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LATIN AMERICAN COMPETITION FORUM

Session I: Competition Issues in Trade Associations

Contribution from Paraguay

13-14 Septembre 2011, Bogotá (Colombia)

The attached document from Paraguay is circulated FOR DISCUSSION under Session I of the Latin American Competition Forum at its forthcoming meeting to be held on 13-14 September 2011 (Colombia).

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LATIN AMERICAN COMPETITION FORUM

13-14 September 2011, Bogota (Colombia)

Session I: Competition Issues in Trade Associations

-- CONTRIBUTION FROM PARAGUAY * --

1. Introduction

1. Trade is synonymous with economic development, and trade associations thus play a fundamental role in the production of social welfare in national economies, provided their aims involve activities that are permitted under current laws.

2. In his “Inquiry into the Wealth of Nations”, Adam Smith mentioned free competition without State intervention, criticising all government economic or mercantilist regulation; and he claimed that any deviation would be corrected by the “invisible hand” of the system — the self-regulating capacity of the free market.

3. Nowadays we know that this theory is not applicable, given the vast jurisprudence that exists in relation to cases involving trade associations, which in some situations lend themselves to violations of the economic rules of the game.

4. Enterprises also enter trade organisations to improve technology, by sharing information, encouraging standardisation, and thus enjoying the comparative advantages of a large-scale organisation — not always to set prices, or engage in boycotts and acts of collusion. Trade associations, *per se*, are legally created unions that have a specific purpose.¹

* This document was prepared by Cynthia Andino, Director of Trade Standards and Negotiations at the Ministry of Industry and Trade, assisted by David Sperber. The opinions expressed herein do not reflect the position of the government and are the exclusive responsibility of the author.

¹ “*Derecho y Economía de la Competencia*” [Competition law and economics]. Gellhorn, Kovacic, Calkins.

5. In this note we describe a case in Paraguay that shows how the behaviour of trade associations can impair market welfare. The case in question has not been ruled on by any authority, nor has it been resolved through the invisible hand of the market system. It is described here to demonstrate the urgent need for legislation to safeguard free competition for the purpose of consumer protection.

6. We also mention Paraguay's current status in terms of national legislation on this subject.

2. Recent situation of the law

7. The Republic of Paraguay is currently in the process of promulgating a consumer protection law, having submitted a draft law to the National Congress on 6 September, which has been agreed upon with the private sector.²

8. The draft legislation is the outcome of hard-earned agreements between business associations on the provisions of the new law. The National Congress now has the responsibility of studying and expressing its opinion on it, and completing its internal legislative processes, which are the exclusive preserve of Parliament.

3. Case study

9. The case described below was the result of a complaint published by "Casa Grutter", a wholesale and retail business based in the country's capital, about what it saw as the imposition of pricing criteria by suppliers. The case could not be dealt with directly, owing to the absence of relevant national legislation. Nonetheless, every effort has been made to mediate between the complainant and the accused suppliers, to obtain a mutually satisfactory solution, and first and foremost to protect Paraguayan consumers.

CASA GRUTTER³
Wholesalers and Retailers
Open Letter

Does the free market exist? Is freedom a reality? Is free competition really possible? Are any their guarantees for acting freely within the law?

These are some of the questions raised today when, as an firm, we seek **to serve our customers by providing good products, good service and low prices.**

Casa Grutter S.A. — a member of the *Asociación de Almaceneros* [Wholesalers Association],⁴ is a trading company with over 60 years in the market. In an effort to provide a more comfortable space for its customers, it opened a new branch a few blocks away from the *Mercado de Abasto* [Wholesale market], where it has its headquarters, in which it also applies the business policy of continuing to offer the same products and low prices that its customers have come to expect.

² <http://www.ppn.com.py/html/noticias/noticia-ver.asp?id=74584&desc=Empresarios-presentan-propuesta-sobre-ley-de-defensa-de-la-competencia>

³ <http://www.abc.com.py/nota/103139-casa-grutter-denuncia-al-mic-que-oligopolio-le-obliga-a-subir-precios/>

⁴ The Wholesale Stores Association (*Asociación de Almacenes Mayoristas*) is a trade organisation created by Government Decree No. 4122 of 27 April 1951. Its main purpose is to lobby the public authorities to adopt measures that promote the development and progress of trade and to suppress measures that excessively impede or tax it.

What is happening today? **Several of our suppliers had been forced to stop selling to us unless we raise the prices we charge our customers, because otherwise, other customers will stop buying from them.**

We ask ourselves, why we can't continue to sell "cheaper"? **This is our slogan; it's part of our business philosophy; it's what we want.** Moreover, when we sell at low prices, we forego higher profit margins; we don't try to renegotiate with our suppliers.

In fact, various brands exist in the market, as well as substitute products; but Casa Grutter, is proud to be a Paraguayan company that has faith in the law and seeks to fulfil it, valuing honest endeavour and respecting others. Again we ask ourselves: why are we being punished for trying to give our customers lower prices? Why do some supplier firms feel unable to sell to us unless we raise our prices; and worse still, why are they raising the prices of the products they sell to us? What are the all-powerful forces that cause them to do this?

Our new branch is one more sales outlet in addition to the three that Casa Grutter already operates. We are not a supermarket; we do not have a food court, toys, clothing or other sectors. We continue to supply the same range of products and prices as we have always done. **We remain a wholesale and retail firm.** Our customers range from small canteens to top-flight gastronomy firms, to small resale businesses selling products to final customers — all attracted by our low prices and the other services we provide.

Who protects us? Who protects our customers? Does free competition exist? Or are we in an oligopolistic environment that is on the way to becoming a cartel?⁵

Hopefully this practice will not proliferate in our country. We urgently need to make progress — all of us under the same constitution that governs the country and the institutions that guarantee it.

We want a fair present and a better future. We owe it to ourselves and our children.

Board of Directors of Casa Grutter S.A.

4. Resolution of the case

10. The case has been solved without the imposition of sanctions, through an arrangement between the parties. Recently at least, there have been no further complaints of the same type.

11. Article 107 of our Magna Carta, on "Free competition", states that: "Every person is entitled to engage in the lawful economic activity of their choice, in a regime of equal opportunities.

12. Competition in the market is guaranteed. The creation of monopolies and the artificial raising or lowering of prices to impede free competition will not be permitted. Usury and unauthorised trade in harmful products will be sanctioned under criminal law."

13. This is the basic legal framework that underlies the central concept of the future competition law of Paraguay.

5. Summary

14. The actions of trade associations are compatible with trade liberalisation if they allow for free and vigorous competition and aim at perfect competition; otherwise, they tend to obstruct trade

⁵ In economics, a "cartel" is defined as a formal agreement between firms in the same sector, whose purpose is to reduce or eliminate competition in a given market. Cartels usually aim to gain control over production and distribution, so that, by collusion between the firms participating in them, they create a monopolistic market structure, gaining power over the market in which they obtain the highest possible profits, to the detriment of consumers.

liberalisation through unfair practices that harm economic development. As noted by Stiglitz in “Fair Trade for All”, achieving domestic competitiveness should be the aim, along with external competitiveness and market access, from a WTO perspective.

15. As noted in the introduction, a trade association is not anti-competitive if it pursues goals of economic and operational efficiency — e.g. alliances and partnerships for export purposes. In contrast, an association can be harmful when it involves the formation of a “cartel” to impose artificial prices and divide up the market, among other things, thereby abusing the association’s position and status. A cartel is considered one of the anti-competitive conducts that are most damaging to the economic order.

16. Competition advocacy provides essential tools whereby competition agencies disseminate and raise awareness among business associations; for the latter often act in ignorance of current laws, even though such ignorance can never be claimed to justify one’s actions.

17. There are also publications, such as the “Antitrust Guidelines for Collaborations Among Competitors”, which explains the criteria used in this case by the Federal Trade Commission (FTC) and the Department of Justice, to analyse the competitive impact of concerted conduct. This could serve as a model for providing market education to consumers and the respective trade associations.

6. Theoretical framework

- National Constitution of Paraguay, 1992.
- Smith, Adam; “The Wealth of Nations”.
- Gellhorn, Kovacic, Calkins; “Derecho y Economía de la Competencia”.
- Coloma, German; “Defensa de la Competencia”.
- Stiglitz, Joseph; “Fair Trade for All”.