

Unclassified

CCNM/GF/COMP/WD(2002)37



Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

14-Mar-2002

English text only

**CENTRE FOR CO-OPERATION WITH NON-MEMBERS
DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS**

CCNM/GF/COMP/WD(2002)37
Unclassified

OECD Global Forum on Competition

VENEZUELA'S FREE COMPETITION SYSTEM

This document was submitted by Venezuela as a contribution to the Global Forum on Competition (17-18 October 2001).

JT00122580

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format

English text only

VENEZUELA'S FREE COMPETITION SYSTEM

The Free Competition Regime

The free competition regime in Venezuela started in 1992 when the government settled a group of new policies in order to prepare the country to face globalisation process, including to the Law to Promote and Protect the Exercise of Free Competition. The objective of the law is to promote and protect the free competition and the efficiency that benefits the producers and the consumers; and to prohibit monopolistic and oligopolistic practices and other means that could impede, restrict, falsify, or limit the enjoyment of economic freedom. In this sense, the normal subjects of law are natural or juristic persons, public or private, engaged in profitable or non-profitable economic activities within the country, or groups of agents engaged in such activities.

The Venezuelan System of Free Competition prohibits in general all the conducts, practices, agreements, etc. that impede, restrict, falsify or limit the free competition. In particular our legislation prohibits boycotts, cartels and other horizontal agreements, bid —rigging, vertical agreements that contains vertical restraints and the abuse of dominant position. The law has also a prohibition for all the mergers - horizontal, vertical or other-that are restrictive of the market or could generate o reinforce a dominant position in a relevant market. Finally, the law prohibits unfair competition in terms of misleading or false advertising, bribery in commerce, violation of industrial secrets, etc. and other commercial policies, which tend to eliminate competitors.

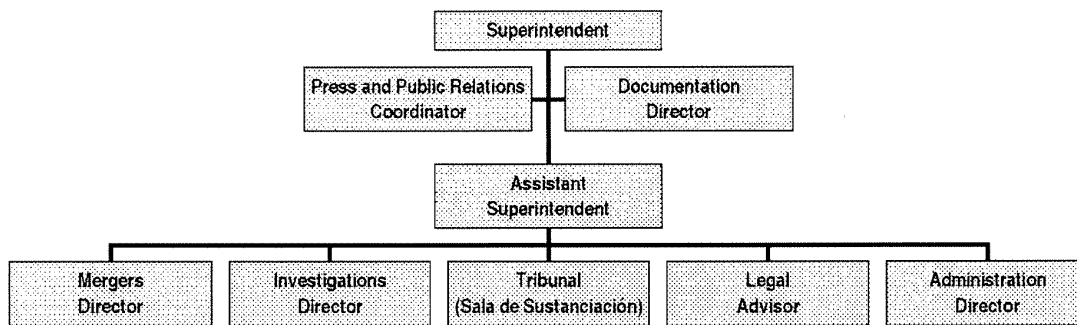
Cartels and bid-rigging, boycotts, abuse of dominant position and unfair competition are *per se* violations of the law. The other anti competitive practices should be analysed by the Office by the rule of reason theory in order to establish if there is or not a violations of the law or if the practice should be authorised by the Office because the efficiency that it provide. In order to develop the case, the Office use the methodology of the relevant market.

In the case of mergers, there are two ways to review them. One is to authorised them (*ex ante*) and that is voluntary for the parties, that is, the pre merger notification procedure is not obligatory. The other is by an administrative procedure of prosecution of an anti competitive practice, which is *ex post* and it is to determine if the merger has violate the law, because is anti competitive or restrictive of the competition.

The Competition Office

The law creates the Competition Office (Office of the Superintendent For The Promotion And Protection Of Free Competition) which is an independent Office (with operational autonomy), that is attached administratively to the Ministry of Production and Commerce. This Office has the power to investigate the existence of anti competitive practices and to impose fines against persons or firms that act against the law. Some of the powers and duties that the Office has are: to conduct the investigations necessary to verify the existence of anticompetitive practices; and prepare cases files concerning with such practices; to determine the existence or non existence of prohibited practices or conducts; proscribe and

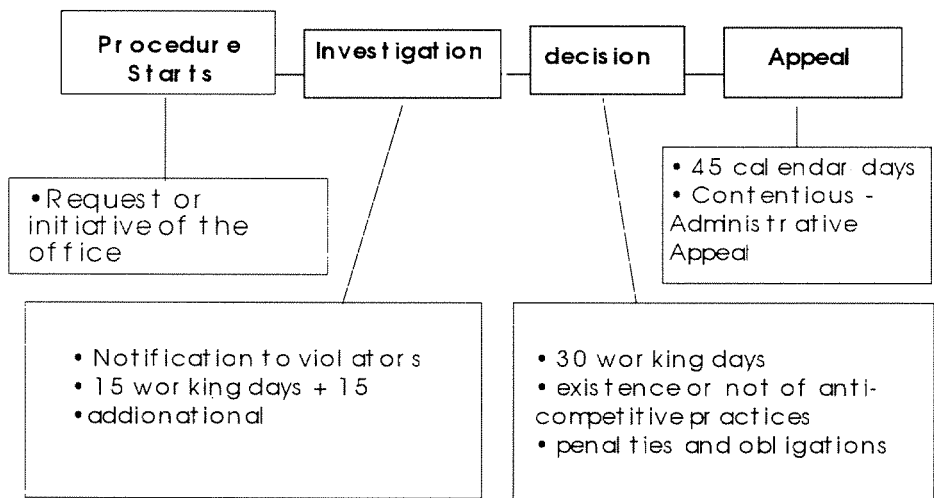
punished them; propose to the Executive Branch the regulations necessary for the application of the law; to issue an opinion on matters within its competence when so requested by the judicial or administrative authorities; etc. A Superintendent, who shall be appointed by the President of the Republic, shall administer the Office. The Superintendent has an Assistant Superintendent who is also appointed by the president. Both will exercise their office for four years and may be appointed for other periods. The Superintendent has a Tribunal (named Sala de Sustanciación) which has powers to: summon any person to appear to testify on pertinent matters; to require a person to present any documents or information that could be related to the alleged violation; to examine ledgers and documents during the investigation; to subpoena a person, through the national press; to appear who may be able to furnish information with respect to the alleged violation; etc. In this sense, all persons and firms conducting business in the country, public or private must furnish the information and documentation required of them by the Office. The information provided is confidential. The Tribunal is under the Assistant Superintendent. The Tribunal, as we call it for translation purpose is substantiation chamber that instructs the files and co-ordinates all the defence and offence argument and proofs in order to give to the Superintendent the must complete file for him to decide.



The Procedure

Regarding to the procedure in case of prohibited practices, they could be initiated by request of a concerned party or at the initiative of the Office. The Superintendent orders the initiation, and he orders the investigation to be held by the Tribunal. Once the case is open, the Tribunal notifies the alleged violators that the respective administrative enquiry has been opened, and indicates the violations that are being investigated. The parties have fifteen (15) working days period within to present their evidence and put forward their arguments. The period could be extended for fifteen (15) additional days if the tribunal deems it necessary. Once this period of time has elapsed, the Superintendent has thirty (30) working days to issue a decision in which he determines whether the existence or not of anti-competitive practices. The decisions adopted by the Office exhaust the administrative route, and the only remedy that may be undertaken is the Contentious —Administrative appeal within a period of forty — five (45) calendar days since the decision and then it shall be appeal at the Supreme Tribunal of Justice. Persons who are involved in the prohibited practices and conducts may be punished by the Office, with a fine of up to twenty percent (20%) of the value of the violators' sales.

In the case of mergers' authorisation (ex ante) or other practices, and for the resolution of this matters the procedure that applies is the regular one established in the Organic Law of Administrative Proceedings.



The protection of the free competition that is one of the objectives of the law is possible by prosecuting anti competitive practices and punishing them. In other hand the Office has another main activity that is the promotion of the competition. This activity is held by the office among different ways as presentations in academic and business forums, sectorial investigations, public policies analysis and opinions, revision of the laws or projects of new laws that will be approved by the National Conference (Congress), and others.