DOWNLOADING COMPETITION LAW FROM A REGIONAL TRADE AGREEMENT (RTA): A NEW STRATEGY TO INTRODUCE COMPETITION LAW IN BOLIVIA AND ECUADOR

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Abstract

Ecuador and Bolivia have proved resilient to the establishment and the adoption of Competition Laws. Despite several drafts have been discussed in the last few years, to date no competition rules have been enacted.

Notwithstanding, both are members of the Andean Community which have recently adopted new rules aimed at fighting anticompetitive practices at supranational level (2005). The competition rules of the Andean Community foresee the possibility that Ecuador and Bolivia apply them in their domestic settings until national competition laws are adopted.

Although this provision is well-intended and it may help in overcoming the impasse in the processes leading to the adoption of national competition laws in both countries, this paper will argue it may have undesirable effects. Not only it may undermine the goals of RTA competition rules, but also may worsen the prospective of domestic competition rules being adopted. Besides, the transfer of Andean rules to the national system requires considerable effort to adapt them to national institutional background, and even afterwards some conflicts and interferences may arise.

Keywords: Regional Trade Agreement (RTA), Andean Community, Antitrust Law, Ecuador, Bolivia
JEL Codes: F13, K21, L40

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1. INTRODUCTION.

Ecuador and Bolivia are the only Andean Community countries without competition legislation. Different reasons explain this situation. Although several initiatives have tried in the lasts decade to provide these countries with competition laws, with lots of resources poured on the process by the respective governments and by donor foreign countries and international organizations, no success has been reached so far. Political instability and institutional weaknesses are the main explanations behind that outcome[2]. Lack of consciousness regarding the virtues of a competitive market, small size of markets and widespread poverty are other factors that have helped so far to the blockade of all the drafts of competition laws so far.

2. THE ANDEAN COMMUNITY COMPETITION RULES.

The Andean Community (CAN) was born in 1969 as a Regional Trade Area (RTA) initially comprising the South American countries of Chile, Bolivia, Peru, Ecuador and Colombia. Venezuela entered the agreement in 1973, and Chile withdrew in 1976. Lately, the 22nd of April 2006 Venezuela has announced its withdrawal, although formal requirements may delay its effectiveness some time. The CAN was originally conceived as a free trade area, a Customs Union, with a common external tariff and a common external trade policy specially regarding foreign investments[3]. Over the years the functioning of the CAN has been rather groggy, never fulfilling its economic integration aims, but it has some vigorous and strong institutions, which had proved their effectiveness in some of the matters of their competence[4].

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[2] See Francisco Marcos, "Do developing countries need Competition Law and Policy?", presented at 23th EALE Conference, Sept. 2006, Madrid (WP-Instituto de Empresa Business School, available at http://www.ie.edu/).

[3] For some reflections on this policies on their origins (very deterrent of foreign investment) see Antonio R. ZAMORA, "Andean Common Market-Regulation of Foreign Investment: Blueprint for Future?", *International Lawyer* 10/1 (1976) 153-166; Carlos RYERSON, "Legal problems of investment in the Andean Common Market", *Houston Journal of International Law* 1 (1978) 29-36; Dennis L. GREENWALD, "The Multinational Enterprise in the Context of Latin American Economic Integration: The Andean Agreement Model", *San Diego Law Review* 11 (1973) 245-266 and Dominic A. PERENZIN, "Multi-national Companies Under the Andean pact-A Sweetener for Foreign Investors?", *International Lawyer* 7/2 (1973) 396-404. In the last decade the attempt to revitalize the Andean Community is founded in a different approach, more benign to foreign investors, see Thomas Andrew O'KEEFE, "How the Andean Pact Transformed Itself into a friend of Foreign Enterprise", *International Lawyer* 30/1 (1996) 811-824. A recent view on the "achievements" of the Andean Community in terms of integration can be seen in COMUNIDAD ANDINA (Secretaría General), *Estado de la integración andina. Instituciones, mecanismos y disciplinas relacionados con el comercio*, SG/di 666, 12 october 2004.

[4] It is the case, for example, of the Andean Justice Court (created in 1979, located in Quito) see Nicolás DE PIEROLA, "The Andean Court of Justice", *Emory Journal of International Dispute Resolution* 2 (1987) 11-37 and Edwin P. LOCHRIDGE, "Note: The Role of the Andean Court in Consolidating Regional Integration Efforts", *Georgia Journal of International and Comparative Law* 10 (1980) 351-383.

The founding charter of the Andean Community –The Cartagena Agreement (1969)[5]- contains some references to the necessity of adopting rules against anticompetitive agreements and practices within the RTA[6]. In theory, the Secretary General was enabled to fight all anticompetitive business practices that may damage the functioning of Andean common market[7].

2.1. Soft competition rules (1971-2005).

For many years existing antitrust rules in Andean Community Law lacked any effectiveness, as they consisted of simple recommendations or mere declaratory rules without teeth[8]. That was the situation with Commission's Decision 45 (adopted 18 December 1971), Commission's Decision 230 (adopted 11 December 1987[9]) and finally Commission's Decision 285, 21 march 1991 (containing rules to prevent or correct the distortions in competition raised by restrictive practices of free competition[10]). Due to the defects in the design of competition rules and lack of sanctioning powers by Andean institutions in charge of applying them, no major anticompetitive practices introduced by the member state governments or by business firms were detected or sanctioned during that time[11].

2.2. Hard competition rules (from 2005).

Lately, Andean Commission Decision 608 of 29 March 2005, adopts the rules to protect and promote free competition in the Andean Community[12]. This Decision forbids agreements and business collusion that restricts competition and abuse of dominant position by firms that may affect trade among member States[13]. Decision 608 limits its scope of application to conducts

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[5] Decision 406 codifies the Cartagena Agreement (Official Gazette nº 273, 4 July 1997, 1-33)

[6] Similar rules exist in Mercosur (not in force yet) and lie at the foundation of a common Latin-American framework of cooperation in the fight against anticompetitive practices in the region, see ALADI/COMUNIDAD ANDINA/MERCOSUR, *Convergencia Comercial de los países de América del Sur hacia la comunidad sudamericana de naciones. Política de competencia*, 14, 2006

[7] See Article 105 (before 93) of the Cartagena Agreement puts the Andean Commission in charge of adopting rules that confer powers to the Andean Secretary General to prevent or correct practices that may distort competition within the Andean Community.

[8] A review of this regulation and its enforcement in practice in Jorge CASTRO BERNIERI, "La regulación de la competencia en la Comunidad Andina", *Gaceta Jurídica de la CE y de la Competencia* 207 (may/june 2000) 49-67 y Bruno CIUFFETELLI, "Venezuela: role of antitrust law in Latin American integration", *International Business Lawyer* 26/11 (1998) 522-525.

[9] Rules to prevent or correct practices that may distort competition within the Sub-region (*Official Gazette of the Cartagena Agreement* nº 26, 18 December 1987).

[10] *Official Gazette of the Cartagena Agreement* nº 80, 4 April 1991, 14-17.

[11] See Gabriel IBARRA PARDO, "La política de competencia en la Comunidad Andina de naciones", *Revista de Derecho de la Competencia*, CEDEC V, 2004, 315-325.

[12] *Official Gazette of the Cartagena Agreement* nº 1180, 4 april 2005, 1-9.

[13] Articles 7,8 and 9 establish the material prohibitions. A description of the new regime in Ramón GARCÍA y Mª Dolores DOMÍNGUEZ, "La reforma de la norma de competencia en la Comunidad Andina", *Boletín*

restricting competition that affect business activities among member states in the Andean Community. It applies to those practices that take place in the territory of one or more member states and produce real effects in one or more member states, or those that take place in the territory of a non-member State and whose real effects are felt in one or more member States. Practices with origin and effects in a single member State are excluded from its scope of application[14]. This rule is in force and, differently from its predecessor, it authorizes the General Secretary to impose heavy sanctions for the violations of the Decision's prohibitions[15].

However, the prospects of the new rule should not be exaggerated, the poor experience with the Andean Community antitrust rules enacted before Decision 608 is inherited, and it is not easy to foresee where will its enforcement lead and what the effectiveness of Decision 608 will be. Apart from the weaknesses of the Andean Community itself, and the lack of resources of the Secretary General (which is the institution in charge of enforcing the rule) that may hinder application of Decision 608, there is considerable asymmetry in the member states on how widespread competition culture is in their economic systems and laws[16].

3. DOWNLOADING ANDEAN RULES IN NATIONAL LEGAL SYSTEM.

Decision 608 has been praised due to its technical quality, inspired in EC competition Law. It sets a simple but effective framework to further economic integration and competition in the Andean Community markets. Moreover, it will undoubtedly affect domestic competition law and policy of member states, not only because it provides a powerful complement against anticompetitive practices affecting trade among member states but also because it may influence the way national rules are enforced, and even lead to a modification of national rules[17].

One of the singularities of system enacted by Decision 608 explain this article and its title: Andean Competition Rules recognize the power of Bolivia and Ecuador to apply them in their

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Latinoamericano de Competencia 20 (junio 2005) 44-53. Some criticism in Gabriel IBARRA PARDO, "Análisis de la Decisión 608 en el estado actual de la Comunidad Andina de Naciones", mimeo 2006.

[14] Article 5 of Decision 608. See Javier CORTÁZAR MORA, "Decisión 608 de la comunidad andina: un paso adelante para el sistema antimonopolios de la región", *Rev. Derecho de la Competencia*, CEDEC VI, Vol. 2 n° 2 (jan.-dec. 2006) 127-131, who underlines how the interpretation of the "effects clause" (which, at the end, is mirrored on EC antitrust law) is key in the future and credibility of the rule.

[15] Article 34 establishes the fines applicable to violations of the prohibitions (with the cap of 10% of the value of total gross income of the violator in the previous year).

[16] Ranging from countries familiar to competition law like Peru and Venezuela, to countries like Colombia, which does not share that familiarity. Ecuador and Bolivia do not have competition law at all, see CORTAZAR MORA, *Rev. Derecho de la Competencia*, CEDEC VI, 2/2 (2006) 134.

[17] See, referred to Colombian Law, CORTÁZAR MORA, *Rev. Derecho de la Competencia*, CEDEC VI, 2/2 (2006) 136-148.

domestic setting as a transitory device until they adopt their respective national rules[18]. For that possibility to be effective, both countries were asked to designate the national institution in charge of applying Decision 608 in their domestic setting[19].

Metaphorically I have termed such an option as the capability of Ecuador and Bolivia to directly "download" legal rules from the "host legal system" of Andean Community law in their respective "client legal systems". Similar to computer data or programs, Andean legal rules are transferred from their supranational setting to the national setting.

3.1. The 'Download' alternative.

The possibility of downloading Decision 608 in the domestic setting applies to all the rules of the decision that "may result applicable". The reading of this norm is laconic and open to interpretation[20]. It is not clear whether national authorities may freely chose what rules of the decision they want to transfer to their legal system. A flexible interpretation seems preferable. Of course, the option of downloading Decision 608 may require that some of its rules are inapplicable and some of them adapted due to the particular procedures, rules and institutions in force and operating in Ecuador or Bolivia, but the spirit protecting and promoting market competition of the Decision 608 has necessarily to be respected. Accepting other thing would probably go against the obligations that Bolivia and Ecuador have as member States of the Andean Community[21].

In other supranational systems, allegedly the European Union, the law has enabled Member States' institutions to apply EC competition rules but only when the conducts at issue had

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[18] See article 49 of Decision 608. See article 1 of Decision 616 of 15 july 2005, regarding the enter into force of Decision 608 for the Republic of Ecuador. There have been some suggestion that this device may be useful in other RTAs in which member states do not have national competition laws, for example, COMESA (Common Market for Eastern and Southern Africa), see George K. LIPIMILE & Elizabeth GACHUIRI, "Allocation of competences between national and regional competition authorities: The case of COMESA", in *Competition provisions in regional trade agreements: How to assure development gains* (ed. Brusick, Álvarez, Cernat), 408

[19] See article 50 of Decision 608 and article 2 of Decision 616.

[20] See, for example, Maria Clara LOZANO, "La Decisión 608 de la CAN y sus implicaciones en Bolivia", *Boletín Latinoamericano de Competencia* nº 21/1 (february 2006) 47-48 (who does not expressly address that question, assuming that the preferred option would be to transfer "as much as possible" of Decision 608 at the national level).

In the Ecuadorian case one question that have been raised is whether the national authority downloading Decision 608 (i.e., CONATEL) could change the definitions and rules included in the Andean rule.

[21] See article 4 of the Treaty Creating the Andean Court of Justice, codified by Decision 472 (*Official Gazette of the Cartagena Agreement*, nº 483, 17 september 1999, 5-12): "*Member State are obliged to adopt measures that are necessary to guarantee the observance of the legal rules that belong to the legal order of the Andean Community. They also commit themselves nor to adopt neither use any measure that may be contrary to those rules or that in any manner may hinder their implementation*". Similar words, though related to the limited scope of Decision 608 are contained in its article 36.

anticompetitive effects within the member states. There is a huge difference of the download alternative and the decentralization of EC competition law enforcement which has its corollary in EU Council Regulation 1/2003 of 16 December 2002.

The idea behind that option is to give Ecuador and Bolivia the possibility to overcome the *impasse* in their adoption of competition legal rules at state level. Initially, the idea of allowing them to use supranational rules provisionally until they adopt national rules seems to be a good one. In the short time it circumvents the impediments and obstacles to adoption of antitrust rules and it may help in propagating market competition culture. On a more long term perspective, one may tend to think it may put pressure on national legislators that may speed the adoption of national competition rules.

On the other hand, it may even help the implementation of the Decision 608 itself at the supranational level, spreading knowledge about this rule and about the sanctions that may be imposed for anticompetitive practices in trade among Andean member States.

However, the download may also be problematic, it may cause distortions at the national level, due to difficulties in implementing the rule, and it may also endanger the enforcement of Decision 608 at the Andean level.

Further problems may arise due to the fact that Decision 608 provides a framework of competition rules for a RTA and it is undoubtedly concerned with other aims apart from promoting free competition to benefit consumers and efficient firms in markets. Indeed, as it clearly sets in its preamble, it is also aimed at furthering economic integration and free trade among member states of the Andean Community. Interpretations of Decision 608 will have that in mind, and if used within the download process, should also remember that.

3.2. The "Download" in practice.

Decision 608 requires Ecuador and Bolivia to designate the national authority which will be in charge of applying the rule at the state level. Identification of the local authority or authorities which will be responsible for implementing the Andean rule domestically is key to monitor incidences in the download process. Mandatory member state designation is aimed at preventing potential distortions due conflicts among different national authorities that may voluntarily decide to implement the rule at the national level.

Apart from the problems of identifying the institutions that operate as transfer points for the download process. Other difficulties may arise in the download or transfer process. Like with computers, lack of system compatibility may impede the download to operate at all (§ 3.3.1). Interferences with other national rules affecting competition may not only harden the application

of Decision 608 at the national level (§ 3.3.2), but also endanger the credibility of the Andean competition rules themselves (§ 3.3.3) and severely damage the prospects for the adoption national competition rules (§ 3.3.4).

3.2.1. Ecuador: "Download by an Active Regulatory Agency".

The National Direction of External Trade Policies in the Ministry of External Trade, Industrialization, Fisheries and Competitiveness has been designed to apply Decision 608 as a national competition rule in Ecuador. However, the National Telecommunications Council (CONATEL) adopted a resolution on 13th October 2005 recognizing expressly the possibility of applying Decision 608 to the telecommunications sector and requests the drafting of a regulation that provides the procedures and organs in charge of its application[22].

In Ecuador, CONATEL is empowered to protect, promote and guarantee free competition in the telecommunications sector by Law Special of Telecommunications, with powers to draft regulations and sharing investigative powers with the National Secretary of Telecommunications, being the sanctioning powers in charge of the Super-Agency of Telecommunications.

Through CONATEL's initiative, not free from problems and difficulties[23], the possibility of Andean rules to be downloaded from a sector perspective is opened. CONATEL and the Super-agency of Telecommunications are regulatory authorities of an industry with specific problems (natural monopolies, public goods, etc.) and with functions which, if fulfilled, can get into conflict with the satisfaction of the aims of the competition rules of Decision 608 that they will also have to apply.

CONATEL prepared a draft of Regulation downloading Decision 608 at the national level[24]. The draft Resolution was met with great opposition by the firms operating in the telecommunications industry, that filed several comments questioning CONATEL's initiative and the specific rules drafted. Apart from transferring the bulk of Decision 608 at the national level for the telecommunications industry, the draft regulation includes certain rules and provisions of regulatory nature, that may be controversial as competition and regulation objectives are confused and mixed, which is something not considered by the Andean rules when allowing the

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[22] Resolution 416/15 CONATEL 2005, of 13 October (Registro Oficial nº 142, Thursday 10 November 2005, 15-16).

[23] The self-attribution by CONATEL of the power to draft rules to make Decision 608 applicable in Ecuador was questioned due to lack of legislative empowerment. The same argument applies to the sanctioning powers attributed to the Super-agency of Telecommunications.

[24] See *Proyecto de reglamento de aplicación de las normas para proteger y promover la libre competencia en el sector de las telecomunicaciones*, undated (made public on 31st Jan 2006). A public discussion process was opened twice since the draft was first made public, and a motivation of the regulation was prepared (to placate some of the complaints against the draft) and made public in may 2006

download to take place and may aggravate the difficulties for other initiatives aimed at providing Ecuador with a general competition law.

3.2.2. Bolivia: "The European way of Download".

The Vice-ministry of Industry, Commerce and Exports was designed as the institution in charge of applying Decision 608 at the national level in Bolivia. Afterwards, a complete and exhaustive regulatory framework was drafted, with would create a national council for the defense and promotion of competition [Consejo Nacional de la Promoción y Defensa de la Libre Competencia (CPDLC)], and provide detailed procedural rules for the actions of the new organ and of other the Bolivian authorities taking part in the investigation and adjudications of violations of antitrust laws[25]. Nevertheless, no provision is made regarding the possibility of exemption or authorization of anticompetitive practices at the domestic level[26].

Care is exercised in adequately inserting the new procedures –mirrored on those provided by Decision 608- in Bolivian Administrative Law (specially Law 2341/2002 of administrative procedures)[27]. The material rules (prohibitions) contained in Decision 608 are left intact and no reference is made to what elements will the national council use in deciding the disputes. This may cause some trouble due to lack of experience and tradition by Bolivian authorities. It is reasonable to assume that it may follow the precedents set by the Andean General Secretary in applying Decision 608.

The Bolivian Draft regulation contain rules regarding sanctions, including the amount of fines and the criteria to be used in calculating it follow, further developing those provisions contained in Decision 608[28]. The draft regulation also establishes some rules regarding the investigation and

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[25] See *Proyecto de Decreto Supremo, Reglamento de la Ley de Procedimiento Administrativo para procedimientos en materia de defensa de la competencia, en particular los procesos de investigación en materia de defensa de la competencia*, undated. The Regulation does great efforts in separating the investigative and prosecutorial function and the adjudicative function of antitrust rules enforcement, see article 4. Allegedly, the implication of regulatory authorities (SIRESE and Super-Agency of Enterprises) in the investigation phase is aimed at profiting from their knowledge and experience in business competition issues on their corresponding industries, see Maria Clara LOZANO, "La Decisión 608 de la CAN y sus implicaciones en Bolivia", *Boletín Latinoamericano de Competencia* nº 21/1 (february 2006) 44 and 49.

[26] Article 6 of Decision 608 provides for Member States applying to the Commission for authorizing exceptions or exclusions to the prohibitions on certain circumstances.

[27] See Mª Clara LOZANO, *Consultoría sobre el ambiente institucional y guías de procedimiento,* Proyecto de Competencia CAN-UE, 2005, 32-42.

[28] See articles 65-75 of the Draft regulation (ultimately inspired in articles 34-35 of the Decision 608). Two additions are worth noticing: private damages claims are allowed (although no further reference is made to how they may operate, judges will be in charge) and a provision regarding aggravating and attenuating fines, inspired in Reglamento de Sanciones y Procedimientos Especiales por Infracciones, Decreto

cooperation by Bolivian authorities within the procedures opened by the General Secretary of the Andean Community in enforcing Decision 608[29].

3.3. Why the "download" may not function or there may be interferences.

So far, the transfer of the Andean Competition Rules to the Bolivian and Ecuadorian national laws is an unconcluded process. The downloading initiatives are in progress, and only drafts of the regulations have been prepared. However, the initiatives detailed above (§3.2.1 and §3.2.2) relate some of the problems that will be faced by the transfer process. Some of the problems have to do with the contents of the rules transferred themselves, others with the national institutions that have to apply the rules once downloaded. And yet, others have to do with the background in which downloaded rules have to root.

3.3.1. Lack of system compatibility.

Download may be difficult if national legal system contains singularities that impede some of the Andean rules to fit in it (for example, when there may be a contradiction between them). However, if this problem arises, it will likely be solved through the use of the provisions in Andean Community Law that oblige member states not to adopt rules that contradict or go against the aims of the organization or of Andean Community Law[30].

3.3.2. Conflicts or interferences with other national rules and institutions affecting competition.

This problem is related to the previous one, lack of competition law and policy in Ecuador and Bolivia does not mean they do not have rules and institutions that affect competition, specially related to regulated industries[31]. Moreover, the State plays a relevant role in economic activities and interferes in market functioning through several policies.

Some of the national rules contradicting the downloaded Andean competition rules will undoubtedly be modified and adapted, but problems may arise in coordinating the new framework with the former ones. Of course, this problem is also faced by other nations in which

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Supremo n1 25950, 20 oct. 2000 (Super-Agency of Teleccommunications/ SITTEL). See LOZANO, *Consultoría sobre el ambiente institucional y guías de procedimiento*, 42.

[29] See articles 76-80 of the Draft Regulation.

[30] See note 20 *supra*.

[31] See, for the case of Bolivia, Lorena OTERO, "El derecho de la competencia en Bolivia", *Rev. Derecho de la Competencia,* CEDEC VI, Vol. 2 n° 2 (jan.-dec. 2006) 21-27.

competition rules are also included in industry regulatory frameworks, and it is not peculiar to Ecuador or Bolivia.

For example, in Bolivia, the SIRESE Supreme Agencies (Sistema de Regulación Sectorial) will be in charge of investigating practices that may constitute a violation of Decision 608 which are also a violation of the Law 1600, of 28 October 1994 (Law SIRESE), which they are in charge of applying[32]. Apart from the obvious conflict of interest and lack of independence, this makes easy to confuse competition and regulatory policies, which are aimed at different tasks and objectives[33].

3.3.3. Risking credibility of Andean competition rules

The Andean Community has never had a powerful competition regime, Decision 608 provides an instrument to correct that shortcoming. The implementation of this rule is a challenge for the Andean Community due to lack of experience and possible problems faced in its enforcement. One of the difficulties that may be faced is related to the lack of a widespread market competition culture, and Andean Community institutions and national authorities will have to devote resources to change that[34].

The download experience may harden the job for Andean institutions and for national authorities, specially in Ecuador and Bolivia, due to possible confusions derived from the transfer of Andean rules to be applied at the domestic setting. It may not be clear for market agents when original Andean rules or downloaded Andean rules are applied, and this may be a vital issue when differing interpretations of the rules are made by national and Andean authorities. This may add confusion to the process of consolidating a clear-cut case law and doctrine on Andean Community law. Bear in mind that one of the more controversial questions of Decision 608 has to do with its scope of application. The "doctrine of the real effects", embedded in Decision may be problematic as conflicts may occasionally arise among Andean law and national laws regarding which is applicable. On the Bolivian and Ecuadorian case, once the download is complete, the conflict would be between Decision 608 in its original Andean version and in its downloaded version.

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[32] See article 4.II.a) of the Draft Regulation. Both roles may be confused, see LOZANO, *Consultoría sobre el ambiente institucional y guías de procedimiento*, 21 and 43.

[33] See UNCTAD, *Fortalecimiento de Instituciones y Capacidades en el Área de Políticas de Competencia y Protección al Consumidor. Casos de Bolivia, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua y Perú*, COMPAL Program, New York & Geneva 2004, 92-93.

[34] See Frédéric JENNY & Pierre HORNA, "Modernization of the European Legal System of Competition Law Enforcement: Lessons from other Regional Groupings", in *Competition provisions in regional trade agreements: How to assure development gains* (ed. Philippe Brusick, Ana Mª Álvarez, Lucian Cernat), UNCTAD, New York & Geneva 2005, 302-303.

3.3.4. Dangers for prospects of adopting a national competition rule.

Finally, downloading competition rules from the Andean setting faces the typical problem of "entering through the window what did not pass by the door". If the national background has been unapt for the implant of a competition law, there may be powerful explanations behind that outcome. In a sense, getting the competition law through the download process allows to overcome some of the political or institutional problems that have succeed so far in preventing Ecuador and Bolivia to have competition laws. However, the problems will undoubtedly appear in a different manner or shape later on, when identifying the institutions in charge of the implementation of the downloaded rules, drafting the national application procedures and in enforcement activities themselves. If the explanations behind the impossibility of adopting national competition rules to date were related to the institutional weakness and the lack of market and competition consciousness[35], the same problems will arise –though with a slightly different flavor- when the download starts. For example, institutional weakness explains the difficulty encountered in the identifying the organs in charge of applying the national competition rules (be them nationally designed or downloaded from Andean Community Law), Ecuador shows the problems of a "volunteering organ" (i.e., CONATEL) while Bolivia represents better a compromise among all possible interested institutions, although the final solution may be to complex.

In this sense, problems faced with the download alternative may make more problematic the prospects for the design and installation of a national competition law . However, if the download is successful, presumably this may help in the adoption of national rules.

4. CONCLUSION.

This paper has analyzed the possibility provided by new competition rules in the Andean Community to be used as national competition rules by Ecuador or Bolivia. These are the only two members of the Andean Community without national competition law. The download alternative provides an interesting way of overcoming the impasse of national initiatives aimed at installing competition law s and policies on these two countries, but they are not free of problems. The clever shortcut provided by the download faces many challenges and difficulties as the experience relates in Ecuador and Bolivia to date.

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[35] See, for example, Francisco MARCOS, "¿Una política de competencia para la República de Ecuador?", *Boletín Latinoamericano de Competencia* nº 21/2 (february 2006) 93-95.

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