

# Does the Ecuadorian Competition Authority lack Focus?



**CPI** COMPETITION POLICY  
INTERNATIONAL

*By Xavier Andrade<sup>1</sup> & Estefanía Fierro<sup>2</sup>*

The Ecuadorian competition authority (*Superintendencia de Control del Poder de Mercado* – hereinafter “**Competition Authority**”) has devoted great effort to activities that have little connection to its main role (i.e. “to ensure the transparency and efficiency of markets and to encourage competition”<sup>3</sup>) or to activities that, although certainly related to this role, have little relevance for the competitive process.

We do not question the Competition Authority’s good intentions, but we do question its power to undertake certain activities and the dispersion that carrying out a wide variety of activities – some of them of little significance for the economy – may cause.

For the debate, below we briefly explain some of the activities carried out by the Competition Authority whose purpose is questionable:

## **Good Practices Manuals**

The Competition Authority has produced a large number of “manuals” aimed at *regulating* various industries, including agriculture, pharmaceuticals, palm oil, textiles, vehicles and insurance, independent retailers, land transportation, advertising, public procurement and citizen monitoring, among others.

From the point of view of administrative law, according to the prerogatives provided for by the Competition Act, the Competition Authority is not empowered to regulate markets. In our opinion, it cannot become a sort of universal legislator who regulates every market. In fact, it is highly unusual for a competition authority to regulate a market and, at the same time, pass judgements according to the rules it enacts.

From a technical standpoint, to the best of our knowledge, there are no economic studies that demonstrate that *ex post* enforcement of the Competition Act would be insufficient to mitigate the market failures that the *ex-ante* regulation wants to address. In fact, due to the lack of publicly-available economic studies, it is not known that such market failures exist in the first place.

<sup>1</sup> Partner at Andrade Veloz, Quito; professor of Competition Law, San Francisco de Quito University; J.D. Pontifical Catholic University of Ecuador; LL.M., McGill University; M.A. in Economics, King’s College London.

<sup>2</sup> Associate lawyer at Andrade Veloz, Quito; assistant professor of Competition Law, San Francisco de Quito University; LL.B., San Francisco de Quito University..

<sup>3</sup> Article 37 of the Organic Act on Regulation and Control of Market Power (hereinafter “**Competition Act**”).

<sup>4</sup> The Competition Act does not authorize the Competition Authority to enact general rules as the ones it wishes to through the “manuals”. According to Article 37 of this Act, the Competition Authority may only enact rules “*in matters within its competence, without being able to alter or innovate the laws, and regulations issued by the Regulatory Commission*”.





The time devoted by the Competition Authority to drafting and debating these manuals - which are not mandatory<sup>5</sup> - is immense.

### **Ecuador Superstore (*Supertienda Ecuador*)**

The *Ecuador Superstore*<sup>6</sup> is another effort from the Competition Authority with an ambiguous purpose. The *Ecuador Superstore* is a portal hosted on the website of the Competition Authority which aims at bringing together local producers and consumers without intermediaries. To this end, sellers and buyers can register their information on the portal.

As far as we understand, eliminating intermediaries or becoming one of them (through a portal that links buyers and sellers) is not a task for the Competition Authority. Its role is that of controlling the undertakings involved along the different levels of the productive chain, ensuring they do not distort free competition.

In our view, the Competition Authority's role does not include trying to reshape markets by becoming a new enterprise. Furthermore, in practice, this project would be of little utility since a virtual shop, managed by a competition authority, would hardly generate relevant efficiencies for the economy and consumer welfare.

### **Speculation Control**

The Competition Authority constantly carries out raids for controlling price increases and speculation, and preventing products shortages<sup>7</sup>. The Competition Authority also supports the so-called *User Committees*, civil society groups created to monitor price increases and inflation<sup>8</sup>.

After the earthquake that hit the Ecuadorian coast in April of this year, raids by the Competition Authority intensified. They were intended to verify that businesses charge taxes correctly and that price increases, due to the VAT rise (a tax measure taken by the government to finance the reconstruction of affected areas), are not disproportionate<sup>9</sup>. It is not for the Competition Authority to control prices, inflation or speculation. These are tasks for police intendants, inspectors and commissioners<sup>10</sup>.

The Competition Authority's intervention in the recent beer and soft drinks shortage in Ecuadorian supermarkets is another example of lack of focus. The Competition Authority called the businesses involved (producers and supermarkets) in order to understand the reasons for the shortage. The authority apparently

<sup>5</sup> The only rules approved by the Regulation Commission (a body created by the Competition Act) which takes into consideration a manual drafted by the Competition Authority, is the one concerning supermarkets.

<sup>6</sup> Access the Ecuador Superstore (*Supertienda Ecuador*) portal at: <http://www.scpm.gob.ec/supertiendas-registro/>

<sup>7</sup> See, for example, the following press release: <http://www.eltelegrafo.com.ec/noticias/economia/8/operativos-para-evitar-desabastecimiento-y-especulacion-seran-permanentes>.

<sup>8</sup> See, for example, the following interview: <http://www.ecuadorenvivo.com/economia/85-sp-651/47409-superintendente-de-poder-de-mercado-emplaza-a-llamar-al-159-si-considera-que-hay-alteracion-de-precios-sin-justificacion.html#.V3nNGzWqmnV>.

<sup>9</sup> See, for example, the following press release: <http://www.elcomercio.com/actualidad/superintendencia-supermercados-impuestos-cerveza-gaseosas.html>.

<sup>10</sup> Article 53 of the Organic Law on Consumer Protection:

*"When signs of speculative processes are detected by Police Intendants, Inspectors, National Commissioners and other competent authorities, at the request of any interested party or even by their own motion, they may carry out the necessary controls to determine the existence of such speculative processes"* (Unofficial translation)





found that there were negotiations going on between businesses regarding costs and prices<sup>11</sup>. Having group meetings with businesses (some of them competitors) does not seem to be a common practice in the control of eventual coordinated practices.

### **Agriculture and artisanal fairs**

The Competition Authority has organized the so-called “agriculture and artisanal fairs” through which it seeks to promote direct trade between producers and consumers<sup>12</sup>. As previously noted, the Competition Authority seems to consider that its role includes removing intermediaries.

### **Training**

The Competition Authority has organized events of high academic quality on competition policy. But it has also organized events that have little relevance for economics and competition law. For example, events have been organized on bamboo construction<sup>13</sup>; responsible consumption and solidary economy<sup>14</sup>; prototypes for bioclimatic suitability for housing<sup>15</sup>; the *Ecuador Superstore* platform and means of payment<sup>16</sup>; global economic and financial crisis and responses from the South<sup>17</sup>; rural cheese factories in Ecuador<sup>18</sup>, among others.

Although these topics could be relevant to society, the Competition Authority is expected to focus on the economic and legal underpinnings of competition law until society has properly internalized and understood them.

### **Support in natural disasters**

The Competition Authority actively participated in activities related to the earthquake of last April. For example, it reached agreements with supermarkets to grant discounts to people wanting to make donations. This initiative aims at making donations more “transparent” so that donors know the fate of their funds. For this purpose, forms with names, dates, amounts and roadmaps must be completed and uploaded to the Competition Authority’s website<sup>19</sup>.

---

<sup>11</sup> See, for example, the following press releases: <http://www.eltelegrafo.com.ec/noticias/economia/8/seis-cadenas-comerciales-acudieron-a-audiencia>; <http://www.eluniverso.com/noticias/2016/06/08/nota/5623029/desacuerdo-costos-alterio-abastecimiento>.

<sup>12</sup> Press Release no. 79, Competition Authority, March 22, 2016: <http://www.scpm.gob.ec/se-desarrollo-con-exito-la-feria-agropecuaria-y-artesanal/>

<sup>13</sup> Press Release no. 202, Competition Authority, June 29, 2016: <http://www.scpm.gob.ec/scpm-invita-al-seminario-internacional-la-construccion-bambu/>

<sup>14</sup> See the invitation to the event on the website of the Competition Authority: <http://www.scpm.gob.ec/scpm-invita-seminario-internacional-consumo-responsable-y-economia-solidaria-en-ecuador/>

<sup>15</sup> Press Release no. 199, Competition Authority, June 28, 2016: <http://www.scpm.gob.ec/segunda-conferencia-virtual-sobre-prototipos-para-adequacion-bioclimatica-para-viviendas-se-desarrollo-en-portoviejo/>

<sup>16</sup> Press Release no. 189, Competition Authority, June 23, 2016: <http://www.scpm.gob.ec/taller-internacional-plataforma-supertienda-ecuador-medios-pago/>

<sup>17</sup> Press Release no. 133, Competition Authority, May 12, 2016: <http://www.scpm.gob.ec/en-santa-elena-la-scpm-realizo-el-primer-taller-internacional-para-comites-de-usuarios-tesis-economica-y-financiera-mundial-y-respuestas-desde-el-sur/>

<sup>18</sup> Press Release no. 006, Competition Authority, January 11, 2016: <http://www.scpm.gob.ec/23895-2/>

<sup>19</sup> See, for example, the following press release: [http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news\\_user\\_view&id=2818800342](http://www.ecuadorinmediato.com/index.php?module=Noticias&func=news_user_view&id=2818800342).





## Food for debate

It is almost 5 years since the enactment of Ecuador's Competition Law. Its enforcement by the Competition Authority has shown some gaps, in particular: the detection of cartels; state aid control (especially in times where the state has been a major economic player); potential discrimination in favour of state-owned and/or local companies eventually to the detriment of consumers; lack of publication of the Competition Authority's resolutions; absence of publicly-available economic studies. One wonders, then, if a clearer focus from the Competition Authority would have helped filling these gaps.

*This note was prepared for academic purposes only. It does not represent our firm's position or our clients' views in particular cases.*

Estefanía Fierro ([efierro@andradeveloz.com](mailto:efierro@andradeveloz.com))  
Xavier Andrade ([xandrade@andradeveloz.com](mailto:xandrade@andradeveloz.com))  
Andrade Veloz  
Quito, Ecuador

