



## **COMPAL PROGRAMME**

**Projects for Bolivia, Costa Rica, El Salvador, Nicaragua and Peru**

### **COMPAL Global Annual Report 2005<sup>1</sup>**

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### **Executive summary**

The objective of this Annual Report is to describe the implementation of the COMPAL<sup>2</sup> programme during the calendar year 2005, identifying where challenges were faced and what measures have been taken to overcome them, by summarising the main policy-relevant and analytical findings for the beneficiary countries, which may also be relevant to other countries in Latin America. This Annual Report provides a succinct and informative account of the COMPAL programme's activities in its first calendar year of implementation (see box no. 1 below). It also includes other important matters relating to the programme's budget. The material presented here draws on submissions and reports from the beneficiary countries, in particular from the National Project Coordinators (NPCs), and includes contributions from the Programme Management Committee (PMC) and the International Technical Programme Advisor (ITPA).

COMPAL has been active in all five of its beneficiary countries, principally through the implementation of its planned activities. The COMPAL programme has two types of beneficiaries. The first are countries that are in the process of drafting a competition law and need related support, with each nation's chosen priorities being respected. The second type of beneficiaries are countries which have competition laws in place and need assistance to implement them, disseminate information about them, or revise them. With respect to consumer protection, all five beneficiary countries have a law on the statute books and therefore the activities are oriented towards strengthening institutional capacities and undertaking national initiatives.

The beneficiary countries belong to two different geographical areas and two different subregional groupings, namely Central America (Costa Rica, El Salvador and Nicaragua) and the Andean Community (Bolivia and Peru). Their economies, competition policies and consumer protection

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<sup>1</sup>UNCTAD is grateful to the national coordinators and consultants involved in COMPAL activities and to the Swiss authorities represented by SECO, COSUDE and COMCO for their support in the implementation of the first year of COMPAL. The report was prepared by Ana María Alvarez, COMPAL Programme Manager, Simon Evenett, International Technical Advisor to the Programme, and Pierre M. Horna, General Assistant to the Programme Management Committee, Geneva. The team works for the Competition and Consumer Policies Branch, headed by Philippe Brusick. The opinions expressed in this report are, however, those of the authors and do not necessarily reflect the views of the UNCTAD Secretariat.

<sup>2</sup> Please refer to the list of abbreviations and acronyms used in this report.

policies are often influenced by other initiatives (e.g. Andean Community regional law, CAFTA-DR<sup>3</sup>) at the subregional level.

Bolivia and Nicaragua belong to the first type of COMPAL beneficiary countries mentioned above. In the case of Bolivia the following two factors currently shape the country's experience with competition law and policy: first of all, the economic and political climate,<sup>4</sup> which has been particularly influenced by recent presidential elections (which were held in December 2005) and the upcoming change in administration; and, secondly, the fact that SIRESE is the only authority to deal with competition-related matters in certain regulated sectors of the Bolivian economy.<sup>5</sup> A strategic communication plan for SIRESE was prepared by COMPAL consultants (see Activity B.1.1.) in order to raise awareness within the population of SIRESE's role in fostering competition and associated consumer benefits in regulated sectors. Moreover, regarding the dissemination of this strategic plan throughout four major Bolivian cities, it will be necessary to assess first the priorities of the new Government in this respect. In addition, a sectoral study on the impact of imports of used clothing was finalized. With respect to Nicaragua, the integrated approaching to competition and consumer protection issues by the DGCTM has contributed to coordinate activities in these areas. Two market studies, on cooking oil and beef, commodities which have important consequences for the poor, are underway and a fact-finding and skill-enhancing trip was organized to several of the competition agencies in the region.

The second type of COMPAL beneficiary countries includes Costa Rica, El Salvador and Peru. With respect to Costa Rica, it is worth mentioning Activity CR.1.5.1., which concerns a proposal to amend the current competition law. A report prepared by consultants for COMPAL has provided clear recommendations for improving competition law, including expanding its application to all sectors. In El Salvador a major achievement of COMPAL has been the dissemination of the new competition law through seminars in the capital and in major cities. These events have also been used to raise awareness among policymakers, civil society, the media and the private sector about the costs of anti-competitive practices and the benefits of promoting competition and an effective competition culture. It is expected that methodologies will be developed to identify and examine the possible consequences of potential anti-competitive practices in the markets for medicines and in the inland transport sector in El Salvador. In Peru, three in-depth sectoral studies were commissioned in 2005 on hydrocarbons, health, and financial services (activity P.1.1.) and were formally presented during a seminar in early 2006 (activity P.1.2). These studies have already contributed to INDECOPI's investigations. Moreover, a competition with prizes has been organized to foster interest in the consumer protection policies of INDECOPI among academics and government officials.

Several cross-country lessons can be drawn from the activities carried out in 2005. In-depth sectoral studies conducted in a given country and their associated methodologies and findings can be used as a tool by other COMPAL beneficiaries. Moreover, COMPAL intends to benchmark the lessons learned in drafting TORs<sup>6</sup> in 2005 as well as investigation tools available for current and future competition law enforcers. Many of the beneficiary agencies or ministries are engaged in their nation's negotiations on bilateral and subregional free trade areas, such as the CAFTA-DR negotiations and the talks pursuant to Decision 608 in the Andean Region, and it is expected that COMPAL's work products will be a useful input during these negotiations. This is in addition to the other benefits that flow from COMPAL's activities.

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<sup>3</sup> Central America Free Trade Area and Dominican Republic (CAFTA – DR): is a comprehensive trade agreement between Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States. The agreement went into effect for El Salvador on March 1, 2006 and for Honduras and Nicaragua on April 1, 2006.

<sup>4</sup> See the relevant national *Human Development Report* and ECLAC's most recent reports on Bolivia's current political and economic situation.

<sup>5</sup> For further details on SIRESE's role in competition-related matters, see Bolivia's Annual National Report.

<sup>6</sup> Drafting TORs also involves justifying the need for specialized consultancy work.

COMPAL has been designed to take into consideration the project beneficiaries' institutional plans, as stated in the MOUs that were signed at the beginning of 2005. Priorities for 2005 and their accomplishment are summarized in box no.1. The PMC is committed to keeping the originally agreed timetable of activities in 2006 and the priorities for COMPAL are summarized in box no. 2. Approximately 30 new activities are planned for the calendar year 2006. This is in addition to some of the 33 activities that were started in 2005 and are due to be completed in 2006. According to the COMPAL project document, around 70 activities will be completed by the end of 2006. COMPAL will continue working closely with the five national project coordinators bilaterally and in the context of the PMC, as well as undertaking efforts to strengthen linkages between COMPAL-related personnel and other stakeholders, such as the private sector and academia. The latter constitutes one of the major goals for the second year of COMPAL.

**box no. 1: Main priorities for COMPAL in its first year**

Number	Priority	Accomplishments to date
1	Establishing the organizational structure of COMPAL.	<ul style="list-style-type: none"> <li>• PMC established.</li> <li>• NPCs appointed.</li> <li>• Organizational manuals and protocols developed and employed.</li> <li>• Lines of communication and reporting expectations established.</li> </ul>
2	Initiating the activities planned for the first year.	<ul style="list-style-type: none"> <li>• 33 scheduled activities launched.</li> <li>• 25 activities well advanced or completed.</li> <li>• 7 national annual reports submitted by the NPCs.</li> </ul>
3	Launching the Internship Programme with COMCO.	<ul style="list-style-type: none"> <li>• 3 Bolivian officials sent to COMCO (Activity B.1.5)</li> <li>• Clear communication of COMCO's requirements concerning interns.</li> </ul>
4	Raising the profile of COMPAL programme in Latin America and elsewhere.	<ul style="list-style-type: none"> <li>• COMPAL mentioned and praised at major UNCTAD, OECD and other regional and international events.</li> <li>• Extranet launched.</li> </ul>
5	Establishment of protocols to better implement and monitor COMPAL activities on an on-going basis.	<ul style="list-style-type: none"> <li>• Design of high-quality templates for terms of reference and common application.</li> <li>• Protocol established for hiring of consultants.</li> <li>• Establishing review procedures for reports drafted.</li> <li>• Information made available after public events sponsored by COMPAL.</li> <li>• Hard data on impact sought for reporting purposes.</li> </ul>

**box no. 2: Main priorities for COMPAL in its second year**

Nr	Priority	Impact	Challenges
1	Strengthening the impact of COMPAL activities, particularly those related to the sectoral in-depth studies.	<ul style="list-style-type: none"> <li>• A major objective of the sectoral studies comprises drawing policy recommendations for the institutions in charge of implementing competition.</li> <li>• Bolstering private sector participation.</li> <li>• Establishing programmes with academics.</li> <li>• Fostering cross-country lessons from the sectoral studies.</li> </ul>	<ul style="list-style-type: none"> <li>• Launching the impact strategy for the first half 2006.</li> <li>• Better dissemination of competition issues (sectoral studies) through consumer protection strategies undertaken by consumer protection institutions.</li> <li>• Establishing plans to reach out to the private sector.</li> <li>• Need to watch natural inertia at the universities so as not to delay implementation.</li> </ul>
2	Consolidation and refinement of the internal organization of COMPAL. Ensuring timely implementation and assessment of COMPAL's activities	<ul style="list-style-type: none"> <li>• On the basis of the lessons learnt in the first year of COMPAL, revise procedures and workflows as required.</li> <li>• On the basis of the national circumstances In beneficiary countries, revise procedures.</li> </ul>	<ul style="list-style-type: none"> <li>• Review of the current Manual of COMPAL Committees.</li> <li>• Pay particular attention to the situations in Bolivia and Nicaragua; monitor others.</li> </ul>
3	Positioning COMPAL as one of the main technical assistance programmes on competition and consumer protection in Latin America., bearing in mind regional developments.	<ul style="list-style-type: none"> <li>• On the basis of the exchange of experiences and information facilitated by the COMPAL extranet,, establish the foundations for a competition network among Latin American countries.</li> </ul>	<ul style="list-style-type: none"> <li>• Preparing questionnaires to be sent to institutions in charge of competition.</li> </ul>

## List of abbreviations and acronyms used in this report

ACP	anti-competitive practice
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 Defense of Competition and Intellectual Property, Peru
ITPA	International Technical Programme Advisor
MAGFOR	Ministry of Agriculture and Forestry, Nicaragua
MDE	Ministry of Economic Development, Bolivia
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
POA	annual operative plans
SECO	State Secretariat for Economic Affairs, Switzerland
SIRESE	Sectoral Regulation System, Bolivia
SME	small and medium sized enterprises
TOR	terms of reference
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme

## Section I: COMPAL programme description

1. COMPAL represents the second step in an UNCTAD-led strategy whose overall objective is to enable the Governments, populations, civil society and business people of the selected beneficiary countries to make the most of opportunities that have arisen from domestic liberalization and from the globalization of the world economy, thereby providing a basis for sustained growth and development, including employment growth, poverty alleviation and the narrowing of income inequalities. At a time of crucial changes in Latin America, and given the disenchantment in some quarters with national economic reforms and globalization, it is imperative to demonstrate that freer markets can deliver faster and more equitable growth.
2. The COMPAL programme consists of competition-law-related and consumer-protection-related activities, which are mutually reinforcing government measures that improve economic efficiency, increase competitiveness, and promote consumer welfare through the lowering of prices and the widening of choice of better-quality products. Although this programme is expected to last three years, a related goal is to maximize the likelihood that the progress made and institutions strengthened during the years 2005 to 2008 will be sustained over the longer term.
3. The COMPAL programme undertakes several types of activity in the following five beneficiary countries: Bolivia, Costa Rica, El Salvador, Nicaragua and Peru. Those activities include the training of government officials, teachers and other interested parties, dissemination seminars and campaigns, advisory services, analysis of policy options, and institution-building initiatives. During 2003 and 2004 extensive efforts were made to ascertain the needs of each of the beneficiary countries and the circumstances they face or are likely to face, and to gauge their level of commitment to the COMPAL programme. Before the COMPAL programme was implemented, each beneficiary country signed a MOU with UNCTAD, detailing the planned activities, timetable, expected outputs and commitments by the former to the project.
4. Within the parameters of the MOUs signed, efforts have been made to tailor the implementation of COMPAL to the circumstances of the beneficiary nations, it being recognized that those circumstances can change for perfectly good reasons and that unforeseen challenges and opportunities arise. (More information on the implementation record to date in each beneficiary country can be found in Section II of this document.) Each beneficiary country has designated a NPC or "focal point" whose obligations include taking responsibility for the local implementation of planned COMPAL activities, liaising with UNCTAD and the ITPA and providing (where appropriate) logistical support for COMPAL-hired consultants in the conduct of their in-country work and for COMPAL-related seminars, workshops and training activities.
5. From the start it has been recognized that the COMPAL beneficiary countries differ widely in their experience with competition law and consumer protection policies. Peru and Costa Rica, for example, have long-established competition agencies, whereas El Salvador established its competition agency in January 2006 and Nicaragua has the Direction of Competition and Market Transparency (DGCTM) in charge of competition and consumer protection issues. The diversity of experiences in the implementation of competition and consumer protection issues in the Latin American countries has encouraged UNCTAD to organize parallel sessions during regional seminars.<sup>7</sup>

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<sup>7</sup> Seminars with parallel sessions were initiated on the occasion of the Regional seminar organized by UNCTAD with the Colombian Superintendency of Trade and Industry (2-3 February 2006).

6. Moreover, within Latin America, nations differ markedly in their enforcement experience with both of these State measures. Consequently, the COMPAL programme includes activities that foster cross-national learning across beneficiaries and across Latin America. One goal here is to encourage knowledge transfer and the mechanisms that will sustain transfers over the longer term. In certain activities the COMPAL programme has benefited from the expertise of some of Latin America's most experienced former enforcement officials, who bring both rigour and practical expertise to bear on the challenges faced by the beneficiary countries. These contributions are complemented by those from UNCTAD experts and the ITPA, who together have worked on competition law and consumer-protection-related areas in every region of the world.
7. Considerable efforts have been made to raise the profile of the COMPAL programme within the beneficiary countries, within Latin America and in international forums more generally. Meetings with legislators, non-governmental organizations, civil society, journalists and government officials that are not responsible for the implementation of competition law and consumer protection policy have been organized for the purpose of discussing the COMPAL programme. A number of representatives of beneficiary countries have spoken at international workshops about the COMPAL programme and the benefits that they derive from it. This has led to requests for further information and the exchange of ideas, further contributing to the development of a competition and consumer protection culture in Latin America and elsewhere. Some UN member countries have contacted the organization to request support in establishing similar programmes, based on COMPAL.

#### **Description of Geneva-based steps to implement the COMPAL programme**

8. COMPAL is a comprehensive programme that involves numerous activities in each of the five beneficiary countries, and is overseen by the General PMC. The role of the Geneva team is to ensure that each NPC is implementing activities at the national level in accordance with the annual operative plans (POAs). Once a year an annual monitoring meeting takes place for both Central American beneficiaries and Peru and Bolivia. Furthermore, the extranet virtual gateway has also contributed to the dissemination of the outcome of some activities. As a result, this system has worked so far well.<sup>8</sup>
9. With regard to the implementation of the COMPAL programme, two sets of inputs are being provided by UNCTAD. The first is the overall supervision of the Programme, whereby managing and implementing schemes are undertaken by the COMPAL manager and the General Assistant to the Programme Management Committee.<sup>9</sup> Moreover, UNCTAD has coordinated with UNDP local offices to settle certain administrative tasks, particularly those relating to consultants' payments and other relevant tasks. The latter is in accordance with the COMPAL Manual on the *Procedures for recruiting and selecting national, regional and international consultants and experts*.
10. The second set of inputs takes the form of analytical support for all COMPAL activities. Staff from the UNCTAD Competition and Consumer Protection Branch, as well as the ITPA, have contributed their knowledge and extensive experience in the field of competition and consumer protection policies. To date, the major analytical and

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<sup>8</sup> For more information see <http://compal.unctad.org>.

<sup>9</sup> UNCTAD, represented by the Programme Manager, has managerial responsibilities regarding the overall supervision of COMPAL and managing the project budget in order to ensure that the project proceeds as planned, efficiently and orderly. The management and control of the master budget is undertaken in line with 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. Source: <http://compal.unctad.org>.

knowledge-transfer-related activities in COMPAL have been providing feedback on sectoral studies and encouraging cross-country exchange of experiences among project beneficiaries, where appropriate. This particular task has been carried out principally through COMPAL's semi-private extranet site and the Swiss Internship Programme currently being undertaken at COMCO (see box no. 3).

11. As stated in the original project proposal, in addition to the provision of advice, project management, and so forth, the PMC prepares half-yearly progress reports, national annual reports (INAs), Global Annual Reports (IGAs) and a final report on the completion of the programme. These reports include a discussion of the impact of the COMPAL programme as well as other matters, such as a description of the activities undertaken, and challenges faced and how they were overcome. Moreover, representatives from the PMC keep the donor informed of developments, answer queries from the donor, and seek the donor's advice where necessary. Finally, in coordination with the donor and its representatives at local level, UNCTAD organized annual meetings held in Managua (30-31 January 2006) and La Paz (6-7 February 2006). These meetings resulted in revisions of the set of planned activities every year, taking into consideration any accomplishments to date and expected future circumstances.

### **Box no. 3: The internship programme at the Swiss Competition Agency (COMCO)**

As part of the Strategic Direction Committee (CDE), COMCO and SECO have participated in COMPAL activities from the beginning of the implementation of the COMPAL programme.

The main purpose of the internships organized by COMCO is to provide an opportunity for the exchange of experiences between government officials and staff from COMPAL beneficiary countries. In 2005, three Bolivian officials participated in the internship programme. The experience made a substantial contribution to COMPAL objectives and particularly to strengthening the capacities of the various institutions involved with competition issues in beneficiary countries. Similarly, staff from COMCO have benefited from the exchange of information and experiences with Latin American professionals. The latter have highly recognized the value of the internships, as mentioned by one of the interns, as follows:

*"The internship at COMCO has been one of the most interesting and enriching experiences that I have had in my life, both in a professional and personal level. The possibility of sharing working experiences with professionals of another part of the world is unique. The complementation of the internship with visits to related offices and talk to well prepared professionals is furthermore beneficial. But the good thing is that the internship and the experience does not finish the third month with the end of the sojourn in Bern. The professional and the friendship relations continue at the distance because not only I feel part of the COMCO Secretariat family but as well part of the COMPAL Program. Thanks to all of them." (Final report presented by Gonzalo Dávila. Superintendencia de Hidrocarburos- SIRESE, Bolivia. Fuente: <http://compal.unctad.org>)*

## Section II: The implementation of COMPAL in 2005, by beneficiary country

### A. BOLIVIA

12. In the first half of 2005, acute political and economic factors affected the implementation of COMPAL activities<sup>10</sup> in Bolivia. After this turmoil and following the nomination of a new administration a certain degree of stability emerged. As a result, efforts were carried out to comply with activities planned for 2005. Table no. 1 summarizes the status of each activity.

**Table no. 1: Objectives, activities carried out, and status**

Objective	Activity	Current status
<b>OBJECTIVE 1:</b>  Strengthening 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.	Activity B.1.1. Undertaking a dissemination campaign to raise the profile of SIRESE regarding its competition and consumer protection role in five regulated sectors (basic sanitization, electricity, hydrocarbons, transport and telecom).	Final version of the Strategic Communication Plan submitted to the PMC Bolivia.  PMC Bolivia and the ITPA have formulated comments on the final version for the consultants.
	Activity B.1.2. Preparation of separate case studies in five selected sectors on the existence of anti-competitive practices and sectoral enforcement actions that have implications for the degree of competition. (For 2005 only two studies were planned.)	Revised version to be disseminated in the major cities in Bolivia, pending the new Government's priorities in this respect.  The first study on used clothing market has been finalized. This work is currently being reviewed by the NPC in Bolivia.
	Activity B.1.4. Establishing and implementing three academic (teaching) programmes in collaboration with INDECOPI on Competition and Consumer Protection Law, to take place at three Bolivian universities with co-operation from foreign experts and universities.	The second study on transport was delayed owing to the changes in the TOR. The new title of the study is "Cartelization of the passenger transport market in La Paz city".  On 2 December 2005 the NPC submitted the project proposal to UNCTAD. Now awaiting drafts of the Cooperation Agreements to be signed with local universities. Need to assess latest NPC proposal to create an inter-governmental commission for this activity (including SECO and MDE).
	Activity B.1.5. Participating in internships at COMCO (for officials from SIRESE and the Ministry of Economic Development).	By the end of 2005 three internships were successfully completed and reports were posted on the COMPAL webpage.

<sup>10</sup> This situation resulted in planned COMPAL activities (B.1.1.: SIRESE: Design of material, seminars and advertising campaign; and B.1.2. Ministry of Economic Development: Study on used clothing), being delayed.

13. The stakeholders involved in Bolivia's COMPAL Project included during the first year of implementation;
  - i. The NPC including the Ministry of Foreign Affairs, SIRESE, and MDE. This NPC not only acts as the main beneficiary of the project for Bolivia, but also has the main responsibility for implementing the activities in the field;
  - ii. National and international consultants that have carried out two of the planned studies and implemented the strategic communication plan (see activity B.1.1.);
  - iii. Interns that have worked at the Swiss Competition Agency during 2005.

*Implications of article 49 of the Decision 608 (Andean Community of Nations)*

14. An innovative aspect which is worth mentioning is the regional competition legislation, namely Decision 608 of the Andean Community (AC). The Decision adopted in 2005 is particularly important for those AC member countries that still do not have a competition law as they will be able to apply the regional norm according to article 5 of the above-mentioned Decision. It should be mentioned that the norm applies to cross-border cases with anti-competitive effects. As a result, according to the jurisprudence of the Tribunal of Justice of the AC, if the conduct does not have transnational effects, it should be dealt with by the respective national authority.
15. In spite of the former and bearing in mind article 49 of the Decision, the case of Bolivia is special since that it can apply the regional rule even in those cases when the anticompetitive effects do not have a transnational character, according to article 5.<sup>11</sup> However, Bolivia needs to establish an institutional framework responsible for applying the Decision in this respect.
16. It is hoped that the regional law will contribute to progress on the adoption of a national competition law for all sectors of the Bolivian economy.

**Main findings to date and their impact**

17. Two COMPAL activities in Bolivia were fully completed in 2005. The first concerned a programme to raise awareness of SIRESE, the collective body that oversees regulation in a number of important sectors in the Bolivian economy. (At this time Bolivia does not have a separate competition law enforcement agency and SIRESE has a number of regulatory powers that have consequences for competition and for consumer welfare.) Before making their recommendations, the consultants who undertook this activity (B.1.1) performed an internal and external "image audit" of SIRESE to determine how this agency was perceived in general and with respect to its consumer-related functions. This audit revealed that SIRESE's previous communications strategy had been very ineffective, compromised perhaps by SIRESE's poor reputation in the eyes of the public and by what was characterized as a tough, even hostile, political environment.
18. The consultants concluded, on the basis of the above evidence, that another far-reaching public advertising campaign would not be successful. Instead they recommended that a targeted approach be adopted to raise awareness of SIRESE's competition-related activities among leading business figures, academics, economic and legal practitioners, journalists, and civil society organizations.<sup>12</sup> Over time the goal would be to foster a positive image of what SIRESE could accomplish. To implement this approach a "strategic communication plan" was proposed which would entail a number of institutional changes within SIRESE (such as the appointment of a group of credible persons to communicate

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<sup>11</sup> In the absence of exceptions to the application of the regional law, Bolivia and Ecuador have to adopt national laws to challenge anticompetitive practices originating and with effect in their national jurisdictions.

<sup>12</sup> See SIRESE: "Plan estratégico de comunicación de sensibilización y pedagogía social sobre la defensa de la competencia y protección al consumidor," Final Report by Marina Bidart and Javier Medrano.

the role of SIRESE), media training, the holding of seminars and workshops in the main cities of Bolivia targeted at the selected groups mentioned above, and the use of radio advertisements to inform the public of their rights, and so forth. The consultants suggested conducting another “image audit” six months after this targeted approach is implemented, to see if Bolivian “opinion formers” perceive a more constructive role for SIRESE. It should be noted that this is not the same as the population holding such a perception, and the latter must remain the ultimate long-term goal.<sup>13</sup>

19. A second activity completed in 2005 was a study of potential anti-competitive practices in the used clothing market. Used clothes tend to be purchased by the poorer members of Bolivian society, so their price and quality are of special concern. Used clothes can be imported and can compete with the clothes produced in Bolivia by firms in the formal sector and the informal sector. Limitations of data forced the authors to concentrate on the city of El Alto, where a detailed economic census had been conducted of formal and informal activity. While no specific anti-competitive practices were identified, econometric analyses suggested that clothing imports had reduced the production of small and medium-sized clothes producers in El Alto by approximately 28 per cent. This finding highlights the redistributive nature of international trade—the poor benefit from cheaper used clothes, but workers in competing firms face either downward pressure on wages or the threat of unemployment. Although it cannot be denied that the latter adjustments are potentially painful, their relationship to competition law and enforcement is not immediately obvious (unless the importers of used clothes are engaged in some form of predatory conduct or collective exclusionary practice.)

#### **Problems encountered and actions undertaken**

20. The main problems faced by COMPAL in Bolivia during 2005 can be summarized as follows:
  - a. Factors external to the project (i.e. the political and economic turmoil faced until mid-2005);
  - b. Difficulties in initiating activities due to institutional factors;
  - c. Delays in delivering work from consultants due to the above-mentioned factors.
21. Despite the volatile political situation in Bolivia, efforts have been made to implement the planned activities. The national coordination represented by the Ministry of Foreign Relations in conjunction with the Ministry of Development and SIRESE has made a substantial contribution to that endeavour and constant by compromised with the COMPAL Programme. The Bolivian National Project Coordinators have contributed extensively to this endeavour, showing their commitment to the programme.
22. In Bolivia the scarcity of high-skilled human resources qualified to be potential consultants, as well as the unavailability of data, has hindered the prompt submission of studies and reports. Regarding the former, in the case of the second study (Activity B.1.2) the Bolivian

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<sup>13</sup> The main points of the strategic communication plan suggested are: selecting and appointing a group of professionals responsible for communicating the role of SIRESE (non-SIRESE analysts or academics with a high reputation public opinion and the media); media training for both the above-mentioned professionals and the spokesmen at SIRESE; creating a database with questions and answers on the role of SIRESE regarding the defence of competition and consumer protection to bring messages into line, improve institutional communication in the various Superintendencies and make it easier for the public to understand the relevant topics; conducting seminars in the main cities in the country aimed at opinion makers; developing training micro workshops for communication leaders in cooperation with the most important universities; and, finally, instead of the current massive radio advertisements, a pedagogical radio campaign through brief educational advertisements.

NPCs informed UNCTAD of their inability to find a suitable candidate to undertake the study. UNCTAD took immediate action by proposing regional candidates and the study is now being prepared. Regarding a general paucity of data, the consultants were creative and innovative in using available information from different public and private sources. The relevant studies include the appropriate caveats.

## B. COSTA RICA

23. In Costa Rica the COMPAL programme involves activities to support the institutional strengthening of competition and consumer protection. The first activities relating to competition law and policies, specifically Activities CR.1.1.1., CR.1.1.2., CR.1.5.1. and CR.1.5.2. were implemented in 2005. With respect to activities relating to consumer protection, arrangements have been made for the implementation of Activities CR 2.1., CR 2.2., CR 2.3. and CR 2.5. Several outputs are expected to be finalized from December 2005 onwards (see table no. 2).

**Table no. 2: Objectives, activities carried out and status**

Objective	Activity	Current status
<b>OBJECTIVE 1:</b> To broaden the scope of enforcement of the competition law and improve the internal work processes of COPROCOM.	Activity CR.1.1. To raise awareness of competition law among consumer associations, the media and policymakers. Activity CR.1.1.1. Preparation and publication of easy to read materials on the benefits of competition laws. Activity CR.1.1.2. Organization of a workshop in which separate sessions will target consumer associations, the media and national policymakers.	Competition leaflet finalized by an international consultant from Chile. The dissemination of the leaflet to different stakeholders in Costa Rica has occurred.
	Activity CR.1.5. Proposals for revising the national regulations implementing Costa Rica's competition Law. Activity CR.1.5.1. Prepare a report concerning possible amendments to the current competition law. Activity CR.1.5.2. Organization of a related seminar.	A draft report was finalized according to the timetable by two consultants (from Costa Rica and Brazil).  A revised version of the document is expected to be submitted to the National Congress in 2006.
	Activity CR.2.1. Elaboration of a manual that shows how the enforcement agency can implement a system to certify and/or recognize best practices by firms.	Ongoing. Final draft is expected to be ready by mid-December 2005.
<b>OBJECTIVE 2:</b> To strengthen the enforcement of the national consumer protection law and improve the internal work processes of the consumer protection agency.	Activity CR 2.2. Preparation of a manual to better manage the functioning of the Consumer Protection Agency	An exploratory mission was carried out at the beginning of the consultancy. The final report summarizing 14 guidelines for the Agency was submitted to the NPC (30 November 2005). The NPC is revising these documents.
	Activity CR 2.3. Organize a training workshop.	This activity will be organized once the comments and suggestions from the NPCs are duly taken account of by the COMPAL consultant in charge of activity CR.2.2. It is hoped that the seminar will take place by the second half of January.

Objective	Activity	Current status
	Activity CR 2.5. Prepare a report to include reform proposals and an evaluation of the merits of enacting a combined consumer protection and competition law.	By January 2006, the COMPAL consultant will submit the final report. It was delayed owing to the changes in the TORs.

24. The stakeholders in Costa Rica include the following actors:

- i. The NPCs, specifically the COPROCOM and the Consumer Protection Commission (CNC). As in the case of other national projects of the COMPAL Programme, these stakeholders are not only the main beneficiaries of the project; they also bear the main responsibility for implementing the activities in the field.
- ii. National and international consultants.

### Main findings to date and their impact

25. Three COMPAL activities in Costa Rica were completed in 2005. The first (Activity CR.1.1.1) involved the design and publication of a leaflet that was disseminated to consumers, businesses and academics. In addition, a seminar was held to raise awareness of the competition law. A press release from the Competition Agency (COPROCOM) was distributed among civil society (academia, producers, etc.) As a result, several more participants attended the seminar. In addition, the COPROCOM executive director and the international consultant who prepared the leaflet were interviewed by the local media (TV Channel 4 Repretel) before the seminar. The international consultant talked about the link between competition and development, and praised the fact that Costa Rica enacted a competition law 10 years ago, which, compared with some other South American countries, was a step forward. Also the international consultant exchanged views about the education of law students on competition subjects with the Dean of the Law School of Costa Rica University. Finally, a representative of the Rotary and the legal adviser of the Regulatory Authority of Public Services praised the quality of the presentations at the seminar.

26. A comprehensive assessment of the existing competition law and its implementation by COPROCOM was conducted (Activity CR 1.5.1.). The associated report is as detailed as the reports published by UNCTAD and the OECD after conducting voluntary peer reviews of developing countries' competition laws and associated enforcement practice. Six deficiencies with the current set-up in Costa Rica were identified, ranging from the lack of formal independence for COPROCOM to the absence of any merger review provisions in the competition law. Recognizing the current political climate in Costa Rica, the authors of this report recommend that a gradual approach to reform be adopted. Rather than arguing immediately for making COPROCOM independent, the suggested reforms seek to make COPROCOM more effective and to expand its powers into the area of mergers and acquisitions. The logic appears to be that enhanced effectiveness will eventually make it easier to argue for greater independence. To that end, specific legal changes are proposed, including the possible text for an amended competition law. The challenges highlighted in this study are faced by many developing countries' competition agencies, and over the coming year or so it will be interesting to see if this strategy is successful.

27. The third completed activity (CR 2.2.) involved the drafting of several guidelines for the better functioning of the Consumer Protection Agency. The internal guidelines aim at fostering transparency and predictability of the Consumer Protection Agency's procedures

so as to generate a better understanding by civil society stakeholders. To that end, a dissemination campaign needs to be put in place to further legitimize the agency's practices. Subsequently, it would be worth conducting a consumer survey with a view to assessing consumer satisfaction before and after the implementation of these new guidelines. In this regard, it is worth noting that a 30 per cent reduction over the longer run in the time needed to settle a consumer protection case is being targeted. The latter would constitute a major improvement in performance. Finally, the agency will be presenting these guidelines for ISO approval.

### **Problems encountered and actions undertaken**

28. During 2005, the PMC Costa Rica encountered a few problems when implementing the planned activities. One problem concerned in the implementation of activity CR.1.1.1 which related to a leaflet on competition issues, was finally published after some delays had been overcome. Moreover, the official submission to the Congress of the amendment to the Competition Law (Activity CR.1.5.1.) could face some delays owing to the recent presidential elections, which took place in February 2006.
29. With respect to consumer protection, the TORs were occasionally changed so as to better target more appropriate resource persons. Hence, the schedules for starting Activities CR.2.1., CR.2.2. and CR.2.5 were delayed. These changes have not influenced substantially the final output of the activities; in fact, they have strengthened them. For instance, in the case of Activity CR.2.1., its duration was reduced from the original eight months to six months. Moreover, this change has led the COMPAL consultant to meet with other stakeholders from the private sector so as to strengthen the support for the best practices suggested in the final version of the relevant report.

## **C. EL SALVADOR**

30. As part of the economic and structural reforms implemented in El Salvador a Competition Law was enacted on 26 November 2004.<sup>14</sup> The national Government is currently supporting the dissemination of the law and plans to establish a Superintendency of Competition in early 2006. With respect to consumer protection, the Government is clearly committed to supporting this area as a means of safeguarding the rights of consumers.<sup>15</sup> 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, it 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, which should contribute to the improved implementation

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<sup>14</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 modernize the public sector, including the privatization of public services, opening trade, tighter budgetary controls, implementing concessions and decentralization of the State and 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 (not publicly available).

<sup>15</sup> The 2004-2009 Government plan includes an area for action that specifically touches on the issue of consumer protection, such as norms and supervision of the market.

of COMPAL activities in El Salvador. Tangible progress has been achieved in 2005 and is summarized in table no. 3.

**Table no. 3: Objectives, activities carried out and status.**

Objective	Activity	Current status
<b>OBJECTIVE 1:</b> To support the new competition law through the analysis of anti-competitive practices in selected sectors and by disseminating the findings to a wide audience of policymakers and media.	Activity ES.1.1. Undertake two studies (medicines and inland transport) of the extent and effect of anti-competitive practice in five selected sectors using a methodology developed for the purpose.	Draft version of study on inland transport is ready.  Preparatory interviews with the companies involved in the medicine sector have been taken place.
	Activity ES.1.2. Organize a seminar (for parliamentarians, senior government officials, media representatives, private sector) to highlight the costs of ACPs.	A seminar was organized in San Salvador.
	Activity ES.1.3. Organize seminars, attended by producers and consumers, on the benefits of promoting competition in El Salvador.	A workshop was organized in Santa Ana.
<b>OBJECTIVE 2:</b> To strengthen consumer associations at the national and local levels.	Activity ES.2.1. Organize two workshops for consumer and business people, targeting four regulated sectors (with a substantial, potential impact on the living standards of the poor).	The two workshops were organized.
	Activity ES.2.2. Organization of three workshops to sensitize national legislators.	
	Activity ES.2.3.1. At the neighbourhood level organize working meetings with local leaders to raise awareness of consumer protection issues and to identify promising leaders of consumer associations.	
	Activity ES.2.3.3. Prepare a document to comment on the National Consumer Protection Law.	The final draft was concluded satisfactorily. This document is being printed and will be disseminated.

31. The stakeholders in El Salvador included the following in 2005:

- i. The national project coordinators, specifically the MINEC and the Presidential Commission for Consumer Protection. As in the case of other national projects of the COMPAL programme, these stakeholders are not only the main beneficiaries of the project, but also those principally responsible for implementing the activities in the field.
- iii. National and international consultants.

#### **Main findings to date and their impact**

32. Since the large component of COMPAL in El Salvador was the organization of seminars and workshops, it can be said that a large number of COMPAL-related activities were completed in El Salvador in 2005.

33. With respect to the preparation of sectoral studies in 2005, one study was fully completed and a second one is in preparation. The first sectoral study, on the transport sector, has

served as a basis for further action by the new Superintendency of Competition, which was established in January 2006. The second study, of potential anti-competitive practices in the distribution of medicines, has already begun with interviews seeking to better understand the sector and to identify allegations of ACPs. These interviews have also facilitated the gathering of statistical data from different sources, which are helpful in, for example, defining the relevant market.

34. As for the impact of the seminars organized under Activities ES.1.2. and ES.1.3., various documents and consultations with the NPCs indicate that the Government of El Salvador is well aware of the need to encourage the participation of all actors (from the private sector, academia, judges and lawyers, and civil society at large) in the process of accomplishing the competition law objectives. Hence, seminars organized under the aforementioned activities during October 2005 helped prepare society for the implementation of the Law and in the creation of a culture of competition in the country. In addition, the cooperation offered by more advanced competition authorities through exchange of experiences and knowledge and training of personnel will help improve the ability to investigate cases and to better apply the new Competition Law.
35. Several COMPAL activities have sought to promote consumer associations at both the local and the national levels. These associations are not thought to be that strong in El Salvador and are seen as potential allies in the fight against poor quality and unsafe products and against anti-competitive practices. Four of the five workshops that were organized for business people, consumers and legislators (Activities ES2.1. and 2.2) have been held. One of these workshops was opened by the President of the Republic, providing a strong indication of the importance of this subject and support for this aspect of the COMPAL programme.
36. Activity ES.2.1 aimed at examining electricity, telecommunications, water supply and financial services (credit cards), where most of the consumer claims were identified. Participants praised this activity as it was the first time that high-level officials from regulatory institutions had delivered presentations on each issue, which gave a sense of legitimacy to the workshop. Civil society was represented by local governments and community, religious and social leaders. The main matters discussed were, among others, the problems related to the lack or inadequate supplies of water and electricity in selected country regions and high charges related to those supplies.
37. Working at the neighbourhood level, COMPAL has been very active in raising the profile of consumer protection matters and in identifying potential future leaders to reinforce this message. A total of 26 meetings have been held to date. Issues such as relevant aspects of the new consumer law, particularly chapter III, articles from 161 to 164 related to the conditions and requirements for consumer associations' accreditation were discussed. A survey was conducted with all participants in these 26 meetings. The major findings of the survey were the lack of judicial status of the organizations, the readiness to work on consumer protection issues, and particularly those related to social development, and the existence of leaders capable of undertaking managerial functions in certain consumer associations so as to implement social development projects. As part of the follow-up actions, this COMPAL activity has been supporting (since 5 January 2006) the process to obtain the legal status required by some organizations for further accreditation as consumer associations and to provide training on consumer protection issues.

## Problems encountered and actions undertaken

38. During 2005 the PMC El Salvador encountered some problems when implementing the planned activities. The studies commissioned under Activity ES.1.1 faced some difficulties owing to the lack of resources and data on market structures, etc. For instance, the first draft submitted on the market study of the transport sector and the conditions for competition could not precisely identify allegations of ACPs, given the lack of available data in the sector. As a result, some expected outputs were only partly realized, particularly with regard to raising awareness of the harm of anti-competitive practices to consumers and competitors, strengthening competition culture within the transport sectors, and providing technical and analytical tools for the future Superintendency of Competition. This aspect has motivated the PMC Geneva to prepare a study aimed at identifying the results of the sectoral studies carried out in 2005.
39. In view of the difficulties in obtaining data for the commissioned studies, the PMC for El Salvador encouraged consultants to be creative and innovative in obtaining alternative sources of data from public and private sources. For instance, the Ministry of Economy encouraged cooperation amongst Salvadorian public institutions involved in a selected industry to further assist the consultants in obtaining data and statistics.

## D. NICARAGUA

40. Despite the efforts of PMC Nicaragua, in support of the Government's objective to develop a national competition law and policy, to date no such law has been enacted. The CAFTA-DR includes a series of commitments that may have implications for laws and regulations in regulated sectors. A more important aspect is the complementary agenda comprising country efforts to assist in the implementation of CAFTA-DR. This includes a wider national plan to be undertaken by the National Assembly and the Executive Branch, with an integrated strategy to improve the level of competitiveness and strengthen the human resources of associated institutions. The passage of a competition law for Nicaragua is important for the COMPAL Programme. Two activities planned for 2005 are on hold pending the adoption of the Competition Law in Nicaragua. The COMPAL programme has also contributed to the strengthening of the General Direction of Market Transparency and Competition (DGCTM), which promotes market efficiency and consumer welfare (see table no. 4).

**Table no. 4: Objectives, activities carried out and status**

Objective	Activity	Current status
OBJECTIVE 1.  To contribute to the establishment of an effective	Activity N.1.1.1. Undertake two studies of selected markets (cooking oil & flour and beef markets) that will result in policy recommendations.	Versions of the two studies for 2005 are circulated among PMC Nicaragua members (partially accomplished).
	Activity N.1.1.2. Organize a regional seminar to be held in Managua.	Seminar postponed until 2006, pending the finalization of studies prepared in support of the Law.
	Activity N.1.2.1. Organize fact-finding visits to other Latin American competition agencies.	Carried out in October 2005. COMPAL mission report available.

Objective	Activity	Current status
competition authority.	Activity N.1.2.2. Prepare recommendations for the functions, structure and organization of the competition agency, including its relationship with other governmental bodies.	Pending the passing of the competition law.
	Activity N.1.2.3. On the basis of other countries' experience, and taking into account local needs and conditions, prepare the terms of reference for the new staff of the Competition Agency.	Pending the passing of the competition law.
OBJECTIVE 2.  To strengthen the State and non-State organizations that promote consumer protection in Nicaragua.	Activity N.2.1. Preparation and implementation of a strategic plan to incorporate consumer protection issues into school classes, and raising awareness of these issues through the media.	Ongoing.
	Activity N.2.2. Prepare and implement a plan to create a service centre for consumers in a local university or local enforcement office in selected municipalities.	Ongoing.

### Main findings to date and their impact

41. Three COMPAL programme activities were completed in Nicaragua in 2005. Two were studies of the operation of the cooking oil and flour markets in Nicaragua, where the goal is to ascertain whether anti-competitive acts are distorting market outcomes and to draw out policy recommendations. The study on cooking oil (Activity N.1.1.1.) provided useful tools for the DGCTM in terms of the legal framework and norms, labelling, administration and prices. The information resulting from this study is expected to be assembled systematically in a database, which will list the basic variables that the DGCTM should use in future market investigations. This information will also be part of the ongoing MAGFOR programme to promote the production of oleaginous products. The study is also expected to identify certain obstacles faced by the agricultural sector. Afterwards the study will be submitted to the Secretariat of the Presidential Commission on Competitiveness, which wants to establish a cluster of producers of oleaginous products. MAGFOR and the Presidential Commission on Competitiveness are expected to organize workshops in order to examine the feasibility of developing such a cluster, where COMPAL work products may be presented or referred to.
42. COMPAL has supported the transfer of expertise between officials with responsibilities for promoting competition in Latin America. Specifically, five Nicaraguan officials visited the competition agencies in Mexico, Costa Rica and Panama. In the case of the visit to the Mexican federal competition agency, where the objective was to train personnel on techniques and tools for the better performance of the competition authority in Nicaragua, the two Nicaraguan officials who participated in this mission prepared a report to adapt where applicable the Mexican set of norms and regulations to the Nicaraguan reality.
43. One ongoing COMPAL activity in Nicaragua that is particularly interesting concerns raising awareness of consumer protection issues in schools and in the media. With respect to schools, the first of two steps has been completed. That is, action has been taken to inform 1,800 teachers about consumer protection matters and a leaflet was published to facilitate this. Next year, these teachers will introduce consumer protection matters into their school

rooms, carrying out the second step in this “training the trainers” programme. This programme aims at training 1.5 million school students in three levels (kindergarten, primary and secondary school) with the purpose of training responsible consumers who will contribute to improving the welfare of future generations.

#### **Problems encountered and actions undertaken**

44. The implementation of the COMPAL programme in Nicaragua has been partly successful, contingent as some of the activities are on the adoption of a competition law. Other government priorities led to delays in the enactment of this law. In addition, there remains a lack of consensus among parliamentarians and the private sector regarding the adoption of a national competition law. It is hoped that the CAFTA-DR's complementary agenda, which involves institutional reforms, could contribute to improved conditions of competition in Nicaragua.
45. The country faces some bottlenecks which hinder the implementation of the planned COMPAL activities. For example, the persons undertaking the market studies in the cooking oil and flour sectors for Activity N.1.1.1. were confronted with a lack of information regarding industrial performance, in particular concerning domestic costs. With the support of national consultants, the PMC for Nicaragua has partially overcome these difficulties by encouraging coordination between officials and consultants working for MAGFOR. The latter used a database (following a certain agro-industry chain methodology) which provided basic statistics of the agricultural production phase (see report on the cooking oil market.) Moreover, thanks to visits organized to two enterprises in the cooking oil and flour sectors during a second phase of the study, it was possible to gather information on investment and production conditions as well as on the relevant industrial context.

#### **E. PERU**

46. COMPAL in Peru has been successfully implemented during 2005 despite facing some difficulties in the first half of the year. Some COMPAL programme 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. is expected to provide tools for INDECOPi's Competition Commission. Likewise, activities P.1.3. and P.1.4. have strengthened INDECOPi's institutional development plans as they were in line with changes that occurred in 2005. Designing a decentralized Consumer Protection system is a major objective of the INDECOPi strategic plan for the years 2005-2010. Hence, Activity P.2.1. has been conceived to complement this strategy and will last the entire duration of the COMPAL Programme. Finally, a pilot project has been designed for Peru in order to prepare two studies on selected sectors that are deemed to be informal. It is expected that the studies will be finalized in early 2006. See table no. 5 for details.

**Table no. 5: Objectives, activities carried out and status**

Objective	Activity	Current status
<b>OBJECTIVE 1:</b> To improve the regulatory framework of INDECOPI so as to better handle competition matters and to promote the adoption of the draft amendment competition law.	Activity P.1.1. Undertake three market studies of competition between firms in selected sectors (health services, gasoline distribution market and financial services).	Market study on EPS completed in July 2005. Final draft of the market study on the conditions of the hydrocarbon sector completed in November 2005. The study on financial services is ongoing.
	Activity P.1.2. Organizing a seminar to present the findings of the market studies resulting from Activity P.1.1.	The seminar will take place in Lima (8-9 February 2006).
	Activity P.1.3. Supporting INDECOPI's Unit for the Promotion of Competition and Innovation by preparing a report on major indicators that could promote competition and innovation.	Final draft completed. Awaiting final comments from PMC Peru.
	Activity P.1.4. Prepare methodologies to measure the impact of the decisions taken by the INDECOPI competition commission.	Final draft completed.
<b>OBJECTIVE 2:</b> To develop the capacity of INDECOPI to implement consumer protection measures.	Activity P.2.1. Design the Decentralized National System of consumer protection and implement a pilot plan for municipalities in the main cities of the country.	Ongoing.
	Activity P.2.2. Train academics and officials of peer bodies related to Competition and Consumer Protection Policies and give prizes to investigations in these fields.	Prize competition organised.
<b>OBJECTIVE 3:</b> To introduce competition-related measures facilitating the formalisation of SMEs previously in the informal sector.	Activity P.3.1. Undertake two sectoral studies on legal and administrative factors that discourage businesses from entering the formal economy.	Ongoing.

**Main findings to date and their impact**

47. Within the context of providing INDECOPI with better tools for the analyses of markets, potentially to launch enforcement or advocacy actions, two studies of markets with important implications for social well-being were completed in 2005. One study examined the supply of health services and the other examined gasoline distribution.
48. The first study on the provision of health services showed that although it is a highly regulated market, there are some firms offering unregulated products which compete to a certain degree with regulated services. The second and more important finding relates to the detection of collusion using bidding data. The methodology makes use of two concepts to detect cartel behaviour and artificial competition in the market for health service provision: conditional independence and exchangeability. If firms are competing, their bids have to be conditional, independent and exchangeable. The first property means that competitive bids should be uncorrelated (independent) after adjusting (that is, conditioning)

for publicly observed information. The second property means that competing firms will behave in the same way if they face the same cost circumstances (so that their bids are exchangeable).

49. The latter study involved a careful account of the various relationships between drillers, refiners and distributors of hydrocarbons within Peru. This account highlighted the significant degree of vertical integration and agreements between firms, the considerable economies of scale and scope at the distribution and refinement stages, and the asset specificity of the investments in this sector. While the authors argued that these factors made entry unlikely, other than through imports of final products, it would be inappropriate to immediately conclude that consumers were being harmed by the current degree of inter-firm cooperation and rivalry. Moreover, the authors were unable to identify any specific anti-competitive practices that might call for enforcement action. The price of final hydrocarbon products, the authors contend, is constrained by the price of imported substitutes and by the possibility of exporting these products should the domestic price fall too low. By and large, these two prices bind the extent to which market power could be exercised in the hydrocarbon supply chain.
50. This study also drew out implications for the competition advocacy that INDECOPI might undertake in the hydrocarbons sector. One of the two oil-refining companies in Peru, (PETROPERU), is State-owned and its pricing and contractual policies towards suppliers and distributors can have a significant impact on market outcomes. Often those policies are less than transparent and the authors indicate that uncertainty in commercial planning would be diminished if such policies were announced in advance and adhered to over specific periods of time. Overall, this type of detailed market analysis is of considerable value to a competition agency. The approach taken is well explained and, where appropriate, replicable in other sectors of the Peruvian economy.

#### **Problems encountered and actions undertaken**

51. Despite INDECOPI's commitment to COMPAL the implementation of activities was delayed during the first half of 2005 for a number of reasons.
52. First, INDECOPI is an umbrella agency which deals with a range of policy matters. In 2005 INDECOPI was heavily involved in the negotiation of a FTA between Peru and the United States, which is considered a major priority for the country. The Economic Studies Unit, in charge of national coordination for substantive issues for the COMPAL programme, has been responsible for the preparation of several studies on the likely impact of the FTA agreement, particularly on intellectual-property-related matters.
53. Second, during the first six months of 2005 changes made to INDECOPI's institutional structure affected the implementation of COMPAL activities. The late establishment of the two responsible units (the Technical Secretariat on Consumer Protection issues and the Unit for the Promotion of Competition and Innovation) delayed the drafting of TORs and the implementation of Activities P.2.1. and P.1.3.
54. Third, given that the COMPAL Programme involves significant cooperation between UNCTAD and National Coordinators at the level of the Programme Management Committee, the documentation for hiring consultants such as TORs needed to be drafted by the National Coordinator and revised by UNCTAD. However, in the case of Peru, the National Coordinator observed that drafting TORs required more time than envisaged, mainly because of the internal coordination required within INDECOPI's units.

55. These problems have been dealt efficiently as COMPAL activities are aligned with INDECOPI's strategic objectives. The annual operative plans in the areas involved call for the assignment of resources (human and financial) to support COMPAL activities in Peru.
56. Finally, during the two-month consultancy to undertake a market study on the private health services sector, two major problems were faced. On the one hand, the problem of confidentiality of information<sup>16</sup> was an obstacle for the relevant consultant. On the other hand, the duration of the consultancy was too short as the responses from companies interviewed were not received in time. As a result, the consultant had to finalize the study using alternative and less complete data. To avoid these difficulties in the future, the PMC for Peru has recommended that consultants be provided with a letter of presentation which will facilitate access to and use of confidential data. The final versions of associated work products should bear the appropriate disclaimer.

### **Section III: Lessons from the first year of COMPAL**

57. On the whole, the implementation of the COMPAL programme was satisfactory and it was able to overcome a number of difficulties. During the implementation of the first year of COMPAL, approximately 33 activities were started in 2005 and 25 were advanced or even fully completed. Major country-specific and cross-country lessons are summarized below. The lessons from COMPAL's activities in each beneficiary country are described in the paragraphs below. In addition, the experience of carrying out activities with cross-border effects on beneficiary countries is also commented on; this refers particularly to the sectoral studies which have stimulated UNCTAD to undertake in-depth analysis.
58. COMPAL's first year was a learning phase while the second year will be crucial for determining the effectiveness of the programme in impacting on beneficiary countries. Any obstacle that could slow the implementation of the activities needs to be overcome. Similarly, it is important to select suitable actors to comply with the challenges of COMPAL during its second year.
59. The following paragraphs describe COMPAL activities carried out in each beneficiary country.

#### *Bolivia*

60. An important country lesson from COMPAL relates to the successful participation of the three Bolivian interns in COMCO over the period April-December 2005. A major lesson for future COMPAL interns is the need to be 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 praised. The first two interns are currently applying in their 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.
61. Another country-specific lesson resulting from COMPAL is the need to establish academic programmes at university level in cooperation with INDECOPI, Peru. This facilitates the creation of a critical mass of professionals in the field of CLP.

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<sup>16</sup> See INDECOPI's guidelines on Confidentiality. Legislative Decree 701.

### *Costa Rica*

62. With regard to competition policy, COMPAL's activities in Costa Rica have shown the need for a competition law with few sectoral exemptions in an economy with plenty of existing regulators. While previous attempts to amend the current competition law in Costa Rica have tried to expand the scope of application of the competition law, the report drawn up during 2005 by two prominent consultants under Activity CR.1.5.1. underlies the first comprehensive proposal to be presented by the Ministry of Economy to the Costa Rican Parliament. This report includes concrete and pragmatic suggestions to amend some of the articles of the current law on competition.
63. In 2006 the Ministry of Economy is expected to officially put forward the amendment of the current competition law. It will be important that information-sharing and awareness-raising activities with parliamentarians take place before, during and after the submission of the draft amendment bill. To this end, under Activity CR 1.5.2., COMPAL envisages contributing to those dissemination activities.

### *El Salvador*

64. Strengthening the culture of competition and consumer protection in El Salvador was a government priority during 2005. The enactment of the competition law on 24 November 2005 and the amendment of the corresponding consumer protection law are positive developments that will facilitate the accomplishment of COMPAL activities. With respect to promoting competition, the seminars organized during 2005 as well as the finalized sectoral study provided support and tools to the new Superintendency of Competition in its first year of existence. In this regard, it is expected that the findings of the sectoral studies, to be finalized by the end of 2006, will offer further support to the Superintendency. With respect to consumer protection, the consensus-building strategy of disseminating current developments to civil society at large has led to a new, decentralized, autonomous and modern institution to effectively protect consumers in El Salvador. In this regard, COMPAL activities have been an important force behind these positive developments. This can be seen, for example, by the comments made on the new Consumer Protection Law (Activity ES.2.3.3.).

### *Nicaragua*

65. Even though the adoption of the competition law in Nicaragua has been delayed by other government priorities, COMPAL has contributed extensively to the institutional development of the DGCTM of MIFIC, in charge of National Project Coordination. The market studies on cooking oil and flour have provided valued inputs into the National Competitiveness Plan, demonstrating again the links between fostering competition and competitiveness. Other State institutions, including the Ministry of Agriculture and the Presidential Commission on Competitiveness, have worked together in raising awareness of these key sectors' exposure to anti-competitive behaviour as part of the plan to establish a cluster on oleaginous products. While Nicaragua has received much technical assistance on a wide range of matters, COMPAL has stood out as an especially well-targeted programme.

### *Peru*

66. 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 INDECOP'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.

#### *Cross-country lessons*

67. In 2005, the COMPAL PMC also undertook knowledge-transfer-related activities in the five beneficiary countries. This included providing feedback on sectoral in-depth studies and encouraging cross-country exchange of experiences among project beneficiaries where it is appropriate. The major cross-country lessons are described below.
68. In March 2005 the COMPAL team in Geneva and the ITPA put forward "Practical guidelines for evaluating the potential anti-competitive impact of corporate practices in selected markets". Although not exhaustive, the knowledge acquired from the drafting of the TORs, the methodology used, and the findings and policy recommendations proposed in each specific study have constituted a useful tool for the preparation of studies. The guidelines have also served to encourage higher quality and a more common approach to each market study, and as a way to encourage joint investigation of ACPs that may take place in two or more COMPAL beneficiaries and possibly with other Latin American countries.
69. The findings and lessons derived from the sectoral in-depth studies carried out in the beneficiary countries will be shared during 2006 with other COMPAL beneficiaries. For instance, the study on medicines in El Salvador (Activity ES 1.1.) is likely to be used by other COMPAL countries such as Peru, as INDECOPI intends to prepare a study on medicines in early 2006. Moreover, certain activities such as the proposal to amend the current competition law in Costa Rica may be of interest to its Peruvian counterparts as the likely amendments of the former's competition law include extending merger review to all sectors of the economy.
70. COMPAL activities can provide useful inputs into the negotiation of FTAs, which are by definition a cross-country activity. Even when such FTAs do not include competition provisions, the complementary reforms can have important implications for competition policy and the welfare of consumers. In this regard, COMPAL countries have taken on potentially competition-related commitments. Nicaragua is planning to strengthen MIFIC and hopefully this would benefit the DGCTM. El Salvador is expected to implement a plan for investment in infrastructure and to strengthen SMEs, matters that may influence the implementation of the Superintendency which is to be established in early 2006. Costa Rica adopted the Law for the Modernization of the Institute of Foreign Trade and is expected to enact a Law on Telecommunications. Both will have an impact on competition and on the regulatory framework of the telecommunication and insurance sectors. Moreover, the negotiations on an FTA between the United States and Peru will entail institutional changes, thereby influencing the implementation of COMPAL activities even before the agreement comes into force. In the case of Bolivia and Peru, the adoption of Decision 608<sup>17</sup> of the Andean Community (adopted on 29 March 2005) may have similar implications. (see box no. 4).

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<sup>17</sup> Regulations for the Protection and Promotion of Competition in the Andean Community.

71. In November 2005, under the auspices of Activity P.2.2., the Peruvian Coordinator (INDECOPI) suggested bringing two government officials from other COMPAL beneficiaries to the Internship Programme that INDECOPI normally holds at the end of each year. In this regard, a representative from El Salvador delivered a COMPAL presentation within the Internship Programme.

72. Finally, as part of a COMPAL dissemination strategy, the Geneva-based team has gradually encouraged the participation of different stakeholders through the COMPAL extranet site. Indeed, a major objective for 2006 is to widen the scope of this virtual gateway, particularly for the stakeholders from the private sector and academia.

#### **Box No. 4: Potential linkages between COMPAL and bilateral and regional trade agreements**

The last ten years have seen a resurgence of interest in bilateral and regional trade agreements in Latin America. In addition to signing agreements among themselves, Latin American countries have sought stronger formal ties, among others, with trading partners in North America and East Asia. Whether this dynamic can continue is, however, another matter as some recently elected Governments are to some extent reluctant to engage in such negotiations. Even so, a large number of these agreements have been signed by countries in the region, including the COMPAL beneficiaries.

Competition law and policy have played both a direct and indirect role in the implementation of these FTAs. In some cases, FTAs directly call for the strengthening of competition law and their associated enforcement agencies. In other cases, some Governments have taken the view that to get the most out of the FTA a so-called complementary agenda of economic reforms must be implemented. Strengthening competition law and its enforcement are typically part of these reform initiatives. Here the COMPAL programme can make an additional contribution, possibly by identifying activities that are central to the linkages between international trade flows, international investment and competitiveness. These activities could include:

- Analyses of competition-related problems that arise in the transportation and communication infrastructures;
- Undertaking competition advocacy activities so that firms gearing up to take advantage of the market opening opportunities created by a free trade agreement know to whom to complain if they suffer at the hands of those providing export-related services;
- Undertaking competition advocacy to ensure that any other provisions of the free trade agreement that would stimulate competition in national markets are implemented in a timely fashion.

This approach could be made operational as follows: during the annual process of revising national priorities beneficiaries may want to adapt certain planned activities to complement the implementation of any FTA to which they are now a party. Naturally, to the extent that implementation of a FTA involves other support for competition-related matters this should be taken into account in the formulation of national Annual Plans of Action.