

Pro-Competencia's Mission and Activities

HISTORY

For a number of decades, Latin American nations were characterized by their protectionist economic policies: import substitution, price controls, monopolistic practices by the government, and state ownership of industries and services. Governments and the private sector operated within a set of rules that guaranteed corporate executives protection from competition and government officials the power to assign and distribute resources.

The majority of Latin American countries began the transition toward a more open economy in the 1980s as a reaction to the debt crisis. At the beginning of the 1990s, almost all of the countries had begun structural reforms such as reducing commercial barriers, privatizing State-owned enterprises, deregulating the economy and promoting competition. Without question, the process of liberalizing the commercial sector is far advanced today.

HISTORY

Promoting competition in these countries, however, requires more than simply enforcing an anti-monopoly law. To do so, federal authorities must discourage the behavior of monopolists accustomed to the protection of various presidential administrations. The government must undertake an education campaign aimed at influencing behavior, attitudes, and culture. The government must persuade consumers and producers that economic liberalization and competition benefit them both due to the greater efficiency they generate, and are a better option than a controlled economy.

In the case of Venezuela, competition policies originated as part of the economic reforms of 1989. In 1992, the Law to Promote and Protect Free Competition was passed, which created the Superintendent of the Promotion and Protection of Free Competition (Pro-Competencia), attached to the Ministry of Production and Commerce. Although Pro-Competencia functions autonomously, it is weakened by the fact that it is not independent and does not have financial or budgetary autonomy.

MISSION

**TO PROMOTE AND PROTECT FREE
COMPETITION FOR THE BENEFIT OF THE
NATION'S ECONOMIC ACTORS, PRODUCERS,
AND CONSUMERS OF GOODS AND SERVICES.**

Who are we?

PRO-COMPETENCIA is a functionally autonomous department of the Ministry of Production and Commerce. It was created in 1992 by the Law To Promote and Protect Free Competition. Its operation was authorized by Resolution N° 37.842, issued by the Minister on 18/12/2003.

What is our legal basis?

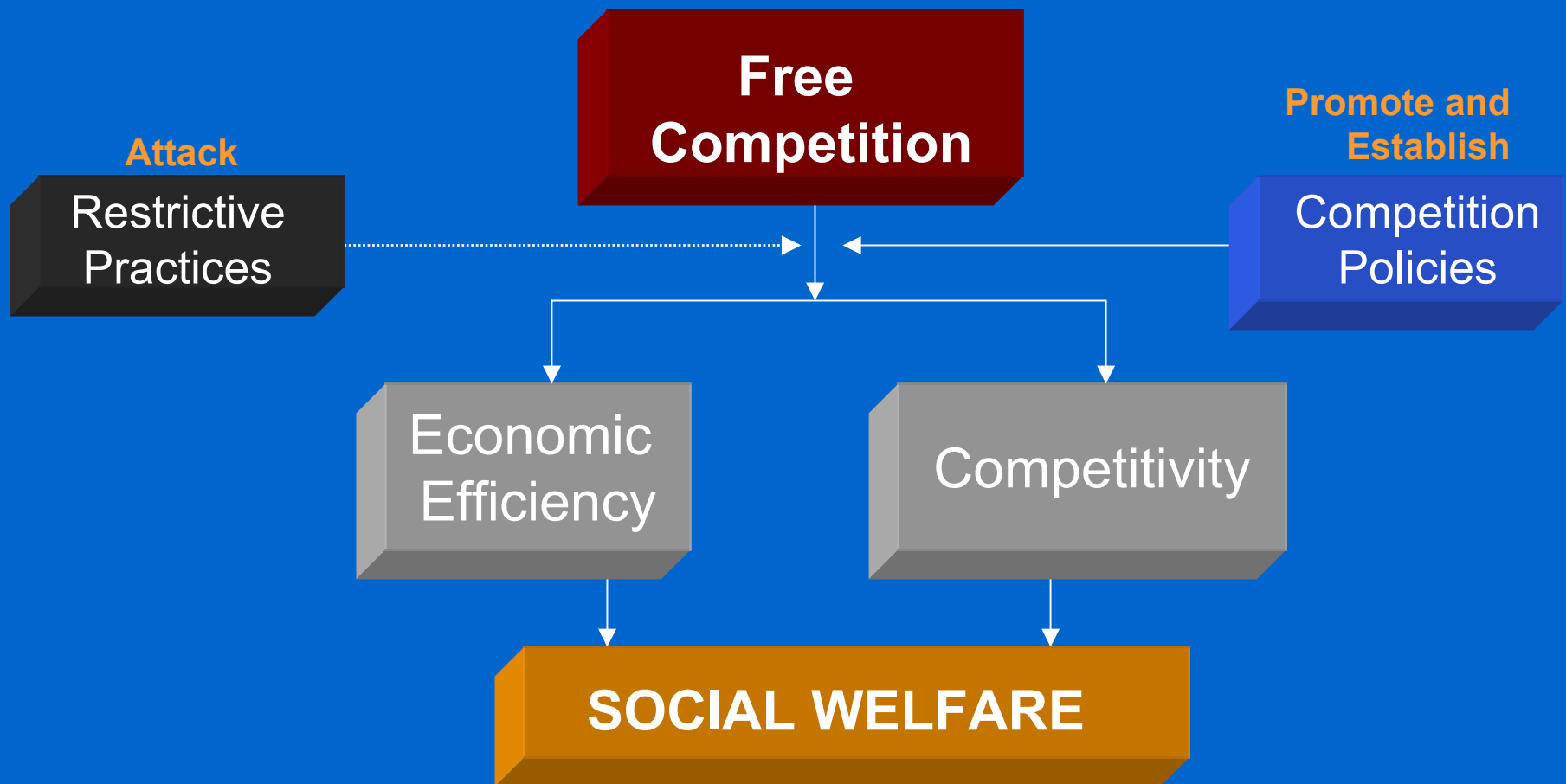
- **Constitution of the Bolivarian Republic of Venezuela**

- **Law to Promote and Protect Free Competition G.O. N° 34.880**

- Regulation N° 1 : Identify the governing regime
- Regulation N° 2: Economic Concentrations
- Global Exception to agreements on exclusive distribution and purchasing
- Lines of evaluation of economic concentrations
- Lines of evaluation of franchises



Objectives



What is our responsibility?

Prevent and attack market failures:

Failures

- Monopoly
- Oligopoly
- Externalities
- Public Goods
- Public Resources

Effects

INEFFICIENT
Distribution of
Society's
Resources

Action

State intervention
to correct market
failures.

How do we operate?

Promote Competition
and Efficiency

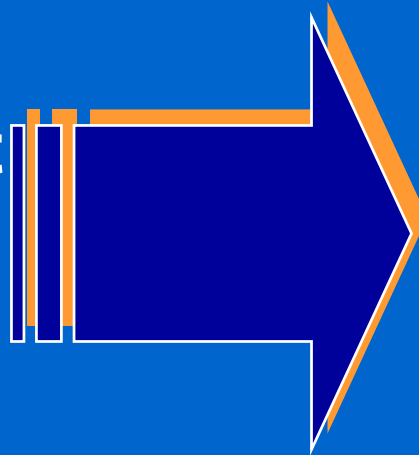
- Opinions and consultations
- Seminars
- Reports on Public Policy
- International Negotiation

Protect Free Competition

- Prosecuting anti-competitive practices through administrative procedures
- Ensuring that economic concentrations do not damage the market

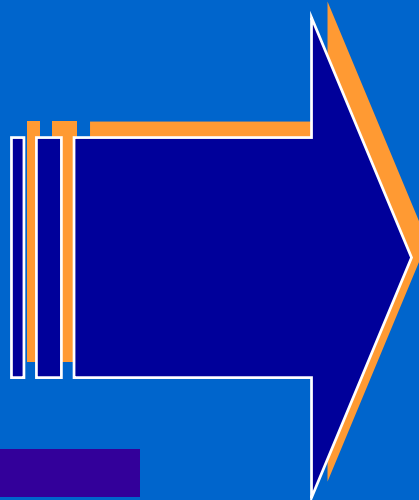
When do we take action?

For exploitative practices aimed at obtaining illicit profits



- Abuses of dominant market position
- Agreements among competitors

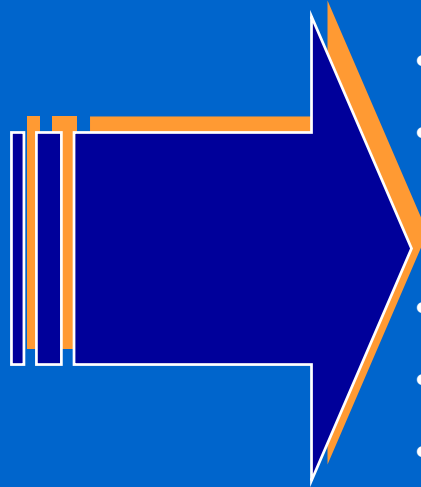
For exclusionary practices



- Abuses of dominant market position
- Agreements among competitors
- Unfair competition
- Boycotts

When do we take action?

**In unfair competition,
with displacement of
competitors:**

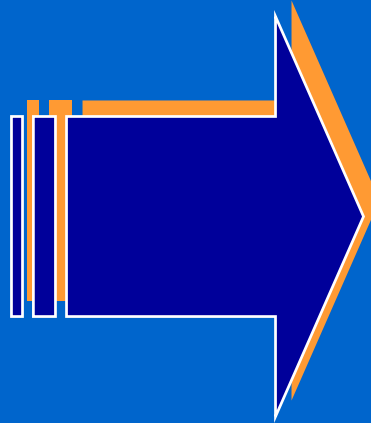


- Violation of industry secrets
- Copying products
- False or misleading advertising directed at the limitation of free competition
- Comparatively false publicity
- Commercial bribery
- Other unfair acts, such as:
 - Using foreign resources

When do we take action?

For economic concentrations, provided that:

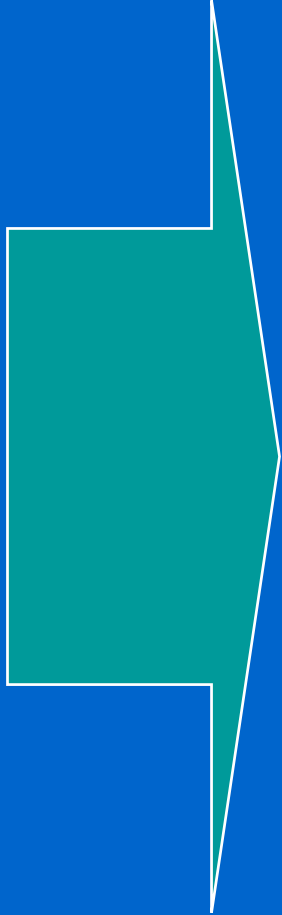
- They generate or reinforce a situation of market dominance.
- They effectively restrict free competition.



- Acquisitions
- Joint ventures
- Mergers
- Etc.

Who is subjected to the regulations?

- Individuals or groups
- Government sector
- Private Sector
- Any grouping of the above



Provided that they undertake economic activities, for or without profit, inside national territory.

How does Pro-Competencia act?

Consultations and opinions

Authorization Procedures
Official Investigations
By Complaint

Sanctioning Procedures:

Sanctions
Orders
Fines
Up to 20% of annual
gross sales

What is the “Sala de Sustanciación”?

- It is the office charged with conducting the investigation, admitting, rejecting, or soliciting the evidence needed to determine the existence or inexistence of restrictive practices.

The following processes are conducted:

**Notify
and send
questionnaires**

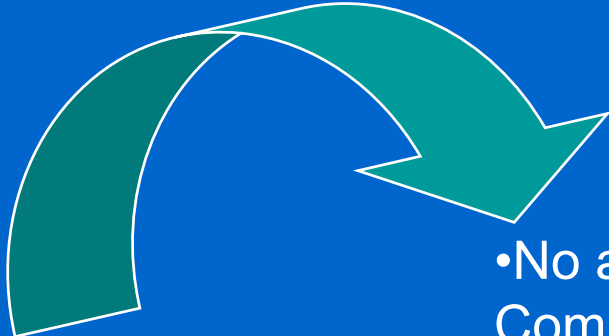
Collect Evidence

Assess Evidence


These processes must take place within 15 days. There is an option to extend the investigation for an additional 15 days.

What is the appeals process?

The decision of Pro-Competencia finalizes the administrative process.

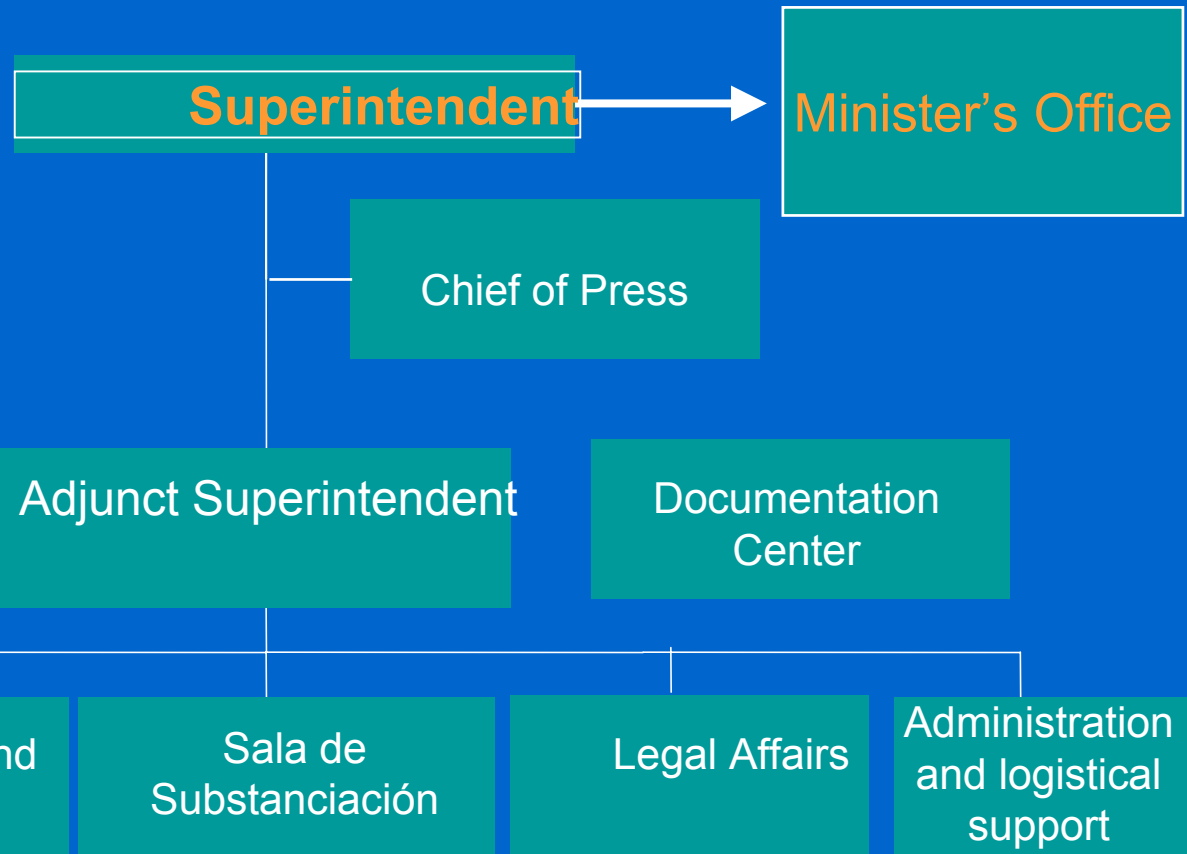


- No appeal to the head of Pro-Competencia or to the Minister of Production and Commerce is available.



- Appeals must be directed to the Administrative Appeals Court (Corte Primera en lo Contencioso Administrativo).

Our Organizational Structure



INSTITUTIONAL WEAKNESSES

i) The following should be viewed as inherent institutional weaknesses:

1.- Number of workers: Pro-Competencia, after nearly 12 years in existence, has nearly the same number of workers as when it originated. Consequently, although staffers are formally assigned specific duties, they must work in other areas outside their principal focus, such as market investigations, merger and acquisition analysis, enforcement of sanctions, and legal representation. In other words, in practice, the Pro-Competencia staff must perform any and every activity required of them, regardless of subject.

INSTITUTIONAL WEAKNESSES

Additionally, the workload at Pro-Competencia has increased due to new support duties for regulatory authorities in telecommunications, electricity, and gas stemming from the processes of liberalization occurring in those sectors.

2.- Budgetary and financial resources: While Pro-Competencia's budget has remained steady in real terms, it can be asserted that it has diminished in real terms. As stated, the agency does not possess financial autonomy, which limits its financial expenditures. It is also important to note that 80% of the budget is devoted to the payroll. This situation weakens the functional autonomy of the institution and hinders the implementation of decisions and rulings.

INSTITUTIONAL WEAKNESSES

3.- Staff Rotation: It is a goal of the agency to hire and maintain the highest-quality staff, not only with respect to its academic and professional qualifications, but also with respect to its competitiveness and attitude (goal-oriented, committed, driven, flexible, versatile, knowledgeable and highly-motivated). Nevertheless, a lack of competitive salaries and the minimal opportunities for promotion within a horizontally-structured organization operating on a skeleton staff encourage employees who have achieved a certain level of experience to move to more lucrative positions elsewhere.

This makes Pro-Competencia an excellent institution for learning about subjects related to economic competition, but, with the exception of a very few cases, it does not maintain its best and brightest for very long. The result is time and resources wasted in the training of staff whom the agency hardly has the chance to utilize.

INSTITUTIONAL WEAKNESSES

4.- National Presence: Although the Law to Promote and Protect Free Competition permits the formation of state-level competition agencies, in practice these agencies have never been created. This prevents many small economic interests from filing complaints about anti-competitive practices, since they would have to travel to the capital to do so.

In addition, the scarce funds available to organize promotional discussions and presentations in Venezuela's interior leads to the perception of Pro-Competencia as an agency that deals only with large economic interests.

The situation becomes particularly challenging in those cases in which complaints have been filed by economic interests with few resources in the interior of the country. Given the limited financial and human resources of the agency, on many occasions Pro-Competencia staff can not travel to the region to investigate the complaint.

INSTITUTIONAL WEAKNESSES

ii) Weaknesses inherent in the organizational framework

1 - Political Sector's misunderstanding and lack of support: Although the Law to Promote and Protect Free Competition and Pro-Competencia has existed for almost 12 years, there is still a significant lack of knowledge about the subject of competitiveness. Neither Pro-Competencia nor the decisions it makes are adequately understood by the official political sector. As a result, there is little support for providing the agency with sufficient financial, technical, and human resources.

INSTITUTIONAL WEAKNESSES

2. Lack of a culture of competition: Promoting competition as a meaningful value for economic interests to pursue is one of the essential functions of the agency ...

This situation is best reflected in the courts authorized to revise Pro-Competencia's decisions. Frequently, the courts' understanding is so poor that they issue decisions that contradict the agency's technical requirements.

What are the challenges?

- Search for mechanisms that solve:
 - The lack of preparation among judges on competition matters, with the goal of effectively protecting competition.
 - The lack of promotion on a national level of the Law to Promote and Protect Free Competition as a strategic public policy tool that allows affected economic interests to denounce practices restricting free competition.
 - The agency's budgetary limitations, which prevent it giving adequate attention to the growing number of cases.
 - The heavy turnover of personnel unable to find adequate incentives to ensure they remain with the agency.
 - The current weaknesses in the legal framework. This could be achieved by passing a new Law to Promote and Protect Free Competition that grants greater budgetary and financial independence.