market observatory”. This technique (already applied in other sectors, i.e. dairy market, aero commercial market) aims at facilitating means for better understanding of the competition conditions of this market to the population in general. The purpose is to ensure that, by supervising the markets, anticompetitive practices are discouraged and in case such practices are found, they can be sanctioned and their negative effects in the society are controlled. Together with the development of the Market Observatory, there is a deep effort by the Peruvian Competition and Consumer Protection authorities (INDECOPI) in organizing and building databases in order to monitor and supervise various markets using such methodology.
81. By strengthening capacities and institutions of beneficiary countries, COMPAL has also contributed to enhance cooperation between beneficiary countries and other countries and regions. In this regard, two countries are members of the Andean Community where Decision 608<sup>42</sup> (adopted March 2005) regulates free competition in the sub-region. Similarly, the Central American countries have established in May 2006 the Working Group on Competition Policy of the Central American Integration<sup>43</sup>. In the field of consumer protection Latin American countries cooperate through the Iberoamerican Forum of Consumer Protection government agencies<sup>44</sup>. COMPAL has also represented a challenging opportunity to build internal strategies at the level of UNCTAD. For example, as a means to better comply with substantive activities, the UNCTAD Competition and Consumer Policies Branch has established a task force composed of staff experienced on competition and consumer policies. This way a reinforced thematic network is put forward by the PMC - Geneva.
82. Last but not least, UNCTAD involvement in this Programme as executing agency, has led to important results that can increase the institutional merit concerning involvement in technical assistance projects on competition and consumer protection policies, particularly in Latin America. In this connection, it is

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<sup>42</sup> See the UNCTAD Handbook on Competition Legislation. [http://www.unctad.org/en/docs/c2clpd55\\_en.pdf](http://www.unctad.org/en/docs/c2clpd55_en.pdf)

<sup>43</sup> [http://lawprofessors.typepad.com/antitrustprof\\_blog/files/1a20edcic3b3n2020boletc3adn20ca20205mar082020ingles.pdf](http://lawprofessors.typepad.com/antitrustprof_blog/files/1a20edcic3b3n2020boletc3adn20ca20205mar082020ingles.pdf)

<sup>44</sup> <http://www.fiagc.org/fiagc.php>

worth to conclude, by quoting how the External technical evaluation to COMPAL identified some successes, difficulties and lessons learned at the macro level.

*"Here are some of the best successes achieved at the macro level: (i) the active participation of all stakeholders, sometimes despite important changes of circumstances; (ii) the development of existing capacities at the regional levels (e.g. consultants); and (iii) the facilitation of discussion fora for the Beneficiary Countries to consult and share experiences relating to consumer protection and competition law and policy. The most relevant difficulties encountered during the COMPAL Programme at macro level are: (i) the undesirable consequences of administrative issues (authorizations, payments, late information,...) on the timely implementation of activities and on the satisfaction of consultants; (ii) the insufficient substantial monitoring of activities and change of activities; and (iii) the lack of dedication of some NPCs due to work overload or considerable political changes. The major lessons learnt are (i) the importance of establishing partnerships among the stakeholders as well as between them and the Beneficiary Countries in order to ensure a successful implementation; (ii) the importance of ensuring that the administrative burden does not hinder the implementation of the Programme or does not discourage the efforts undertaken in the Beneficiary Countries" (External Technical Evaluation. Op. Cit.)*

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