

### Executive Summary

Panama's National Assembly enacted Panama's first competition law in 1996. The current law was enacted in October 2007. In most respects, the current law is consistent with many international competition best practices.

In general, the *Autoridad del Protection del Consumidor y Defensa de la Competencia* (ACODECO), Panama's competition agency, has managed to perform quite well, given scarce resources and limited government support. Practitioners and the business community hold ACODECO's competition team in high regard, as do the members of the judiciary who focus on competition issues.

Given the Agency's limited resources, case selection has been relatively effective. ACODECO eschews bringing large numbers of cases of marginal value in favour of a few cases that are strong both on the facts and on the law. Given the competition problems in Panama, however, particularly in the area of cartels, ACODECO brings too few cases.

ACODECO has instituted only a handful of dominance cases in the past several years. The law provides for merger control, but notification is not mandatory. ACODECO reviews a few mergers each year under this system and approves most of them. Two have been approved with conditions and one has been blocked. The introduction of a mandatory notification system for mergers should be reassessed once ACODECO's competition enforcement resources are increased to ensure effective *ex ante* review of structural changes in local markets.

The new law provides for higher financial penalties and it introduced leniency, but thus far the fines imposed in cartel cases have been too low to act as a deterrent, and there have been no leniency applications. ACODECO must strengthen its anti-cartel efforts in order to increase the probability of detection which will improve the effectiveness of the leniency programme.

ACODECO now plays an important role in overseeing competition issues in regulated industries. The Agency has been proactive in creating better working relationships with sector regulators. As a result, strong inter-agency co-operation now exists with a number of regulators, while co-operation with others is at a nascent stage. ACODECO must continue to improve its working relationship with sector regulators.

Unlike a number of other Latin American countries, Panama does not suffer from significant delays in the judicial review of competition cases. While there remain some delays with cases subject to the earlier Law 29/1996, under the new competition law the 45-day limit for evidentiary hearings should reduce problems of this kind. Nevertheless, to support and strengthen judicial decision-making additional training in economic analysis could be advisable.

The increased use of negotiated agreements could improve both the effectiveness and efficiency of Panama's competition system. A settlement procedure exists in Panama, but to date it has been seldom used (though its use is increasing). It is unclear whether this procedure has been under-utilised because it is ineffective or because the rules for its use are not sufficiently clear.

ACODECO has responsibility for both competition and consumer policy. However, while the consumer programme has benefited from increased resources, the investment made on the competition side has been significantly less. This can, to a large extent, be attributed to the lack of a competition culture in Panama. Competition policy has little visibility in the country, either within other parts of government or among the general population. ACODECO can leverage its success in consumer protection to raise the profile of competition policy.

The report offers several recommendations for the improvement of competition policy in Panama. ACODECO is urged to expand its competition advocacy at all levels, with the aim of fostering the competition culture that is currently lacking. To move competition policy further up the political agenda, ACODECO needs to make the case for competition as a tool for enhancing country competitiveness and economic development. This should be accompanied by increased anti-cartel enforcement efforts, particularly in government procurement. This would demonstrate the benefits of competition law enforcement to both citizens and government. As a part of this increased emphasis on cartels there should be an effort to impose higher fines upon cartel operators.

The financial resources for ACODECO's competition functions should be increased. Consumer protection and competition policy are both important for making markets work well for consumers, but the latter has been underfunded for the past several years.