



Donors Committee

For consideration

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From: The Secretary
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Inquiries to: Mr. Bernardo Guillamon (extension 1583)

Remarks: This report is an integral part of the work program of the Office of Evaluation and Oversight (OVE) to evaluate Multilateral Investment Fund (MIF) activities, since the beginning of its operations in 1993, following the mandate of its Donors Committee. The work of OVE aims at developing a comprehensive image of the Bank activities in support of the private sector, and particularly of the MIF, as established in the document MIF/GN-78 of February 2002.

The evaluation was initiated in 2002, covering four thematic groups of projects: Alternative dispute resolution (GN-78-2), microfinance (GN-78-3), and capital markets & financial reform (GN-78-4). During 2003, as established in the program approved by the Donors Committee (GN-78-1), the project groups to be evaluated include the rest of the MIF thematic areas of intervention: (i) private provision of infrastructure services; (ii) human resources development services (including skills standards and labor market reforms); (iii) business development services (including quality standards and promotion of trade and investment); (iv) development of venture capital; (v) environment; and (vi) **promotion of competition and consumer protection.**

Once these thematic group evaluations are finished in 2003, the results would be consolidated in an overall evaluation report, integrating the results of the evaluation for the 10 years of MIF operations.

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MIF/GN-78-14

*Evaluation of MIF Projects –
Market Functioning:
Promotion of Competition and
Consumer Protection*

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ACRONYMS AND ABBREVIATIONS

ADELCO	Asociación de Defensa del Consumidor [Consumer Protection Association]
B2B	Business to Business
CADE	Consejo Administrativo de Defensa Económica [Administrative Council of Economic Defense]
CARICOM	Caribbean Community
CEPRE	Comisión Ejecutiva para la Reforma del Estado [Executive Committee for the Reform of the State]
CIDA	Canadian International Development Agency
CLICAC	Comisión de Libre Competencia y Asuntos del Consumidor [Commission for Free Competition and Consumer Affairs]
FDI	Foreign direct investment
FTAA	Free Trade Area of the Americas
GDP	Gross domestic product
IDB	Inter-American Development Bank
IDEC	Instituto Brasileiro de Defesa do Consumidor [Consumer Protection Institute]
IEPI	Instituto Ecuatoriano de Propiedad Intelectual [Ecuadorian Institute of Intellectual Property]
IMF	International Monetary Fund
INDECOPI	Instituto Nacional para la Defensa de la Competencia y la Propiedad Intelectual [National Institute for the Defense of Competition and Protection of Intellectual Property – Peru]
MERCOSUR	Southern Common Market
MIF	Multilateral Investment Fund
MSMEs	Microenterprises and small and medium-sized businesses
NAFTA	North American Free Trade Association
NGO	Nongovernmental organization
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
R&D	Research and Development
SEBRAE	Servicio Brasileiro de Apoio às Micro e Pequenas Empresas [Brazilian Microenterprise and Small Business Support Service]
SMEs	Small and medium-sized enterprises
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

PROLOGUE

This report of this Group of Projects is part of the work program of the Office of Evaluation and Oversight (OVE) to evaluate Multilateral Investment Fund (MIF) activities, since the beginning of its operations in 1993, following the mandate of its Donors Committee. The work of OVE aims at developing a comprehensive image of the Bank activities in support of the private sector, and particularly of the MIF, as established in the document MIF/GN-78 of February 2002.

In order to proceed with the evaluation, a special methodological framework was developed by OVE to capture the specific characteristics of MIF interventions. Also an initial estimate of its entire project portfolio was done, identifying the main thematic project groups for which common reference points could be established and meaningful lessons could be drawn. The evaluation was initiated in 2002, covering four groups of projects: (i) Financial Reform, (ii) Capital Markets; (iii) Microfinance; and (iv) Alternative Dispute Resolution. These four groups represented 134 projects from 16 countries with a total approved value US\$159.75 millions of MIF resources.

According to the detailed work program for 2003 included in the Progress Report of 2002 approved by the Donors Committee (GN-78-1), during 2003 the project groups to be evaluated include the rest of the main MIF thematic areas of intervention: (i) private provision of infrastructure services; (ii) human resources development (including skills standards and labor market reforms); (iii) business development services (including quality standards and promotion of trade and investment); (iv) venture capital development; (v) environment and ecoefficiency; and (vi) promotion of competition and consumer protection. Evaluation of the first two groups was completed in the first half of the year, while that of the other four groups was completed during the second semester of 2003.

At the end of 2003, once all the evaluation work is covered for the main thematic project groups, an overall evaluation report will be produced by OVE, integrating the results of the evaluation done for the 10 years of MIF operation, and addressing issues relating to institutional processes and mechanisms.

EXECUTIVE SUMMARY

The purpose of this paper is to evaluate a set of projects in the MIF’s “Market Functioning” portfolio, which includes 12 projects for a total MIF contribution of US\$7.6 million. The specific areas covered by these projects are promotion of competition in markets, government procurement, consumer protection, and intellectual property rights.

The policies of the Washington Consensus contributed to macroeconomic stability and quickened the pace of economic growth. However, although these reforms had a favorable impact in some areas, they achieved less than had been expected. It soon became clear that the institutional weaknesses of the States in the region constituted an insurmountable obstacle to efforts to bring about the desired transformations. In the mid-1990s, discussion began on the need for a new series of reforms that would complement the earlier ones but adopt a different approach. The result was a set of so-called “second generation reforms,” characterized by their emphasis on institutional reform and the quest for a new reform program bent, among other things, on redefining the manner in which the State provides goods and services.

While ostensibly focusing, for the most part, on the State, the second generation reforms are in fact, upon closer examination, very much geared to the private sector. They are reforms aimed at enhancing the capacity of the State to perform its regulatory functions appropriately and thereby ensure the sustainability of market reforms over the medium and long term. Ultimately, their main impact is on economic activity since they define and consolidate the new rules of the game, thereby complementing the first generation of reforms.

The confluence of interests between the government and the private sector with respect to these reforms is even more apparent in connection with competitiveness. The current conception of competitiveness is based on a comprehensive vision of the business environment, including such factors as the quality of macroeconomic policy, the availability of financial resources, infrastructure and human capital services, and the capacity of enterprises and think tanks to innovate. Yet that vision also incorporates an estimation of the quality of government institutions, juridical and legal stability, and effective governance, which are the spheres covered by the project portfolio examined in this paper.

Against this backdrop, the MIF projects analyzed here concentrated on four areas of vital importance to the development of the private sector and competitiveness: (i) the quality of the oversight agencies responsible for safeguarding competition in markets; (ii) protection of consumer rights; (iii) the conditions required to protect intellectual property rights; and (iv) rules and mechanisms governing private sector participation in government procurement. The portfolio comprised three competition operations, three consumer protection projects, two combined (competition and consumer rights) operations, three government procurement operations, and one intellectual property operation. As of October 2003, 55 percent of the projects were in the execution stage.

Table 1

Country	Project	Year	Amount (US\$)	Status
Argentina	Institutional Strengthening of the Competition Commission	2000	360,000	Canceled
Argentina	Institutional Strengthening of Consumer Protection	1999	250,000	Executed
Brazil	Institutional Support for Regulation of Competition	2001	500,000	Canceled
Brazil	Support for Consumer Protection	1999	834,000	Executed
Ecuador	Intellectual Property Rights	2002	245,000	In execution
Nicaragua	Development of a National Government Procurement System	2001	1,050,000	In execution
Peru	Institutional Strengthening of the Market Economy	1998	423,600	Executed
Panama	Strengthening of the Antitrust System	1998	622,100	Executed
Paraguay	Strengthening of the Consumer Protection System	2001	500,000	In execution
Paraguay	Development of a Government Procurement System	2001	1,260,000	In execution
Uruguay	Reduction of State Costs on Private Activity	2001	1,300,000	In execution
Venezuela	Promotion of the Market Economy	1997	274,000	Canceled
		Total	7,618,700	

The concerns addressed by the projects analyzed here were new to the countries concerned, as these sectors had previously received little attention from governments and multilateral organizations. Although the number of projects involved was small, the MIF had significant success in promoting reforms aimed at boosting market functioning and it opened up new areas for international cooperation. In many regards, the MIF played a pioneering role and had a number of successes that can serve as a benchmark for new Bank Group operations.

Excellent results were achieved with the establishment and/or strengthening of agencies responsible for overseeing competition in markets, the most notable being the Panama (CLICAC) and Peru (INDECOPI) projects. Currently, these two institutions are regarded throughout the region as models for the defense of competition. Working in coordination with the Government of Panama, the MIF provided support for the startup of CLICAC, which has now managed to position itself as a key player in the protection of consumer rights and the promotion of competition. Between 1997 and 2002, CLICAC dealt with 55,000 claims and settled 13,700 complaints involving US\$32 million. Today, the institution has highly skilled staff, specifically trained to defend the interests of consumers either at its administrative offices or before the courts, and it now successfully monitors anticompetitive practices. CLICAC's effectiveness in this latter area was shown by its ability to stop the merger of the two largest breweries in the market when it ascertained that the merger would be detrimental to consumers.

In the case of INDECOPI, a special counter was opened to attend to the public and provide a conciliation service to settle consumer claims. Between November 2000 and May 2003, that service handled 424 claims per month (4,974 cases per year) and 766 corrective measures were ordered, of which 31 percent dealt with complaints related to banking and financial services. The program helped publicize consumer rights and contributed to a determined effort to monitor market practices and educate the public. INDECOPI also played an active part with respect to competition and market access, managing to enhance its capacity to safeguard transparency in the different markets thanks to a series of products financed by the program. These included, in particular, development of a set of indicators for monitoring markets, studies of privatized sectors,

such as the electrical power sector and the ports, and a diagnostic assessment of the institutional management issues involved in promoting competition. Between 1995 and May 2003, the Committee for the Defense of Competition received 1,295 complaints about unfair competition and advertising and 78 complaints about dumping. It also processed 134 cases of breaches of the rules and regulations governing free competition. Of the latter, 40 percent concerned dominant position abuse, 35 percent, restrictive practices, and 9 percent, mergers, with cases lasting on average only four months.

Some consumer protection projects were particularly successful, such as those in Brazil (IDEC) and in Peru (INDECOPI). The project executed by IDEC placed the protection of users of public utilities on the agenda of infrastructure reforms in Brazil. Effective protection for users was achieved, various sectors in society were educated as to consumer rights, and today consumers' associations play a vital role in government policy-making. One of the keys to the success of the program was the identification of a reliable and dynamic partner to execute it. IDEC, which is a private civil association to promote the protection of consumer rights, demonstrated that it had the capability and leadership necessary to carry out the activities contemplated in the project. The MIF opted to work with a nongovernmental organization, a key feature of consumer protection systems.

IDEC carried out an intensive training program in consumer rights, which was then replicated in 15 consumer associations in 11 states. Numerous workshops were also held, attended by 138,000 students at 140 schools in three states. A vigorous awareness campaign reached 3.5 million television viewers and a radio audience of 600,000. In terms of monitoring and supervising government services, the results of IDEC's work were highly satisfactory. As envisaged in the strategy developed for the MIF program, IDEC took part in conferences and public hearings, defended users' interests before the courts and in specialized fora, and made major contributions to lawmaking and the formulation of the government's public policies. Between 1999 and 2002, IDEC brought 10 class action lawsuits in disputes related to the provision of public utilities, winning seven of them either outright or in part. It filed requests and suggestions with regulatory bodies and sector agencies on specific aspects of the provision of services and successfully presented recommendations for improving customer service in the principal regulatory bodies. Its activities had a significant impact in respect of environmental issues and transgenic foods. In the telecommunications sector, in 1999, IDEC managed to convince the judicial authorities to order telephone services providers to suspend a rates increase for six months, because the companies had not yet complied with the minimum service quality standards established by the regulator (ANATEL). The loss to the providers was estimated at over US\$80 million, but the end effect was better service and higher quality for consumers.

Competition in government procurement was achieved by establishing procedures that were more transparent and open to private sector participation. That improved the terms on which the private sector could do business with the State. In the Uruguayan case, these arrangements have already yielded excellent results. An electronic system has been set up to receive on-line bids and is expected to save US\$52 million a year. Four aspects of the program are particularly noteworthy. First, it was emphasized from the

project design stage that the new system would generate information on what and how much the government procures, how much it pays, and who buys. Second, the improved access to data would be useful in procurement planning, the idea being to generate framework agreements in order to obtain better purchasing terms. Third, the system sought to align procurement management with budget appropriations, linking procurement to resource availability. Lastly, the program fostered the search for ways to achieve direct private sector participation in the operation of the system. In order to publicize government procurement needs more widely and increase the number of bidders, a mechanism was devised for distributing the data generated by the system to anyone interested. Apart from setting up an easily accessible Internet portal with the State, with ample information on how to take part in government procurement tenders, in association with a private enterprise specializing in business-to-business (B2B) transactions, the project includes daily processing of the data, classification of the data by category, and their distribution to users in accordance with each user's profile and activities. This not only constituted a highly innovative partnership between the public and the private sectors. It also enhanced and increased competition in government procurement in Uruguay.

The intellectual property project in Ecuador has focused in particular on craftworkers and small enterprises, thereby encompassing a segment of the private sector hitherto neglected by similar projects. Although the project is still in execution, encouraging results have already been obtained. Dissemination and training activities highlighting the uses and advantages of intellectual property rights have generated considerable interest among microentrepreneurs and small business owners. Today, the IEPI provides advisory services free of charge to owners of small businesses wishing to register their brand names, patents, and industrial designs. As a by-product of this service and the publicity surrounding it, there has been an increase in the number of registration requests by small business owners and artisans.

At the same time, analysis of the portfolio and on-site visits to the projects revealed some problems:

- **One of the main obstacles preventing this group of projects from having a major demonstration effect, despite their promising results, was the low critical mass and limited monitoring of, and interaction between, the interventions.** It is very difficult to achieve a demonstration effect when there are not enough projects, or sufficient familiarity with the areas concerned, or the appropriate institutional experience needed to face a proposed challenge.
- **At the institutional level, the mandate to narrow the range of activities and create a cluster dealing with competition and consumer protection was not fulfilled.** That mandate derived from the 2000 Report of the Working Group and the document entitled "Improving project impact with MIF clusters."
- **Intervention by the MIF was consistent with the requirements of the context but took place without prior identification of specific issues in which the MIF might play a strategic role vis-à-vis actions undertaken by the Bank; for**

instance, by completing the “last mile” of reform processes that allow thousands of SMEs and users access to the benefits.

- **In part, this reflected lack of effort to acquire in-depth knowledge of the areas under analysis or of the way in which the MIF might position itself in those areas in order to be able to coordinate specific projects.** The most obvious example of this concerns intellectual property rights, an area in which only one operation was approved in seven years. It should be pointed out that, generally speaking, throughout the Bank Group there was insufficient expertise in the areas under review, as the level of thought required to ensure that the Bank Group’s activities complemented those of the MIF was not promoted. That lack of effort also led to grave deficiencies in the construction of indicators, given that there was no significant know-how to tap in order to define impact indicators.
- **There were problems with communicating the MIF’s priorities and requirements for approving new operations.** Staff from the Regions felt affected by this situation, which in some cases discouraged them from working with the MIF. For its part, the MIF points out that the Bank tends to present it with institutional strengthening projects, which are not part of its institutional priorities.

Many of the snags detected stem from lack of institutional experience in the Bank Group of the areas under review and the fact that they are innovations. Consequently, there are numerous opportunities for expanding and consolidating MIF projects. These include:

- **Exploring the possibility of designing projects to promote intellectual property as a tool for expanding business for both large and small enterprises. Franchising and use of appellations of origin could be one opening to pursue.**
- **Coordinating competition and consumer protection policies with infrastructure regulation policies. Given the shortage of effective institutions in the region, there is a large-scale need for such coordination.** One challenge encountered in many countries is the interface between the system for defense of competition and the judiciary, since the latter has impeded effective defense of competition.. Courts are not familiar with the issues involved and their lack of training in this field limits the effectiveness of the work carried out by competition agencies. The internal capabilities of the agencies also need to be strengthened by promoting more extensive participation by the high-level government authorities responsible for economic decision-making and by tying in competition with other functions associated with market transparency.
- **Numerous opportunities related to competition and protection of users of government services.** On the one hand, the sectoral regulatory bodies have not lived up to expectations with respect to attending to and protecting users. Rather, in many cases, they have taken a passive stance, failing to distance themselves equally from service providers and users. On the other hand, exacerbating matters, there were no consumer associations to exert pressure on the demand side and to publicize consumer rights and educate the community. The experience of IDEC in

Brazil provides a wealth of examples, models, and strategies to be taken as benchmarks in future operations.

- **Opportunities related to government procurement, particularly with regard to facilitating access to the information needed for broad participation by the private sector, especially the SMEs.** The Uruguay program is a case in point, since it provides for the possibility of identifying new forms of intervention, by detecting the “last mile” needed in the major reform processes to facilitate access to the benefits by a large number of SMEs.
- **Further opportunities for developing government procurement in connection with integration processes.** This topic is crucial to the future of the region, especially the private sector, since it will trigger transnational business opportunities. It will also generate opportunities to work together with civil society organizations. As with protection of consumer rights, much of the demand for transparency in government procurement is generated by civil society. Some experience has been acquired in the region with “integrity pacts”, designed to enhance transparency in government procurement and tenders, reduce corruption, and improve the rules of the game for private sector participation. These practices are promoted by NGOs through strategic partnerships with the government and the private sector and they may be local, provincial, or national in scope.

I. CONTEXT FOR THE DEVELOPMENT OF INSTITUTIONS FOR MARKET FUNCTIONING IN THE REGION

A. Institutional Reforms

- 1.1 **The policies of the Washington Consensus contributed to macroeconomic stability and quickened the pace of economic growth. However, although these reforms had a favorable impact in some areas, they achieved less than had been expected.**¹ It soon became clear that the institutional shortcomings of the states in the region constituted an insurmountable obstacle to efforts to bring about the desired transformations. In the mid-1990s, discussion began on the need for a new series of reforms that would complement the earlier ones but adopt a different approach. The result was a set of so-called “second generation reforms,”² which attempt to define a new reform program bent, among other things, on redefining the manner in which the State provides goods and public services. Whereas the goals of the first generation reforms were to change the macroeconomic rules, reduce the size of the State, and dismantle institutions associated with protectionism, the second generation focuses on establishing and rehabilitating institutions, increasing the competitiveness of the private sector, and entirely revamping the manner in which the State provides government services. Clearly, the name coined to label these reforms is not appropriate, since it is vague and may cause confusion.³
- 1.2 **This second stage of reforms acknowledges the important role played by political and institutional factors in bringing about macroeconomic change and takes its bearings from the New Institutional Economics school.** This new line of thought recognizes that the market does not function in a void, but, rather, presupposes a set of “institutions” to ensure that transactions are effected with an efficient allocation of resources. Consequently, those institutions are of the utmost importance for a market to function as it should. In this view, institutions are sets of rules governing interactions in specific ways. For a set of rules to constitute an institution, they must be known to the members of the

¹ For more information on these policies, see Williamson, John. 1990. “What Washington means by Policy Reform?” In John Williamson, editor, *Latin American Adjustment: How Much Has Happened?* Washington DC, Institute for International Economics.

² Naim, Moises, 1994. “Latin America: The Second Stage of Reforms.” *Journal of Democracy*. October 1994, pages 33-48.

³ From a sequential point of view, logic suggests that the “second” generation reforms should have preceded the first. In fact, rather than a second generation, they are a group of reforms forgotten by the Washington Consensus, the importance of which rapidly became apparent to international organizations and national policy-makers. “Institutional reforms” would be a better name for them, since it more accurately describes the nature of the reforms and avoids the confusing connotations of “second generation.”

community. Underlying institutions, whether formal or informal, is the notion of equilibrium.⁴

- 1.3 **While ostensibly focusing, for the most part, on the State, the second generation reforms are in fact, upon closer examination, very much geared to the private sector.** They are reforms aimed at enhancing the capacity of the State to perform its regulatory functions appropriately and thereby ensure the sustainability of market reforms over the medium and long term.
- 1.4 **Ultimately, their main impact is on economic activity since they define and consolidate the new rules of the game, complementing the first generation of reforms.** The institutions responsible for overseeing competition and transparency both in markets and in government activity have a major impact on the conditions under which the productive and services sectors operate.

B. Private Sector Competitiveness: Reforms and Challenges

- 1.5 **The interface between the various spheres of public administration and the private sector with respect to these reforms is even more apparent in connection with competitiveness.** The current conception of competitiveness is based on a comprehensive vision of the business environment, including such factors as the quality of macroeconomic policy, the availability of financial resources, infrastructure and human capital services, and the capacity of enterprises and think tanks to innovate. Yet that vision also embraces the quality of government institutions, juridical and legal stability, and effective governance.
- 1.6 **This is reflected, for instance, in the most widely disseminated of all competitiveness rankings, the *Global Competitiveness Report*,⁵ which groups the determinants of competitiveness under three headings: quality of the macroeconomic environment, technological capacity, and the quality of public institutions.** This last group incorporates the opinions of the region's entrepreneurs regarding prevalence of the rule of law, corruption, and the effectiveness of regulatory frameworks.⁶

⁴ For more details on this, see North, Douglass, 1990. *Institutions, Institutional Change and Economic Performance*. Cambridge University Press.

⁵ This index is compiled every year by the World Economic Forum.

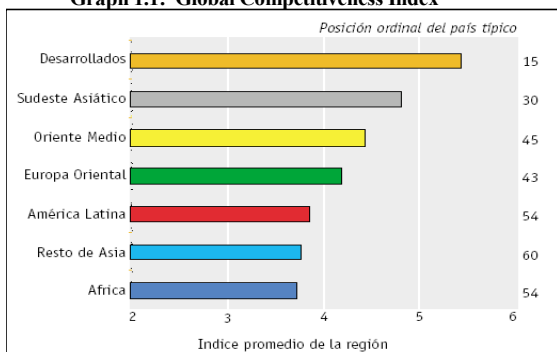
⁶ Indicators include the extent to which intellectual property and property rights are protected, transparency in government procurement, the existence of obstacles to entry into local markets, and the effectiveness of antitrust policy.

Table 1.1: Competitiveness Ranking 2002 (Selected Indicators)

Country	Property rights	Protection of intellectual property	Irregular payments in government procurement	Entry into local markets	Effectiveness of antitrust policy	Average
Chile	5.6	4.2	6.4	5.7	5.1	5.4
Brazil	5.0	4.1	4.8	5.6	4.7	4.8
Trinidad and Tobago	4.9	4.2	5.4	5.5	3.2	4.6
Uruguay	5.6	4.3	5.2	5.0	2.8	4.6
Argentina	5.1	3.2	5.5	5.1	3.8	4.5
Costa Rica	5.2	3.7	5.0	5.1	3.7	4.5
Jamaica	4.9	3.5	4.9	5.1	3.9	4.5
Panama	4.6	3.4	4.7	5.2	4.0	4.4
Peru	4.1	3.0	5.7	5.0	3.8	4.3
El Salvador	4.3	3.4	5.3	5.4	3.1	4.3
Mexico	4.6	3.6	4.3	5.0	4.0	4.3
Colombia	4.3	3.0	5.3	4.9	3.5	4.2
Dominican Republic	4.2	2.7	5.1	5.4	3.4	4.2
Venezuela	3.8	3.0	4.8	4.8	3.8	4.0
Bolivia	3.8	2.0	5.4	4.3	2.8	3.7
Guatemala	3.4	2.3	4.8	4.7	2.5	3.5
Nicaragua	3.2	2.2	4.1	4.6	3.0	3.4
Ecuador	3.3	2.8	3.9	4.2	2.5	3.3
Honduras	3.3	2.4	3.7	4.5	2.1	3.2
Paraguay	2.9	2.4	2.8	3.9	3.1	3.0

Source: World Competitiveness Report 2002.

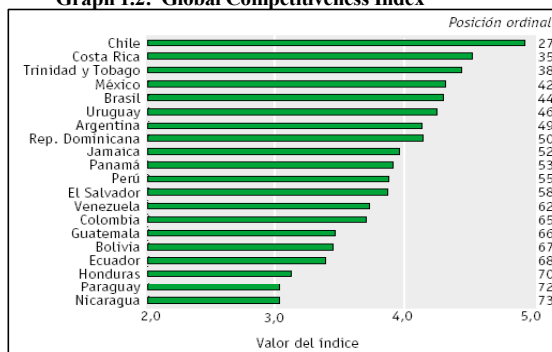
Graph 1.1: Global Competitiveness Index



Note: The ranking of the typical country is the average of the countries included in each group.

Source: World Economic Forum (2001), from IDB (2002).

Graph 1.2: Global Competitiveness Index



Source: World Economic Forum (2001), from IDB (2002).

Note: Graphs 1.1 and 1.2 are not available in English

- 1.7 **Specialists say that two factors appear to be associated with the region’s poor performance with respect to competitiveness: the level of education of the workforce and the quality of government institutions.**⁷ The quality of the public sector environment in the region is consistently rated as a serious problem in all rankings and comparative studies of the topic. The World Bank’s government institution quality indicators, for example, confirm that the region does badly on almost all scores.⁸

- 1.8 **The quality of government institutions affects not only a country’s competitiveness but also the level of foreign direct investment (FDI).** Corruption in public administration, political and legal instability, or excessive red tape frighten off potential investors. In other words, to become more attractive for FDI flows, countries have to improve the public sector environment, by establishing the rule of law, fulfilling government commitments, and increasing competition in public administration.

- 1.9 **Improving government institutions would have a doubly beneficial impact. One the one hand, it would lower transaction costs and thereby improve the business environment. At the same time, it would generate stable rules of the game, a crucial factor for business activities and new investment projects.** Lack of predictability with respect to government regulations and policies discourages foreign investors. An IDB study has shown that institutional quality

⁷ IDB (2001) IPES on Competitiveness.

⁸ These indicators measure the following four dimensions of governance: “rule of law,” “control over corruption,” “effectiveness of public administration,” and “quality of the regulatory framework.” For further details, see Kaufman et al (1999), “Aggregating Governance Indicators.” The World Bank, Washington, D.C.

indicators have a statistically significant impact on direct foreign investment flows.⁹

C. The Development of Institutions for Market Functioning and the Sustainability of Reforms

1.10 **At the same time, institutional reforms are a key fact in the sustainability of the structural reforms of the 1990s. The dearth of policies to protect users' rights, the weakness of public utility regulatory bodies, and scant government supervision of effective compliance with providers' obligations, among other things, led to deficiencies in the provision of privatized services and exacerbated the population's perception that the privatizations were simply a good deal for a select group of enterprises.** In the medium and long term, that kind of malaise erodes the viability of privatizations, because it generates animosity towards the regulators and the providers. These tensions sometimes rise to a point at which they begin to impact political discourse, leading in some cases to a debate about renationalizing privatized services.

1.11 **The problems described above are replicated with varying nuances in the majority of the countries of the region, undermining the legitimacy of the reforms.** The negative perception with regard to the impact of privatizations has grown steadily in the past five years. The regional average of citizens who consider that they have not been beneficial for their country rose from 48 percent in 1998 to 63 percent in 2001.¹⁰ This suggests that the shortcomings in the regulatory frameworks, deficient performance of sector agencies, and neglect of users' rights, have impaired privatization processes in a large number of countries in the region.

D. Key Factors in Market Functioning: Promotion of Competition, Consumer Protection, and Protection of Intellectual Property

1.12 **Consumer protection, promotion of competition, and the protection of intellectual property are specific examples of institutional (or "second generation") reforms focusing on core institutions for the correct functioning of markets.** However, although they have been the subject of donor and multilateral agency programs in a number of countries in the region, in terms of both implementation and analysis of the impact they have had, our knowledge of them is still incipient. As we shall explain further on, in these areas much still remains to be done in Latin America and the Caribbean.

⁹ IDB (2001). "IPES 2001: Competitiveness: The Business of Growth." Inter-American Development Bank, Washington, D.C. These findings were validated by the IDB, which used other sources as well, and the conclusion is that institutions have an impact on foreign direct investment. The other data sources were the International Country Risk Guide, the shareholders rights index compiled by La Porta, López de Silanes, and Shleifer, and the World Business Environmental Survey data.

¹⁰ Source: Latinobarómetro, 2001.

Table 1.2: Promotion of Competition, Consumer Protection, and Intellectual Property

AREA	BENEFITS			CHALLENGES
	Private Sector	Society	State	
Competition in Government Procurement	-Transparency -More business opportunities with the government -More information	-Less corruption -Efficiency in expenditure	-Transparency -Less corruption -Cost reduction -Efficiency in expenditure	-Current providers' corporate lobby -Institutional reform
Defense of Competition	-Clear rules -Market transparency -Elimination of barriers	-Protection of consumer rights -Better prices	-Enhanced regulatory capacity -Market transparency	-Corporate resistance in some areas -Institutional reform
Intellectual Property	-Protection of intellectual property rights -Investment incentives -Research and Development -Innovation	-Variety of products -Greater protection	-More investment -Increases in patents and other registrations	-Political sensitivity on this topic -Isolated treatment of the subject
Protection of Consumer rights	-Greater competitiveness -Fair competition -Transparency	-Better prices -Better quality -Protection of rights	-Access to justice -Rule of law	-Corporate resistance -Institutional reform.

1. Consumer protection

- 1.13 **The economic reforms of the 1990s transformed the rules of the game and the structure of markets, triggering marked shifts in consumer relations.** The most significant change in terms of impact was undoubtedly the divestment of government services from state-owned enterprises to the private sector. The privatizations, especially those in the telecommunication and electricity sectors, signaled the birth of the consumer rights movement in the region.
- 1.14 **The privatizations of public utilities have in many cases left consumers defenseless vis-à-vis the new owners of the formerly state-run enterprises.** Although, in many countries, the new regulatory framework contemplated the establishment of regulatory bodies or agencies, they have not proved very effective in protecting the rights of users of public utilities. The latter, who are in fact consumers of public utilities, have in some situations found themselves neglected and ignored by the new institutional setup, without many remedies being available to them when their rights are violated. There have been instances in which the privatized enterprises did not honor some of the commitments they made to the government, such as the undertaking to invest a certain sum or percentage of their profits in modernizing infrastructure, improving customer

service, shortening service installation times, and/or expanding coverage to certain areas.¹¹

- 1.15 **The economic reforms of the 1990s fostered a climate favoring an increase in consumption and the use of durable goods, thereby paving the way for new business and new forms of entrepreneurship.** Some involved relatively sophisticated activities, backed by specific marketing methodologies, such as time-sharing, promoting mass access to credit cards, and private cemeteries. Others were less elaborate, driven simply by macroeconomic stability, the liberalization of trade, and financial deregulation, which led to a reduction in the prices of consumer durables accompanied by easier access to consumer credit and a surge in new services based on new technology, such as cellular telephony, pay-TV, the Internet, and others.
- 1.16 **These new forms of consumption and business methods called for new legal instruments.** Thus, so-called standard adhesion contracts began to be used for the sale of electrical appliances. For the sake of greater efficiency, companies resorted en masse to standard contracts, which consumers were unable to adjust. When confronted with unfair practices, they often had few institutional options for filing a complaint. “Time-sharing” companies use similar legal schemes and standard contracts, accompanied by the same kind of deceitful marketing techniques. These two examples—and there are many more—illustrate lines of business that gave rise to thousands of complaints and led to new consumer protection laws.¹²
- 1.17 **Although many countries of the region have introduced a legal framework for the protection of consumer rights, in many cases the law is not enforced.** On the one hand, this reflects the weakness of the State and of state institutions supposedly responsible for seeing that specific regulations are developed and the law enforced. It is worth noting that in many countries legal prescriptions are ignored, consumer rights are not adequately safeguarded, inspections are not carried out, and sanctions are not imposed. On the other hand, citizens are unaware of their rights and have no idea of the tools and mechanisms provided

¹¹ Auditoría General de la Nación (2003): “Correo y Mercado Postal: Principales Auditorías sobre Órganos de Control y Empresas Adjudicatarias de Procesos de Privatización. Síntesis y Conclusiones 1993-2003.” Office of the Manager responsible for Supervision of Regulatory Agencies and Privatizations, Buenos Aires, Argentina; “Transporte Terrestre: Muestra de las Principales Auditorías sobre Órganos de Control y Empresas Adjudicatarias de Procesos de Privatización. Síntesis y Conclusiones. 1993-2003”; “Concesiones Viales y DNV: Muestra de las Principales Auditorías sobre Órganos de Control y Empresas Adjudicatarias del Proceso de Privatización. Síntesis y Conclusiones 1993-2003.”

¹² It is worth noting that standard contracts are not in themselves prejudicial to consumer interests. Nevertheless, improper use of them may infringe consumer rights, especially in the absence of protective mechanisms and given the paucity of legal norms and lack of education of citizens. In developed countries, regulations have been developed governing the type of information that should be provided in such contracts, the kind of clauses that are considered unfair, and clear indications of the tools available for the protection of citizens affected.

for by law for them to defend their interests and lodge complaints when they are mistreated. At the same time, civil society organizations are often still in their infancy and lack the funds and experience needed to perform the role assigned to them by law.

- 1.18 **Consumer protection is the subject of particular attention because of the asymmetrical access to information involved.** When an entrepreneur and a consumer enter into a transaction, the State safeguards the interests of both parties by seeing that contracts are fulfilled and by resolving any disputes that might arise. The entrepreneur has a two-fold advantage vis-à-vis the consumer: he knows more about the product and about the contractual terms governing the transaction. Consumer protection by the State aims precisely at counteracting the information gap that is detrimental to the consumer.
- 1.19 **At the same time, consumer protection is a factor that affects the economic efficiency and competitiveness of the private sector.** Working with consumers to ensure that their rights are respected involves a major effort to educate consumers about their rights—and obligations—and to get them to exercise them in practice. The ultimate goal is have better educated consumers, who demand more of producers, merchants, or entrepreneurs because a better educated consumer is a more discerning buyer. That is to say, he or she is not only familiar with consumer rights and knows how to use them, but is also good at buying and finding the optimum price-quality trade-off. This last skill is what forces the private sector to strive for the highest quality at the lowest possible price, which is what makes it competitive.
- 1.20 **The principal objective of a consumer protection system is to guarantee quality and transparency in the information that consumers receive from entrepreneurs.** The idea is that the disparity in the level of information at the disposal of entrepreneurs and consumers should not affect the choices made by the latter. In other words, the system attempts to ensure that the difference in access to information, which is weighted in favor of the entrepreneur, does not harm the consumer and, if it does, that the latter's rights will be safeguarded by the protective instruments provided for by law.

Table 1.3: Countries with Consumer Protection Laws

Country	Has a law?	Status / Challenges
Argentina	Yes	Implementation satisfactory; deficient in the provinces
Brazil	Yes	Implementation excellent; remains to be consolidated in the states
Bolivia	No	Lacks a protection system
Chile	Yes	No data
Colombia	Yes	No data
Costa Rica	Yes	No data
Ecuador	Yes	System largely ineffective; institutional weaknesses
El Salvador	Yes	System largely ineffective; marked institutional weaknesses
Guatemala	Yes	Incipient system; marked institutional weaknesses
Haiti	No	Lacks a protection system
Honduras	No	Lacks a protection system
Mexico	Yes	System functioning; shortfall in the states
Nicaragua	Yes	Implementation incipient; institutional weaknesses
Panama	Yes	Implementation satisfactory; needs to be consolidated
Paraguay	Yes	Implementation incipient / institutional weaknesses; no consumer associations
Peru	Yes	Implementation satisfactory; needs to be consolidated in the provinces
Uruguay	Yes	Incipient institutional development
Venezuela	Yes	System largely ineffective; institutional weaknesses

Source: Consumers International (2003), various articles, on-site visits, and interviews with experts

1.21 **Consumer rights are protected through legal institutions that together constitute what is known as a “protection system.”** The three core components of such a system are: (i) legislation recognizing the rights of consumers and establishing procedures for effective protection of them; (ii) the oversight body responsible for enforcing the law, imposing sanctions, monitoring procedures, and educating consumers; and (iii) consumer associations whose purpose is to defend consumers and educate the general public. In practice, the combination of these three elements may vary; there is no single, universally accepted model. Although a model consumer protection law exists, domestic legislation is highly heterogeneous. The scope of the laws, the degree to which rights are protected, and the powers assigned to the oversight bodies vary considerably from one country to another.

1.22 **Consumer associations, for their part, are restricted by the regulation that defines them and grants them legal status.** In some countries, the requirements for legal recognition are very demanding. Although such requirements tend to ensure the impartiality of the associations vis-à-vis the private sector and political parties, they also considerably restrict access to sources of financing. In most cases, associations of this kind may only receive funds from individuals, not, for instance, from the private sector, the State, or political parties. What matters are their powers to represent consumers, in both individual cases and those affecting more widespread interests, and the rules governing sources of

funding. In most countries, consumers' associations are exempt from litigation costs and judicial fees.

- 1.23 **The retail sector has undergone significant changes over the past decade, particularly in terms of consumption patterns and market oversight in the region. This has had substantial repercussions on competitiveness and consumer protection issues for SMEs in the retail sector and for the SMEs supplying these retail chains.** The trend has been to move from an industry split into numerous small-scale family businesses to a global industry dominated by a few players. The latter have greatly increased their leverage, straining relations with suppliers.¹³ The ten largest retailers in the United States have 55 percent of the market while in Europe the concentration is even more marked: the five largest chains have 80 percent of the market in France and 60 percent in Germany and the United Kingdom.
- 1.24 **The situation is similar in our region, with the five largest chains in each country averaging a 65 percent market share.**¹⁴ In this case, however, it should be noted that large foreign supermarkets played a key role. The opening up of the economy in the countries of the region in the 1990s led to a sharp increase in foreign direct investment and marked the “disembarkation” and, in some cases, a major expansion of international chains such as Carrefour and Wal-Mart, via the opening of new branches or mergers and acquisitions of local chain stores.
- 1.25 **With regard to supermarkets, Latin America and the Caribbean are at the vanguard of change among developing countries.** Until the 1980s, there were only a handful of supermarkets in the region, financed principally by local capital and located in the big cities and well-to-do districts. They accounted for 10 to 20 percent of retail sales. By the year 2000, this pattern had changed completely. Today, the supermarkets account for 50 to 60 percent of domestic retail sales: a level approaching those of the United States and France (70 to 80 percent). In other words, in a mere ten years the region underwent a transformation that in the United States took five decades. Food sales in supermarkets in Latin America range from 45 to 75 percent, with Brazil heading the ranking, followed by Argentina, Chile, Costa Rica, Mexico, and Colombia.

¹³ For example, in Uruguay and Argentina, the impact of the entry of the big chainstores in the 1990s triggered efforts to impose urban development controls on the opening of branches and led the MIF to fine-tune and channel its support to small retailer organizations capable of pooling the purchasing power of their members and tailoring their businesses to focus on the segment of specialization and convenience of the customer.

¹⁴ Reardon, Thomas, C. Peter Timmer, Christopher B. Barrett and Julio Berdegue. “The Rise of Supermarkets in Africa, Asia, and Latin America.” Scheduled for publication in the *American Journal of Agricultural Economics* (December 2003).

These countries account for 85 percent of the region's income and 75 percent of its population.¹⁵

- 1.26 **These developments have led, inter alia, to changes in the regulatory environment in which supermarkets operate.** Some countries have established rules governing the operations of large supermarket chains and/or increased monitoring of compliance with labor laws, with a view to striking a balance vis-à-vis the growing market clout of the large retail outlets. Some have also striven to find mechanisms for attending to the needs of small sales outlets and enhancing their competitiveness, for instance by pooling their sales and/or purchases.
- 1.27 **The dynamic shifts in the regional food market have also impacted consumers.** The number of consumer associations has grown significantly and they have managed to continue to play an active role in the developed economies. They no longer focus exclusively on seeking a fair price and have, rather, raised new issues, such as product quality and safety, variety and reliability of supply, and sustainable production. The region's consumer associations have devised training and awareness programs with assistance from international organizations, bilateral cooperation agencies, and other organizations. The most important NGO in the world for consumer protection, Consumers International, runs support programs for local associations in almost all countries in the region as well as a regional office in Santiago.¹⁶
- 1.28 **In short, the entry into the market of the big supermarket chains and the resulting concentration of large sales outlets not only sparked changes with respect to competition with traditional retailers,¹⁷ but also for industrial providers of foods and other merchandise.** Thus, changes in retail trade affected sector SMEs, supplier SMEs, and consumers themselves, triggering practices that sometimes fell short of desired standards for market transparency. Under those circumstances, there was little doubt as to the importance and need for mechanisms to protect consumers and defend competition.

2. Promotion of competition

- 1.29 **The elimination of market entry barriers and the dismantling of monopoly perks became the hallmark of the more open economies.** The liberalization policies of the 1990s altered the shape of the private sector. The lowering of trade barriers, privatizations, and increasing influx of foreign investment brought

¹⁵ Reardon, T. and Berdegue, J.A., "The Rapid Rise of Supermarkets in Latin America," *Development Policy Review*, Vol. 20, No.4, September, 2002.

¹⁶ For further information, see <http://www.consumersinternational.org>.

¹⁷ There were cases in the region in which industrial providers of local foods chose not to sell to some international supermarket chains dominating the retail market, because the latter used deferred (six months) payment practices and give-away merchandise tactics for promotional purposes. In other cases, some industrial suppliers entered into partnership with small-scale retailers in order to organize large-scale sales under joint purchase programs.

new players onto the private sector stage. At the same time, the gradual withdrawal of the State from economic activities, the elimination of subsidies, and the abandonment of protectionist policies for certain industries generated more propitious conditions for competition.

- 1.30 **The rationale for developing institutions that stimulate competition is that the benefits of liberalization will be watered down unless there is a clear perception of the harm done by anticompetitive mechanisms and incentives.** Although the governments in the region accepted that it would be up to the market to ensure social wellbeing and were determined to support that role of the market by refraining from a return to interventionist practices, they gradually realized that it would be necessary to implement policies firmly advocating competition in order to guarantee the viability of the reforms and market transparency.¹⁸
- 1.31 **The new institutions formed part of a new generation of reforms and would be responsible for formulating policies to boost competition with two ends in mind: ensuring market transparency by penalizing enterprises engaging in monopolistic practices and closing the regulatory loopholes left following deregulation.** According to a number of authors, policies favoring competition contribute to social welfare since they facilitate the entry into the market of new competitors, protect competition from restrictive trade practices, and, above all, foster economic efficiency and consumer welfare.¹⁹
- 1.32 **The establishment of systems to safeguard competition involved both legal and institutional tasks.** It was necessary to design the legal framework for the new competition watchdogs by issuing regulations governing this field, including such issues as the definition of illicit practices, administrative procedures, audits, and the role of the oversight agencies. Included in that task, too, was the challenge of selecting an institutional model for the new agencies. The choice of a model determines, among other things, how the agency fits into the institutional fabric of the State, how autonomous it is, the composition of the auditing and decision-making bodies, and the number of members of those (individual, collegiate, etc.) bodies.
- 1.33 **Efforts to promote competition in markets were also undertaken in connection with the process of privatizing public utilities.**²⁰ The transfer to the

¹⁸ Rodríguez A and K. Hoffman. "Why is INDECOPI focused on Competition Advocacy? A Framework for Interpretation." Published in *Peru's Experience in Market Regulatory Reform. Lessons from the First Five Years of INDECOPI: 1993-1998*. Beatriz Boza, editor. INDECOPI, Lima, 1998.

¹⁹ Jatar, Ana and Luis Tineo. Competition Policy in the Andean Countries: The Ups and Downs of a Policy in Search of its Place. Paper presented at the conference on "US – Andean Trade and Investment Relations: Policy Issues and Choices," organized by the CAF, the OAS and the Inter-American Dialogue. 3-4 September 1997, Washington, D.C.

²⁰ The subject of the reforms and the opening up of public utilities to private sector participation is discussed in depth in an evaluation report (document MIF/GN-78-9) prepared parallel to this one. We will not, therefore, delve further into this topic here.

private sector of electric power, gas, water, telephone and other services called for a regulatory framework that would include mechanisms for monitoring and guaranteeing competition in the provision of those services. The idea was to avoid one of the feared outcomes of privatization: that public monopolies become private monopolies.

- 1.34 **Designing regulatory mechanisms for the privatized services poses several challenges, such as having to choose between special rules for each sector or mechanisms of a more generic nature, which have varied above all as a function of country size.** On the one hand, it is necessary to determine which industries will fall within the purview of the regulatory agency. In some cases, a decision was taken to assign regulatory powers to the oversight body in each sector. In those cases, each of the bodies is responsible for competition in its particular branch of industry. This is what happened in Mexico and Canada. On the other hand, in other cases, such as Panama and Jamaica, a single agency was assigned responsibility for all public utilities.²¹
- 1.35 **It is also necessary to define the manner in which consumer rights will be protected.** In the majority of cases, it was decided to grant the regulatory bodies power to safeguard the interest of users and to resolve any conflicts that might arise out of the consumer relationship. For that, it is necessary to guarantee the impartiality of the regulatory body and its independence vis-à-vis the service provider.
- 1.36 **The function of the regulatory agencies, with respect to both public utilities and the other activities performed in the private sector, is to safeguard competition by overseeing the behavior of companies and the structure of the market.** As regards corporate behavior, competition policy must prevent companies from engaging in monopolistic practices. Such practices may, for instance, take the form of agreements to divide up the market geographically or by segment (so-called “horizontal” agreements). Other monopolistic agreements may be reached by enterprises at different levels of the productive process (“vertical” agreements). There are also enterprises that engage in monopolistic practices by improperly using their dominant position to maintain or even increase their market position.
- 1.37 **With respect to market structure, competition watchdog agencies try to stop them from becoming over-concentrated by preventing improper exploitation of a dominant market position caused by a reduction in the number of companies.** Their activities focus, in particular, on mergers, acquisitions, and joint ventures. For these operations, some countries require prior notification of the authorities responsible for safeguarding competition,

²¹ Aubert Cecile and Jean-Jacques Laffont. Designing Infrastructure Regulation in Developing Countries. Published in Beato, Paulina and Jean-Jacques Laffont (Editors). *Competition Policy in Regulated Industries. Approaches for Emerging Economies*. Inter-American Development Bank and Johns Hopkins University Press, Washington, D.C. (2002).

because they may irreversibly alter the structure of the industry concerned. Argentina, Brazil, and Mexico require prior notification; Chile, Peru, and Venezuela do not.²² Measures adopted by the agencies in this area require in-depth analysis, because although mergers and acquisitions may impair competition, at the same time their goal may be to achieve greater internal efficiency.

- 1.38 **Given the innovative nature of this whole field, the newly established competition agencies in the region have faced numerous challenges.** Among the most important is the lack of a competitive culture with respect to both the State comptroller function and private sector readiness to address these issues. As a result, it has been necessary to train the staff of the agencies and other regulatory bodies in the government. In some cases, the experiences of other countries, especially those of developed countries, were examined, and lessons and best practices were shared among countries in the region. However, institutional development is a complex and protracted task, so that the impact of a newly established agency will only be perceived after this apprenticeship period. One of the lessons learned in the course of these reforms is that considerable time elapses between approval of the new competition laws and their diligent enforcement.²³
- 1.39 **Most laws in the countries of the region were enacted in the 1990s, many of them being replications of developed country models and therefore potentially flawed by what are known as “legal transplantation” effects.** As it turned out, merely replicating legislation was not enough to achieve the impact sought by reform. This was because circumstances in developing countries differed from those in the countries whose laws were being imitated.²⁴ In other words, reproducing the legal framework of another country completely ignores the political, economic, and cultural characteristics of the receiving country and risks rendering antitrust policy ineffective.²⁵ What is more, some of those countries have quite different legal traditions. The legal system in the United States and the United Kingdom, for instance, is based on common law.

²² Fuente, Carmen. *Competition Policy in Latin American Infrastructure: Lessons from Six Countries*. In Beato and Laffont (2002).

²³ Scherer, F. M. “Competition Policies for an Integrated World Economy.” In Naim and Tulchin, editors, *Competition Policy, Deregulation, and Modernization in Latin America*. Lynee Rienner Publishers, Boulder, Colorado, 1999.

²⁴ For a detailed analysis of this phenomenon, see: Weber Waller, Spence, “Neo-Realism and the International Harmonization of Law: Lessons from Antitrust.” *University of Kansas Law Review*, 42 1994:557.

²⁵ For a concrete example of this problem, see: Schuck, Peter and Robert Litan, “Regulatory Reform in the Third World: The Case of Peru.” *Yale Journal of Regulation*, 51 (1996).

Table 1.4: Latin America and the Caribbean: Countries that have Competition Laws

Country	Has a law?	Shortcomings
Argentina	Yes (1999)	High turnover of authorities
Bolivia	No	No data
Brazil	Yes (1995)	Institution strengthening and interagency coordination needed
Chile	Yes (1980)	No data
Colombia	Yes (1959)	High turnover of authorities
Costa Rica	Yes (1994)	Lack of recent initiatives; scant institutional development
Dominican Republic	No	No data
Ecuador	No	No data
El Salvador	No	No data
Guatemala	No	No data
Haiti	No	No data
Honduras	No	No data
Mexico	Yes (1992)	No data
Nicaragua	No	No data
Panama	Yes (1996)	CLICAC – Judiciary interface
Paraguay	No	No data
Peru	Yes (1991)	Highly vulnerable to political factors
Trinidad and Tobago	No	No data
Uruguay	Yes (2000)	Lack of recent initiatives; scant institutional development
Venezuela	Yes (1991)	Highly vulnerable to political factors; Precarious development of underlying principles/norms

Source: De León (2001) and various articles.

1.40 **As the new agencies acquired experience, their capacity to exercise comptroller functions increased, as shown in the increasing number of cases dealt with and resolutions issued. This trend also reflected the increasing importance attributed to regulation in connection with privatizations and the aforementioned changes brought about in the private sector as a result of trade liberalization.** Typically, their role has been to detect breaches of the law and impose the prescribed punishments (enforcement). However, some authors suggest that there should be a shift to a more proactive role in promoting competition by means of regulation and that the agencies' strategy should be to strike a balance between their promotional and supervisory functions. Others add that in societies lacking an "antitrust" culture, advocating competition does play a role in the creation and consolidation of a competitive culture.²⁶

3. Promotion of Competition in Government Procurement

1.41 **The subject of government procurement has received increasing attention over the past decade.** On the one hand, this reflects efforts undertaken, with

²⁶ Fuente, Carmen (2002).

varying degrees of intensity, to modernize the State in most countries in the region. The need for more efficient public administration, making better use of public funds, spurred interest in streamlining government purchases and hiring procedures. On the other, corruption has become the talking-point of the region, as in almost all developing countries. Gradually, multilateral organizations and the bilateral cooperation agencies have begun to discuss the harmful effects of corruption in government, funding research projects, and encouraging countries to combat that scourge by designing and implementing specific policies.

- 1.42 **The perception that a country is corrupt is a major obstacle to investment and creates negative vibes in the private sector with regard to its relations with the public sector.** Transparency International's perceived corruption ranking shows most countries in the region among the worst cases in the world. This matches the findings of Latinobarómetro's regional survey, which shows that 96 percent of people in the region consider corruption to be a serious problem. Ninety percent of those surveyed estimate that corruption has increased and that most government officials are caught up in it.
- 1.43 **Government procurement systems are one of the areas in which corruption is usually perceived to be rampant.** Those worst hit typically have only limited competition, little transparency, few due process opportunities to file an appeal, and difficulties in respecting the rules of the game. These flaws leave the door open to illicit conduct. Moreover, the lack of transparency leads to situations that may not be illicit in themselves but can lead to dubious practices such as the choice of the same provider every time certain inputs are purchased, even though the prices it offers are not the most cost effective. The negative effect of that is to increase the price of the products procured. In other words, the lack of competition renders procurement less efficient in economic terms, because the government tends to pay more than it needs to and the price-quality ratio is not always respected.
- 1.44 **Government procurement is enormously important in developing countries, where it is the equivalent, according to OECD estimates, of between 9 and 15 percent of GDP.** This suggests that in 2002 public procurement contracts in the region totaled between US\$175 billion and US\$250 billion.²⁷ This figure underscores the sensitive nature of this issue and the magnitude of the savings that could result from making procurement processes more efficient and transparent.
- 1.45 **The possibility of generating information is crucially important not only for the public sector but also for the private sector, since it creates the conditions for greater competition in the provision of goods and services.** The availability of information and equal access to it for all generates

²⁷ Based on the region's estimated GDP in 2002. Source: World Development Indicators 2002, World Bank.

competition, which in turn ensures that the benefits of the system also reach the private sector. Armed with a clear set of rules and information, companies will be encouraged to try and win bids and that struggle in itself will translate into improved competitiveness.

- 1.46 **Electronic systems also hold out considerable promise for improved access by microenterprises and small and medium-sized businesses to the government procurement market.** The availability of on-line data on government purchases, on the characteristics of the products or services in question, and the timeframes and terms for delivery, means that SMEs have a better chance of hearing about business opportunities with the government and opens up that market to smaller and weaker players.
- 1.47 **However, various hurdles have to be overcome before SMEs can take advantage of the opportunities afforded by the introduction of electronic systems for procurement.** In many cases, lack of the tools needed to access the system, either because of a limited grasp of information technology or due to the formal requirements for provision of services, may place these enterprises at a disadvantage. At the same time, specific programs need to be developed to take into account the needs and shortcomings of the enterprises with respect to both accessing the system and doing business with the State.²⁸ These programs must form part of a well-defined strategy with ongoing monitoring systems, since it does not suffice just to hand down resolutions establishing terms for small enterprises.²⁹ This does not mean that small enterprises should be granted preferential treatment; it simply means that the “playing field needs to be leveled,” to ensure that small enterprises have equal opportunity of access.

²⁸ Participation in government procurement may be costly for a small enterprise. There are direct costs involved in acquiring the necessary equipment, or, in some countries, in paying registration or inscription fees. There are also indirect costs, such as those related to having to wait to be paid by the government or to the multiple problems associated with enforcing court rulings against the government in cases in which an enterprise attempts to obtain payment by going to court.

²⁹ For more on the Peruvian case, see: Herrero, Alvaro (2003) “*El Costo de la Resolución de Conflictos en la Pequeña Empresa. El Caso de Peru.*” Inter-American Development Bank, Washington, D.C., page 21.

Table 1.5: Development of Electronic Government Procurement Systems in Latin America

Country	Developed	Intermediate	Incipient or none
Argentina			X
Brazil	X		
Chile	X		
Colombia		X	
Costa Rica		X	
Dominican Republic			X
Ecuador		X	
El Salvador			X
Guatemala			X
Haiti			X
Honduras			X
Mexico	X		
Nicaragua			X
Panama			X
Paraguay			X
Peru			X
Trinidad and Tobago			X
Uruguay		X	
Venezuela			X

Source: Compiled from articles and interviews.

4. Intellectual Property

- 1.48 **Intellectual property is an asset and, as such, has an economic value. Whoever creates, invents, or designs something can protect that creation by using the legal tools contemplated for that purpose by law.** By using those tools, legal recognition of the creative activity can be obtained in the form of an intellectual property “right,” which allows us to protect what we have created and prevent others from exploiting it without our consent. In developing intellectual property rights, an abundance of jurisprudence has been formed addressing all the regulations associated with the principal concepts: patents, trademarks, and industrial designs.
- 1.49 **Legal considerations and the status of these rights in the region are important, given that such rights have become a politically sensitive issue, due to the pressure exerted by the developed countries aimed at inducing developing countries to modify their domestic laws so as to afford better protection for intellectual property rights.** Specifically, that pressure is exerted in response to claims by major pharmaceutical, biotechnological, and other corporations seeking to obtain royalties for their inventions and recoup the substantial sums they invested in developing them. Thus, the United States, for instance, has made its trade policies contingent upon the degree of protection of

intellectual property provided by potential trading partners.³⁰ Its objective is to induce other countries to comply with international standards, either by amending domestic laws or via bilateral, regional, or multilateral agreements or treaties. One of the most important pieces of legislation is the TRIPS Agreement (*Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods*), reached in the framework of the Uruguay Round of the GATT (1986-1994). This agreement laid the foundations for increased convergence toward higher and more homogeneous protection standards.

- 1.50 **On the “intellectual property” issue, the focus has been largely political: a by-product of actions driven by international negotiations and by lobbying on the part of transnational software and pharmaceutical companies. However, these discussions have left aside increasingly important issues with respect to the competitive capacity of the private sector in the region, especially as regards innovation, technological development, and the expansion of regional business models via franchise arrangements.** Intellectual property is a valuable tool, capable of contributing, inter alia, to increases in the volume of business, access to higher levels of financing, greater product competitiveness, and access to new export markets. Nevertheless, these options have not been explored as thoroughly as they should be by national policy-makers, multilateral organizations, and international cooperation agencies.
- 1.51 **During the 1990s, most of the externally funded projects in the region aimed to reform and modernize intellectual property registries.** They were typical institutional strengthening projects channeling funds for buildings, personnel training courses, the introduction of information technologies and software, and dissemination activities. The Bank included some of these items in its sector investment programs in the mid-1990s. More recently, USAID has also financed a number of programs of this kind in preparation for the FTAA. These projects have played an important role given that intellectual property registries are key components in the system. It is they that are called upon to register patents, trademarks, and industrial designs, analyze applications for new registrations, and keep the records on file.
- 1.52 **Nevertheless, these programs have not been supplemented to a sufficient extent by comprehensive policies focusing more closely on the uses of intellectual property as a mechanism for stimulating the local private sector.** Nor has there been research into the way in which intellectual property protection levels affect the competitiveness of enterprises. The leading rankings of competitiveness compare protection levels in different countries because they

³⁰ The United States practices a policy of this kind through Section 301 of the Omnibus Trade and Competitiveness Act of 1988, which authorizes the imposition of trade sanctions on countries that allow piracy.

affect the volume of funds that enterprises will earmark for research and development.

- 1.53 **One core feature of intellectual property is that it can help differentiate products.** This is a key factor in the marketing challenges faced by SMEs. Brand names, patents, and designs can help to position a product on the market because they make it possible to distinguish its specific characteristics from those of competing products and to locate it in specific segments (for instance, organic or regional products, or products with a specific value added).
- 1.54 **An adequate grasp of intellectual property can help raise the commercial value of an enterprise. For instance, it can be used to generate income from franchising, marketing protected products, or expanding a business model.** It may increase the value of an enterprise in the eyes of potential investors. Alternatively, the intellectual property assets can be used as collateral security to obtain external funding. Many entrepreneurs, especially the owners of small businesses, are unaware of the value of brand names, designs, and patents. Proper valuation of those assets can raise the value of an enterprise in the event of a sale, merger, or acquisition.
- 1.55 **Innovation is essential for creating intellectual property.**³¹ The two basic factors for understanding innovation are: (i) the enterprises themselves as creators and administrators of knowledge; and (ii) the national innovation system, as the provider of the environment and resources needed to generate this know-how. The national innovation system is to be construed as the set of agents, institutions, and interrelated practices that constitutes, acts, and participates in technological innovation processes.
- 1.56 **Some of the region's shortcomings with respect to innovation have to do with the enterprises themselves.** Innovation tends to be informal, since only 15.7 percent of enterprises have a formal in-house R&D facility. Another aspect of informality is that most enterprises have no idea how much they invest in R&D.³² Another problem is the lack of coordination among enterprises and the other generators of innovation. Empirical data in the region suggest “*limited and inadequate cooperation among the companies themselves and among the business community, universities, and research institutions.*”³³ This constitutes a bottleneck for the generation of new knowledge and for determining enterprises’ innovation needs.
- 1.57 **Intellectual property is crucial for marketing products with a high level of value added, because it can help distinguish them from competing products and make them easily recognizable, or create a loyal clientele.** Not all

³¹ The source for this section was IDB (2002), pages 243-278.

³² Sixty percent of Uruguayan enterprises and 71.4 percent of those in Mexico could not specify how much they spend on R&D.

³³ IDB (2002), page 247.

enterprises can design an aggressive competition strategy vis-à-vis their rivals, and improve distribution networks and the quality of their products. In those cases, depending on the circumstances, another interesting intellectual property tool can be used to expand business: “distinctive signs.” These signs are, for instance, collective marks, geographical indications, or certification marks. In some cases the geographical indications (also known as appellations of origin) are combined with the certification marks. In southern Argentina, for instance, there is a product called “Cordero Patagónico” (lamb from Patagonia). This is a characteristic product of the region that has to be certified before marketing. The certification allowed local farmers to distinguish their lamb from that of other regions and thereby to generate a product with its own identity that has captured both domestic and international markets.

- 1.58 **Another way to access new markets, export, or open branches abroad is via franchising.** Use of this technique has grown markedly in the region since the early 1990s, and has continued to grow at that pace even in recent years and despite market downturns. Franchising is an instrument that allows a business to expand by granting a brand name license together with authorization to use specific know-how and an agreement to provide ongoing technical assistance. The relationship is between a licensor, who possesses the know-how, certified brand name, or tried and tested service, and the licensee, who puts up the capital to open new branches or franchises.
- 1.59 **Franchising has had a beneficial impact on the expansion of new businesses and new forms of commercial ventures.** After an initial phase, characterized by the predominance of international brand names (such as: McDonalds, Wendy’s, and Blockbuster), toward the end of the 1990s there was a surge in national franchises. In Argentina, for instance, franchising markets grew 25 percent per year between 1995 and 1998. The billing derived from franchises in 2002 totaled approximately US\$1 billion, while the figure for 2003 was expected to increase to US\$1.9 billion.³⁴ Most of this growth came from the expansion of originally local franchises.
- 1.60 **One of the outstanding growth sectors for local franchising is the food sector.** A classic case is that of “El Pollo Campero” in Guatemala, with US\$300 million in annual sales and 180 branches in Central America, Mexico, and, more recently, in the Hispanic market in the United States. Other chains are going in a similar direction, such as Venezuela’s “Churromanía.” In Argentina, too, empanada shops have been very successful, with the two leading brand names accounting for 110 licensed outlets in the Federal Capital and Province of Buenos Aires, with monthly sales of 5 million empanadas. In Brazil, the Arab food chain “Habib”³⁵ also has a vast network of 200 outlets, created over the past

³⁴ Study carried out by the Argentina Franchising Association and IAE (Universidad Austral). “Estudio del Mercado de Franquicias en la Argentina”. 2002.

³⁵ Ranked one of the most outstanding enterprises in Latin America by *Global Finance* magazine.

14 years. It is worth noting that the size of the franchise of such enterprises tends to be small. In most cases, they start off as microenterprises or small businesses, which then grow and overcome the barriers associated with limited capital and limited access to financing.

- 1.61 **Regional clothing franchises have also grown rapidly.** “Lolita”, a clothing store chain based in Uruguay, already has some 50 outlets in MERCOSUR and Central America and it plans to expand into the European market after entering via Spain. The Argentine children’s clothes store Mimo has 12 franchised outlets in Chile, Uruguay, Paraguay, Costa Rica, Puerto Rico, Guatemala, El Salvador, Panama, Colombia, Ecuador, Bolivia, South Africa, and even Italy. It also has branches it owns directly in Mexico, Spain, Brazil and the United States.
- 1.62 **Franchising not only constitutes a preferred growth-strategy option for small and medium-sized enterprises. It also has great potential for exporting and penetrating other markets.** Following Argentina’s example, 70 percent of the franchises are of local origin and over half the firms involved are thinking of expanding to other countries, especially neighboring countries, in the next few years.³⁶ The trend is similarly bullish in Brazil, too. A report by the Brazilian Franchising Association states that the business grew 12 percent in 2002. Annual billing increased from US\$8.3 billion in 2001 to approximately US\$9.3 billion in 2002. Together, franchising operations have generated 350,000 jobs in the country as a whole.³⁷
- 1.63 **In short, franchising is a commercial expansion tool based exclusively on the sale of intellectual property rights.** Its success and dissemination generate opportunities to explore the use of intellectual property as an engine of business growth for small, medium-sized, and large enterprises and for exports to regional and international markets.

³⁶ Asociación Argentina de Franchising and IAE (Universidad Austral), “Estudio del Mercado de Franquicias en la Argentina,” page 7.

³⁷ “ABF divulga números sobre o Franchising no Brazil”. Associação Brasileira de Franchising, May 2003. Available online from 15 October 2003 at:
<http://www.abf.com.br/pfModelDetalhes.asp?IDNivel=1&IDConteudo=83&IDArea=1>

II. STRATEGIC OBJECTIVES OF THE MIF

- 2.1 This chapter attempts to analyze how the projects under review fit in with the Bank’s sector policies and strategies and with the strategic objectives of the MIF. It will also examine the strategic intentionality of the projects and how forms of intervention have evolved since the MIF was established.

Table 1: List of Projects in the Portfolio

Country	Project	Year	Amount (US\$)	Status
Argentina	Institutional Strengthening of the Competition Commission	2000	360,000	Canceled
Argentina	Institutional Strengthening of Consumer Protection	1999	250,000	Executed
Brazil	Institutional Support for Regulation of Competition	2001	500,000	Canceled
Brazil	Support for Consumer Protection	1999	834,000	Executed
Ecuador	Intellectual Property Rights	2002	245,000	In execution
Nicaragua	Development of a National Government Procurement System	2001	1,050,000	In execution
Peru	Institutional Strengthening of the Market Economy	1998	423,600	Executed
Panama	Strengthening of the Antitrust System	1998	622,100	Executed
Paraguay	Strengthening of the Consumer Protection System	2001	500,000	In execution
Paraguay	Development of a Government Procurement System	2001	1,260,000	In execution
Uruguay	Reduction of State Costs for Private Sector Activities	2001	1,300,000	In execution
Venezuela	Promotion of the Market Economy	1997	274,000	Canceled
Total			7,618,700.00	

A. The Bank's Sector Policies and Strategies

- 2.2 **The group of projects analyzed in this evaluation does not pertain to a single area within the Bank but falls within the field of activity of various different strategies and policies.** Since MIF projects are designed to fit in with the Bank’s policies and strategies, following is an analysis of the principal documents establishing lines of activity and recommending different approaches for competition, consumer protection, and intellectual property projects.
- 2.3 **The Bank’s Competitiveness Strategy (GN-2243-1) includes analysis and recommendations regarding competition, consumer protection, and intellectual property.** That document acknowledges the need to promote the adaptation and generation of technology and knowledge through incentives that enable individuals, entities, and enterprises to benefit from the effort to innovate. It also underscores the importance of and need for appropriate regulatory frameworks for productive activities and competition, as well as an institutional environment to ensure that they are respected and complied with.
- 2.4 **For its part, the Bank’s Modernization of the State Strategy (GN-2235-1) also addresses the challenges faced by the Bank in its efforts to support private productive activities through various actions related to the transparency and**

effectiveness of the entities regulating economic activity, consumer rights, and competition in government procurement processes.³⁸ Recognizing that the transition to a market economy has not been accompanied by the development of effective regulatory capacity to promote competition, reduce rent seeking, and protect the common good, this document proposes that the Bank concentrate, among other things, on modernizing the legal framework and using new technologies in government procurement; bolstering the independence and professionalism of the regulatory agencies; developing rules to protect consumers; and streamlining economic regulation mechanisms. The purpose of these activities is to promote market competition, transparency in public administration, and the protection of vulnerable groups.

- 2.5 **At the same time, the Bank’s Science and Technology Strategy (GN-1913-2) underscores the importance of intellectual property rights (IPR) as part of a propitious environment for technological innovation, increased investment in research and development, and the dissemination of new technologies.** In order to generate such an environment, the strategy points out that the Bank “*will support strengthening IPR laws and enforcement, including patents, trademarks, utility models, copyrights and trade secrets, as well as the major role of IPRs in disseminating valuable information to firms and scientists. Bank support for intellectual property rights could include institutional strengthening, international cooperation, developing information systems, and evaluating the impact of IPR legislation and enforcement.*” It also emphasizes the importance of competition in markets and points out that “*without strong internal and external competitive pressures to lower costs, improve quality, and promote innovation, there is no compelling incentive to adopt more efficient new technology and organization.*”
- 2.6 **The Bank’s Sustainable Economic Growth Strategy (GN-2227) also refers to the areas under review. It states for example, that** “sustainable economic growth requires the promotion and development of transparent, competitive, efficient and inclusive markets. With this objective the Bank will support countries to strengthen the institutions for economic regulation and competition promotion to increase their effectiveness, and simplify the different levels of registration, control, and supervision for private activity in order to avoid redundancies that reduce the incentive for productive activities.” It also promotes benefits for consumers from corporate social responsibility, the modernization of government procurement systems, and protection of intellectual property rights.
- 2.7 **The Public Utilities Policy (OP-708), also echoes the Bank’s concern for competition in public utilities and consumer protection.** This document points out that introducing competition in the provision of services, wherever possible, would be the most effective way to promote economic efficiency. To that end, it underscores the importance of developing effective regulatory frameworks. At the same time, it points to the need for adequate consumer protection, since that has a bearing on the political sustainability of the services provided. In that regard, the Policy paper recommends

³⁸ Document GN-2235-1, 23 July 2003.

attaching priority importance to the quality of the services provided, improving regulatory frameworks, and adopting mechanisms to increase attention to consumer complaints.

- 2.8 **Lastly, the Bank's Information Age Technologies and Development Policy (OP-711) recommends using state-of-the-art technology to improve the scope and quality of public utilities.** This policy states that *“beyond helping our borrowers deal with problems in current systems, the Bank will also intensify its work on pioneering projects which demonstrate the potential for the use of information systems to improve public services”* and points to a number of areas in which action can be taken, including, in particular, medical care systems (telemedicine); social security; outreach activities for the development of small enterprises; local government services, sound public management; tax collection, and human resource services.
- 2.9 **The Bank promoted some of the areas under review through investment sector loan operations.** For example, it included in the Investment Sector Reform Program³⁹ a series of measures that Uruguay was to take as conditionalities, such as amending its copyright, patent, and registered trademark laws and restructuring the intellectual property registry. This inclusion of conditionalities related to intellectual property laws and/or registries was repeated in several sector loans. Likewise, in connection with promotion of competition, the Bank carried out selective interventions in some countries in the framework of reform processes, especially in the area of public utilities (as in Peru and Uruguay, for instance).
- 2.10 **In line with the above, and in connection with nonfinancial products, the Bank intervened in various activities that reveal its growing interest in competition issues, particularly in infrastructure services.** One example was the seminar on *“Second Generation Reform Issues in the Reform of Public Services,”* held in 1999.⁴⁰ That seminar addressed, among other issues, promotion of competition in the provision of public services and dispute settlement and renegotiations following privatizations. A conference entitled *“Competition Policies in Infrastructure Services”* was also held in April 2001. This interest on the part of the Bank was subsequently echoed in a publication entitled *“Competition Policy in Regulated Industries. Approaches for Emerging Economies,”*⁴¹ as well as in numerous sector studies from the Infrastructure and Financial Markets Division of the Sustainable Development Department,⁴² and the Research Department.⁴³
- 2.11 **With respect to competition in procurement, the Bank has stepped up its activities in recent years.** This is reflected in various operations that directly or indirectly

³⁹ Investment Sector Reform Program, UR-0057 (PR-1876), October 1992.

⁴⁰ For an account of the rationale for the seminar, see IDB, CS-3425, 17 August 1999.

⁴¹ Beato and Laffont (2002).

⁴² See, for instance, Artana et al (1998), Basanes et al (2002), De Leon (2001), Beato and Laffont (2002), Paredes (2001), and Serra (2001).

⁴³ For example, Powell (1995), Lora (1997) and Escola de Pós-Graduação em Economia da Fundação Getulio Vargas [Graduate School of Economics of the Getulio Vargas Foundation] (2001).

address the challenges associated with lack of transparency and competition in government purchases and hiring. Such operations were approved for Nicaragua, Honduras, and El Salvador and others are being analyzed in Colombia and Brazil (the Brazil operation as part of a program to strengthen fiscal management in the state of São Paulo).

- 2.12 **Consumer protection activities have not been addressed by the various divisions and units of the Bank.** With the exception of MIF resource contributions, there have been no operations in which consumer protection is listed as a principal objective. Such operations would be covered by the guidelines established in the Modernization of the State Strategy (GN-2235-1) for agencies of the State and civil society. No publications or other nonfinancial products on this subject were identified.
- 2.13 **There appeared to be no interest in the issues under review and no coordination with the MIF on country papers.** At the programming stage, there is practically no mention of competition, consumer, or intellectual property issues. One of the exceptions is, for instance, the Bank's Argentina country paper (May 2001), which identified consolidation of the (national and provincial) monitoring agencies, support for competition, and consumer protection as one area of activity deemed necessary among efforts to boost competitiveness. For its part, the Peru country strategy (1997) pinpoints institutional strengthening programs for specific entities—including the National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI)—as a necessary component for modernization of the State. Lastly, the Nicaragua document (2003) acknowledges the need to improve governance by strengthening institutions and, in that context, recognizes the need to enhance transparency in government expenditure.
- 2.14 **As for plans to achieve greater coordination with the MIF and to define the areas in which the work of the Bank and of the MIF might complement each another, examples are also few and far between.** Some country papers do acknowledge a role for the MIF, but do not specify what form it might take. There is also no direct connection with the areas under review. One of the few exceptions is the Paraguay country paper (2000), which identifies specific lines of action for the MIF, including steps to improve the regulatory environment for private enterprise performance and enhance transparency.

B. Strategic Objectives of the MIF and their Development over Time

- 2.15 The **Agreement Establishing the Multilateral Investment Fund (1992)**, which establishes the MIF's strategic objectives envisages diagnostic studies on legal or regulatory constraints on investment, development of plans for changing the legal environment for investments, **changes in intellectual property legislation**, and advisory services on the implementation and design of privatization programs. These broad objectives constitute the framework for projects on consumer protection, promotion of competition, government procurement, and intellectual property. Documents drafted since then are more specific and provide more detailed guidelines for the portfolio.

- 2.16 The 1995 document entitled “Guidelines for Project Preparation” contains guidelines and recommendations for formulating projects via the MIF’s Technical Cooperation Facility.⁴⁴ The document indicates that, in order to fulfill MIF objectives, financing will be provided for “the development of national plans for reform of the legal and policy environment for investments...including advisory services to amend...intellectual property laws.” It also recommends the financing of “diagnostic assessments at the country level to identify restrictions on investments, including legal, financial, and regulatory obstacles.”
- 2.17 The Report of the **1996 Task Force**, better known as the *Perry Report*, analyzed MIF performance in its first few years and put forward proposals for actions it might undertake in the following years. After underscoring the need to improve the “*targeting of the MIF’s financial action and to define with greater precision its objectives and priorities for the next few years*,” the experts recommended that the Fund adopt, as a working principle, the need to **stimulate and support expansion of the private sector in new areas**. The Report recommended channeling such support through **promotion and regulation** of private sector participation in (i) construction of infrastructure and provision of public utilities; (ii) social security administration; (iii) human resource training; iv) support for the microenterprise and small business sector; and (v) development of domestic capital markets.
- 2.18 **The Perry Report proposes, inter alia, that the MIF support private sector involvement in new activities and it specifically mentions the need for institutions to oversee competition and for adequate protection of users of public utilities.** However, it contains no reference to enhanced transparency in government, consumer protection, or intellectual property.
- 2.19 **The Report of the Working Group on MIF Strategy, better known as Working Group 2000, introduced the concept of “project clusters,” in order to sharpen the focus of MIF strategy and improve various operational aspects.** This Report, in particular, has an abundance of recommendations regarding the portfolio under review, since it went into it in some depth and made specific suggestions as to the strategy to pursue in future projects. The aforementioned project clusters would consist of several operations in a given area and be assigned a specialist, who would act as both advisor and focal point.
- 2.20 **The Working Group 2000 Report recommended that the MIF concentrate on four broad “Core Areas of Activity:” (i) development of small enterprise; (ii) microenterprises; (iii) financial and capital markets; and (iv) market functioning.** With respect to the market functioning area, the report indicates that in order to consolidate macroeconomic and structural reforms it is necessary to “*address the details of market functioning, removing bottlenecks, broadening participation by small enterprise, and promoting transparent and fair practices which meet international norms.*” To that end, it proposes, inter alia, the establishment of a “line of

⁴⁴ “Guidelines for Project Preparation,” September 1995, MIF, Technical Cooperation Facility, Facility I.

activity” for reform of regulatory systems. That line should include programs that ensure that consumers are better informed, thanks to clear regulations regarding advertising of products and competition. It also points out the need for clear and effective regulations regarding intellectual property rights, copyright, trademarks, and patents.⁴⁵

- 2.21 **These recommendations were later taken up in the report entitled “Improving Project Impact with MIF Clusters,” prepared by the MIF’s Management in January 2001, which identified one of the clusters as “Market Functioning and Regulatory Reform”⁴⁶** and proposed focusing on policies designed to promote competition and facilitate trade and international investment. As for the activities to be undertaken in the project clusters, the report mentions:⁴⁷ (i) improving regulatory frameworks to increase competition in the private sector, reduce market barriers, and lower costs; (ii) promoting competition in specific sectors, with emphasis on SMEs; (iii) instituting a legal regime to deal with unfair business practices and protect consumers; and (iv) reforming government procurement practices to award contracts through a competitive process. It should be noted that the topic of competition is connected to that of consumer protection. That is important since the two are closely linked and that association needs to be kept in mind during the planning and design stage of operations.
- 2.22 **In the period that has elapsed since 2002, projects dealing with defense of competition, consumer protection, intellectual property, and government procurement have not been granted either “cluster” or “line of activity” status.** All are lumped together in a category called “Market Functioning,” which they share with projects addressing such issues as alternative dispute resolution, regulatory capacity, and trade and export promotion.

⁴⁵ Document MIF/GN-56. 28 July 2000. Point 4.19 (a), page 21.

⁴⁶ Document MIF/GN-58. 5 February 2001.

⁴⁷ Document MIF/GN-58, page 20.

Table 2.2: Project Objectives

Country	Subject	Project's Overall Objective
Argentina	Competition	To enhance management, efficiency, and transparency in the execution of competition policy in Argentina.
Argentina	Consumer	To contribute to an improvement in the workings of the market economy by strengthening consumer participation and thereby ensuring that market relations are balanced and competitive.
Brazil	Competition	To improve decision-making and increase efficiency and transparency in the implementation of Brazil's policy with respect to regulation of competition.
Brazil	Consumer	To increase consumer participation in the privatization of public utilities, such as water, electricity, and telecommunications, and in the monitoring and control of basic service delivery.
Ecuador	Intellectual Property	To enhance legal security, promote private investment, and improve competitiveness.
Nicaragua	Government procurement	To enhance efficiency, competition, and transparency in government procurement and hiring processes, with private sector participation.
Panama	Consumer Protection and Competition	To enhance CLICAC's ability to meet its obligations with respect to promoting competition, protecting consumers, and monitoring trade policy pursuant to Law 29.
Paraguay	Consumer	To contribute to the strengthening of the consumer protection system and to greater transparency in the buying and selling of products.
Paraguay	Government procurement	To support the development and implementation of a national public sector procurement system aimed at lowering the State's procurement costs and bolstering legal security in this field in order to ensure efficiency, transparency, free competition, and due process in government procurement.
Peru	Competition, Consumer Protection, and Intellectual Property	To support improvements in the mechanisms regulating Peru's market economy.
Uruguay	Government procurement	To mitigate the impact of central government on private sector costs, by achieving savings in terms of time and financial resources. To introduce a system publicizing and providing information on government procurement, with private sector participation in the running of the system.
Venezuela	Competition	To strengthen the capacity of PROCOMPETENCIA to monitor compliance with competition laws and to promote such legislation more efficiently.

III. EVALUATION OF THE GROUP OF MARKET FUNCTIONING PROJECTS

- 3.1 **This section summarizes the findings of the evaluation of the set of 12 projects in the consumer protection, competition, government procurement, and intellectual property portfolio.** (Annex III includes more detailed analysis.) The evaluation was based on a methodology developed by OVE, which includes seven evaluative dimensions (see Annex IV for further detail). The information was compiled using a variety of tools to cover all 12 of the projects in the portfolio.
- 3.2 **Visits were paid to eight out of the nine ongoing projects, or 89 percent of the total, after discounting the three operations that were cancelled.** During those visits, interviews were conducted with the officers in charge of the executing agencies and MIF specialists. There were on-site visits to each project's activities and meetings with independent individuals and institutions specializing in the areas addressed by the projects, such as nongovernmental organizations, academics, representatives of the private sector, government officials, and chambers of commerce, to mention only a few.
- 3.3 **At the same time, the views of the MIF's executing agencies were elicited with the help of an individualized survey that covered 100 percent of the projects.** Evaluation sheets were filled in, using the criteria established in the methodology, for each of the projects that had been cancelled or were not visited (a total of four), and interviews were conducted with the Bank staff that had helped to design those projects.
- 3.4 **Lastly, relevant information was also compiled from various Bank Group documents,** such as country strategy papers, project documents and profiles, midterm and final evaluations, Project Performance Monitoring Reports (PPMRs), Project Completion Reports (PCRs), sector studies, and specialized conferences. During the visits to the countries concerned, the evaluators also analyzed the documentation in the technical files of the Country Offices, as well as reference material provided by the MIF's sector specialists, such as budgets, terms of reference, semiannual reports, final reports, annual work plans, and financial audits.

A. Relevance

- 3.5 The purpose of this dimension is to evaluate how well project contents have been tailored to the circumstances and needs of each country. It comprises the following three subcategories: diagnostic assessment of needs, the demand for services, and market generation.
- 3.6 **Generally speaking, the projects were deemed to have a high degree of relevance, since the reforms and activities proposed in them correlated closely with the needs and priorities of the respective countries.** This reflected accurate assessment at the design stage of the needs of the specific industry, the private sector, and the country as a whole.

- 3.7 **Nevertheless, there were some cases where relevance was low because, although the project addressed sector shortcomings, it failed to match the country’s priorities.** Two cases in point were the consumer protection project in Paraguay and the intellectual property program in Ecuador. The proposed activities were geared to cover a specific gap in each of those two sectors, yet failed to address priorities, given other more pressing needs and problems of the private sector (such as acute political instability, financial crises, economic recession, declining purchasing power, etc.).
- 3.8 **Relevance in terms of market generation varied, the Brazil, Panama, Peru, and Uruguay projects faring best on that score.**⁴⁸ The two Paraguay projects (consumer protection and government procurement) were less successful in generating markets, as were the intellectual property project in Ecuador and the consumer protection project in Argentina. However, it is worth pointing out that this last-mentioned group of projects is still at an early or intermediate phase of execution (except for the Argentina project, which has concluded), so that there is likely to be an improvement in market generation in the medium and long term.

Table 3.1: Market Generation

Relevance – Market Generation			
Country	Status	Rated	Outlook
Argentina	Finished	Low	-
Brazil	Finished	High	+
Ecuador	Under way	Low	+/-
Panama	Finished	High	+
Paraguay (consumer protection and government procurement)	Under way	Low	+/-
Paraguay (consumer protection)	Under way	Low	+/-
Peru	Finished	High	+
Uruguay	Under way	High	+

- 3.9 **In the case of Brazil, for example, the project promoted consumer protection as part of Brazil’s privatization program.** The execution phase coincided with the start-up of the first sector regulatory agencies and achieved excellent results with respect to protection of users of public utilities through both education and outreach activities and proactive legal initiatives on the part of consumer associations.
- 3.10 **The project aimed at strengthening Peru’s INDECOPI was also highly successful. Thanks to the project, that institution consolidated its role in the field of consumer protection, promotion of competition, and protection of intellectual property**

⁴⁸ Execution of the first three operations has been completed and the Uruguay project is well advanced.

rights at a key moment in Peru, when free market-oriented reforms were being promoted. In addition, INDECOPI managed to position itself as a model for organizations of its kind in Latin America. The CLICAC case in Panama was similar. The MIF supported the establishment of CLICAC just when the government was fostering market reforms to improve the business environment for the private sector.

Table 3.1: Consumer Protection and Public Utilities: the Brazilian Model

The wave of privatizations in the region in the second half of the 1990s generated the need to strengthen regulatory frameworks. Under the new arrangements for the provision of public services, governments realized that they had to strike a balance between the interests of investors, operators, and users. Nevertheless, initial outcomes were disappointing and users were poorly represented, leaving them so defenseless as to cast doubts on the long-term sustainability of the privatization model. It was against that backdrop in 1999 that the MIF approved the first consumer protection operation designed to protect the users of public utilities. The principal objective was to increase user participation in the privatization of those utilities, especially the provision of water, sewerage facilities, electricity, and telecommunications, and to achieve a more active role for users in the supervision and control of these services.

The MIF opted to work on this project jointly with the Instituto Brasileiro de Defesa do Consumidor (IDEC). Founded in 1987, IDEC is an independent NGO without ties to political parties, the private sector, or the government. Its principal objective is to actively promote consumer protection, through both public education campaigns and legal action. The project was highly successful, because IDEC managed to achieve the goals it set itself as a public utilities watchdog, while at the same time positioning itself as the pioneer and leading body in the field of user protection. An intensive training program was conducted and then replicated in 15 consumers' associations in 11 states. In addition, numerous workshops were held, attended by 76,900 students in 70 schools in São Paulo, 37,500 students in 50 schools in Rio de Janeiro, and 23,000 students in 20 schools in Curitiba. A vigorous awareness campaign reached 3.5 million viewers via television and a radio audience of 600,000. It included the publication of books, leaflets, and videos on a number of consumer protection-related topics.

In terms of monitoring and supervising public utilities, the results of IDEC's work were highly satisfactory. As envisaged in the strategy developed for the MIF program, IDEC took part in conferences and public hearings, defended users' interests before the courts and in specialized fora, and made major contributions to lawmaking and the formulation of the government's sectoral policies. Between 1999 and 2002, IDEC brought 10 class action lawsuits in disputes related to the provision of utilities, winning seven of them either outright or in part. It filed requests and suggestions with regulatory bodies and sector agencies on specific aspects of the provision of services and successfully presented recommendations for improving customer service in the principal regulatory bodies. Its activities had a significant impact with respect to environmental issues and genetically altered foods.

In the telephone sector, Telebras, the public telephony enterprise, controlled all licensees in the country. The government decided to split Telebras into 12 regional companies and sold its equity stocks to the private sector. From that time on, services expanded at an exponential rate but ANATEL, the telecommunication regulatory body, was overwhelmed and unable to comply with the responsibilities assigned to it by law. As a result, IDEC filed several denunciations and complaints against ANATEL and the providers. For instance, in 1999, IDEC managed to convince the judicial authorities to order telephone services providers to suspend a rates increase for six months, because the companies had not yet complied with the minimum service quality standards established by ANATEL. The loss to the telephone companies was estimated at over US\$80 million, but the end effect was better service and better rates for consumers.

Thanks to the activities and publicity generated by the project, IDEC expanded its membership to include over 40,000 members countrywide and it continues to publish its magazine, Consumidor S.A. (bringing out 23 issues between 1999 and 2002). Today it provides advisory services and training, free of charge, for consumers; runs specialized courses; publishes articles on topics of interest to the general public; and has its own Internet website (<http://www.idec.org.br>). IDEC's ability to mobilize and raise funds has increased markedly thanks to the MIF project, which made it possible to attract additional investment by bilateral and multilateral agencies in the amount of US\$150,000. IDEC's annual budget is currently US\$1.6 million, enough to ensure that it can continue its services and activities.

B. Effectiveness

- 3.11 **The purpose of the “effectiveness” dimension is to measure the extent to which proposed objectives were achieved.** Parallel to that, an analysis is conducted of the part played by risk prevention and the handling of unforeseen developments in achievement of program objectives. In general, the projects achieved a high level of effectiveness, which is one of the dimensions in which they scored best. Four of the projects were rated “very high” in terms of achieving expected results—out of five well-advanced or completed operations.
- 3.12 **The completed or well-advanced projects managed to produce the outcomes established in their components and thereby reach the goals that had been set.** The only exception is the Argentina consumer protection project, which did successfully carry out the activities contemplated for the project, but they were not the activities best suited to attain the desired impact objectives. That project was ambiguous in terms of its goals. Although it did set itself the objective of “bolstering consumer participation, to ensure competition and balance in dealings in the marketplace” the activities carried out under the project focused largely on dissemination and education and failed to contemplate mechanisms for eliciting the participation that had been proposed in the strategic intentionality. Furthermore, the program attempted to underscore the public utilities issue, but in fact only encompassed five studies of the subject, which in practice had little impact.
- 3.13 **In the case of Uruguay, even though execution has not concluded, a large proportion of the objectives set have already been met, particularly with regard to reduction of government-induced costs to the private sector.** This includes the setting up of an electronic government procurement system, streamlining of the red tape for registration of new enterprises and investments, and revision of administrative tariffs and prices. The tariff review activities were carried out and have already achieved savings of US\$91 million in annual fixed costs and US\$13.8 million in one-off revenue. For its part, implementation of the electronic government procurement system is expected to generate savings of US\$52 million a year.⁴⁹
- 3.14 **The Brazilian case is equally successful, given that it has managed to strengthen the participation and watchdog role of consumers in the provision of public utilities.** IDEC, the project executing agency and beneficiary, is already renowned for its active role on behalf of users. For example, in 1999, it managed, by going to court, to have a Telefónica rates increase postponed for six months. The judgment required providers to abstain from increasing rates until they met the minimum quality targets set by the regulator. In those six months, Telefónica is estimated to have forgone earnings of approximately US\$80 million. IDEC has established itself as a national benchmark on consumer and public utilities issues. It has taken part in about 10 public hearings related to the quality or costs of services and advises several regulatory bodies.

⁴⁹ Estimates contained in project execution progress reports prepared by the executing unit (Progress Report at 31 July. ATN/MT-7536-UR. Progress report referred to in clause 7.1.a).

- 3.15 **In Panama, CLICAC has established itself as a key player in consumer protection issues and promotion of competition in the domestic economy.** Between 1997 and 2002, CLICAC dealt with over 55,000 claims and settled 13,700 complaints involving US\$32 million. Finally, CLICAC was highly instrumental in the refusal to grant the two largest breweries in the market permission to merge, on the grounds that the merger would be detrimental to consumers. CLICAC argued that, rather than favor consumers, the merger would create a monopoly for the huge Colombian brewery, Cervecería Bavaria.
- 3.16 **Under Paraguay’s consumer protection project, the Consumer Protection System has been established, the regulations needed to apply the law on the subject have been issued, and three municipal governments—out of the five targeted—have joined the electronic interconnection pilot project.** Although execution is at an intermediate stage, a number of project activities have gotten under way, thanks to the support of an international consultant who used to be on the staff of INDECOPI (Peru). Finally, the project has helped form and consolidate consumers’ associations, with a view to boosting civil society’s still incipient efforts in this direction.
- 3.17 **A high percentage of competition projects were cancelled, which should not be construed as an indicator of the unsuccessful nature of this kind of intervention, but rather as a pointer to the complexity of the issue.** On the contrary, the two projects that were executed were highly successful and their respective executing agencies have become undisputed leaders referred to by other authorities in the region. The reasons for the cancellations have to do with the complex institutional requirements for such operations. The establishment and strengthening of agencies to defend competition pose challenges similar to those associated with institutional reforms and, as such, take more time and effort and political support than other reforms. Furthermore, the impact of such reforms is not felt either immediately or in the short run, which is why politicians have few incentives to support these initiatives.
- 3.18 **Some lessons may be drawn from the cancellation of programs in Argentina, Brazil, and Venezuela.** First, project formulation has to take the political environment into account, since it may impair the sustainability of reforms. Second, a careful assessment must be made of the degree of institutional, financial, and political commitment of the government to the proposed reforms. Third, the criteria for establishing new agencies or strengthening the weakest among them need to be determined from the outset, especially when the viability of the program depends on approval by the legislative branch of changes in the law.
- 3.19 **Political instability and/or frequent changes of responsible officers in the competition agencies involved (which routinely affect the job stability of coordinators in the executing units) undermine the institutional viability of these projects.** Nevertheless, in the two countries in which the agencies concerned enjoy complete operational and hierarchical autonomy, as do CLICAC and INDECOPI, results have been outstanding. Needless to say, they also had the full political support of their respective governments, which meant that no attempt was made to interfere with their activities or in the allocation of necessary funds. In short, the lessons learned

indicate that attention must be paid to the institutional fabric in which competition agencies act and to the political environment in which they will exercise their functions. The firmer the political backing, the more likely it is that expected outcomes are achieved.

Table 3.2: MIF Projects with Agencies for the Defense of Competition

Country	Status	Reasons
Argentina	Cancelled	<i>Political instability; lack of political support.</i>
Brazil	Cancelled	<i>The necessary institutional framework was not approved.</i>
Panama	In progress	<i>Strong initial political support; the agency is independent.</i>
Peru	In progress	<i>Strong initial political support; the agency is independent.</i>
Venezuela	Cancelled	<i>Lack of political support; counterpart problems</i>

3.20 **There was little risk prevention, because often no effort was made to properly identify events and conditions that might affect execution of project activities.** The events most frequently identified had to do with the typical challenges faced by institutional reforms. On the one hand, there are risks associated with lack of support from stakeholders, such as apathy, high turnover of responsible officers, lack of commitment, and resistance to change. On the other, there are risks derived from institutional weakness, such as inadequate training of the human resources deployed and the executing unit's lack of experience.

3.21 **The projects performed well in the way they handled unforeseen developments during execution.** This helped them achieve their established targets. Both the executing agencies and the MIF deftly adapted to unforeseen circumstances and shifts in the environment. In some cases, projects had to face strikes or stoppages caused by political uncertainties. In others, activities had to be revamped either because of legal snags or because the real needs of the beneficiaries had not been identified correctly. Generally speaking, however, the projects managed to adapt to the circumstances and changes, thereby preserving the integrity of the operations.

C. Efficiency

3.22 The aim of the efficiency dimension is to evaluate performance in allocation of resources, administrative management of the project, and productivity. It focuses essentially on cost-benefit (investment/outcomes) ratios.

3.23 **Activities and the allocation of resources were planned in an efficient manner.** Generally speaking, planned activities were specified and highly itemized budgets drawn up at both the component and outcome level. Moreover, in the more complex projects, the terms of reference for key consulting services were established in advance.

This proved helpful at the initial stage of execution, when delays are common due to the lack of experience of the executing agencies. The effects of that can be mitigated if the Bank/MIF provides detailed information and training from the start regarding the administrative procedures to be followed during execution (especially those related to disbursements, hiring, and procurement). However, in some cases this information was provided in a disorderly manner, as the activities were being conducted, and without planning.

- 3.24 **In terms of administrative management, the projects scored well, with almost all projects receiving high ratings.** The Bank/MIF requirements for procurement, disbursements, or hiring did not prove to be an obstacle, except in a few cases in which bidding processes were declared void or when procurement or hiring had to abide by both the rules of the country and those of the Bank. Taxation issues also caused a few accounting and budgetary problems, in cases in which the executing agencies had not been informed that the Bank does not pay taxes. As regards bidding processes that were declared void, one major cause was lack of familiarity with the leading consulting firms for the areas concerned. The executing units lacked sufficient knowledge to identify possible candidates, a shortcoming that was exacerbated by the failure of specialists in the Country Offices to provide that information.
- 3.25 **One exception was the government procurement project in Paraguay, which ran into numerous complications that significantly impaired administrative management of the program.** There were extensive delays in the project that made execution difficult, so much so that on two occasions red flag warnings were issued. The first hurdle was the dismantling of the state body in charge of administering the project. This meant that another executing agency had to be found, during which time the project was at a standstill. This situation in turn led to a rapid turnover of executing unit coordinators (the current one is the third). In addition, there were delays in approving the legal framework for government procurement and in the budget appropriation of counterpart funds. Finally, delays were also caused by the signing of a management agreement with UNDP, aimed at ensuring transparent management of the program's funds. All this made it necessary to extend the execution phase, because by July 2003, eight months before the original deadline was due to expire, only 16 percent of the funds had been disbursed.
- 3.26 **Various kinds of delays have affected project execution. Executing agencies consistently complained of delays caused by slowness in the Bank's response to requests.** In some cases, delays of up to six months were confirmed. The nature of the requests ranged from applications for nonobjection, disbursements, a change of executing agency, budgetary adjustments, etc. Possibly the delays may reflect a lack of specific expertise on the part of specialists with respect to the topics addressed by the projects, combined with the absence of such experts in both the MIF and the Bank.
- 3.27 **The absence of a critical mass of projects combined with a failure to address this group of operations led to neglect of opportunities to generate economies of scale.** For instance, the consulting services performed in the area of consumer protection are fairly similar in all the operations. In fact, the same consultant was hired for four of the

five MIF operations, in some cases replicating products already designed for other operations. Although each project has its own features and specific requirements, economies of scale could have been achieved by producing guidelines or handbooks for implementation of consumer protection programs. This could not only have saved some financial resources; it could also have facilitated project implementation.

- 3.28 **The same applies to government procurement, where opportunities derived from the similarity of the projects could have been exploited to generate savings in portfolio management.** Here, too, materials could have been developed for use at the design stage, such as toolkits and checklists, or handbooks on subjects related to standardization of documents and specifications, minimum requirements of the system, etc.

Table 3.2: Development of an Institutional Model for Consumer Protection, Promotion of Competition and Protection of Intellectual Property: the case of INDECOPI in Peru

The National Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) was established in 1992 as the entity responsible for overseeing and promoting the workings of the market economy in Peru. It is an autonomous and eminently technical body, whose prime purpose is to foster improvements in levels of competitiveness, productivity, and efficiency in Peruvian enterprises and products. Given the important work performed by INDECOPI to facilitate private sector development, in 1997 the MIF decided to support it through an institutional strengthening and dissemination program. To that end, activities were planned in four areas: promotion of competition, consumer protection, intellectual property, and institutional strengthening and dissemination.

In the consumer protection area, a counter was opened to attend to the public along with a conciliation service to settle consumer claims. Between November 2000 and May 2003, that service handled 424 claims per month (4,974 cases per year) and 766 corrective measures were ordered, of which 31 percent dealt with complaints related to banking and financial services. Claims were settled in the amount of US\$1 million. Corrective measures ordered by INDECOPI consisted of returning customers' money (43 percent), repairing appliances (5 percent), reinstatement (4 percent), and others (48 percent). Even more important was INDECOPI's success, with MIF support, in shortening the average time taken to process consumers' claims from 17.3 months in 1998 to only 1.8 months in 2003, an 89 percent reduction. In all, 17 percent of all claims dealt with were settled via conciliation.

INDECOPI also played an active part with respect to competition and market access, managing to enhance its capacity to safeguard transparency in the different markets thanks to a series of products financed by the program. These included, in particular, development of a set of indicators for monitoring markets, studies of privatized sectors, such as the electrical power sector and the ports, and a diagnostic assessment of the institutional management issues involved in promoting competition. Between 1995 and May 2003, the Committee for the Defense of Competition received 1,295 complaints about unfair competition and advertising and 78 complaints about dumping. It also processed 134 cases of breaches of the rules and regulations governing free competition. Of the latter, 40 percent concerned improper use of a dominant market share, 35 percent restrictive practices, and 9 percent mergers, with cases lasting on average only four months. By May 2003, 508 investigations had been carried out into barriers to market access due either to municipal regulations (65 percent) or those of central government and other government bodies (35 percent).

Thanks to the results of the program and INDECOPI's excellent work over the past decade, this institution has become *the* model to imitate in Latin America and the Caribbean. The experience it has acquired in the areas of competition, consumer protection, and intellectual property is used as a benchmark by similar agencies in other countries of the region. An internship program for Latin American officials was held for the fifth consecutive year in 2003. Its objective is to share and exchange with government officials from other countries in the region appropriate tools for establishing and strengthening institutions that promote competition, consumer protection, and/or intellectual property.

To increase the general public's access to its services, INDECOPI launched a free telephone consulting service in its 14 regional offices in 2000. In just one year, it addressed 50,000 complaints. This open house policy towards the public in addition to all its aforementioned activities enabled INDECOPI to position itself as one of Peru's most credible institutions. A survey of business leaders conducted in 1999 ranked INDECOPI as the most trustworthy institution in the country. Public opinion polls in 1999 and 2000 also ranked it as the most efficient institution— public or private—in Peru.

D. Innovation

- 3.29 Innovation is one of the qualities that the MIF expects to promote with its projects. The idea is that its new operations should promote original practices that are highly innovative within the context of each country and in the region as a whole. An innovative project is one involving a new product or service, or an improvement in the process or method used to generate an already existing product or service. Three factors will be taken into account in this dimension: product innovation at the project design stage; innovations introduced during the execution processes; and the “demonstration effect,” that is to say, the degree of attention that the project triggered in third parties.
- 3.30 **An analysis of the operations in the portfolio indicates that the MIF’s operations were in fact innovative. All the projects were rated as showing medium-to-high or high degrees of innovation.** At the regional level, the issues addressed by the projects were highly innovative.
- 3.31 **With regard to competition, for instance, only a small group of countries were making incipient efforts to design or modernize their legislation on the subject and to establish specialized agencies.** Some countries in the region still have no competition laws or alternative mechanisms for monitoring market transparency. Others had obsolete antitrust laws and/or laws that in practice were not enforced.
- 3.32 **As for consumer protection, by the 1990s many countries' laws were out of date and failed to incorporate modern practices and standards promoted by such international organizations as the OECD or UNCTAD and global nongovernmental organizations like Consumers International.** Thus, the MIF’s consumer protection projects fostered highly innovative practices and brought not just funding but also knowledge and access to best practices at the international level.
- 3.33 **Protection of intellectual property rights was another highly novel concern in the region.** Although there were debates, sponsored by the United States and other developed countries, regarding the need for higher standards of protection for patents, there had been practically no efforts specifically geared to strengthening the work of intellectual property registries, publicizing the advantages of the various already existing legal instruments for protecting those rights, or working with the private and public sectors in these fields. At the same time, in other countries, responsibilities for regulation and protection of intellectual property rights were spread over a number of government agencies. In the case of Ecuador, for instance, the Ministry of Industry was responsible for intellectual property rights, while the Ministry of Education was in charge of copyright, and the Ministry of Agriculture monitored rights associated with different varieties of vegetables. Nowadays, the IEPI centralizes control and registration of all those rights in a single institution.
- 3.34 **With respect to government procurement, only a small group of larger countries have installed electronic systems for managing government purchases, boosting competition, and facilitating access for the SMEs.** Toward the end of the 1990s, only Brazil, Chile, and Mexico had such systems in place. Many countries in the region

continue to have cumbersome and opaque procedures, which increase the cost of inputs and breed opportunities for corruption. Nevertheless, the MIF has begun to intervene in this area by financing operations in Uruguay, Nicaragua, and Paraguay.

- 3.35 **Despite the innovative nature of the projects, executing agencies were successful in putting the design phase innovations into practice.** The great majority of projects made satisfactory progress toward their preestablished goals and the desired innovations were put into effect. They included some specific innovations that are worthy of special mention.
- 3.36 **In Uruguay, for example, the executing agency for the government procurement component entered into partnership with a “B2B” enterprise⁵⁰ that distributes government procurement bidding information to its users by e-mail.** In this way, users receive, on a daily basis, specific information that is relevant to their line of business. This has meant that information is getting through to a larger number of companies and businesses.
- 3.37 **The Ecuador operation added a highly innovative element to the project’s activities by paying attention to the intellectual property needs of the SMEs.** Thus, a component was included in the design phase aimed at providing training for small enterprises and craftworkers on various aspects of intellectual property, such as the tools available, the advantages of intellectual property, and mechanisms for registering it.
- 3.38 **The Paraguay project incorporated participation by the municipalities in consumer protection activities, thereby tailoring consumer protection services to community needs.** The novelty here was providing at the local level services that in other countries are national or provincial. Municipal councils are better placed to reach people and offer them greater opportunities of access to consumer protection, especially because people do not have to travel long distances to file claims.
- 3.39 **The consumer protection project in Paraguay also promoted the involvement of entrepreneurs and merchants in the project’s dissemination activities.** Rather than adopt the hostile attitude toward the private sector that is frequently found in consumer protection circles, the project incorporated it and worked constructively with it, showing merchants the advantages of abiding by the rules protecting consumers. Prizes were awarded, for example, to merchants whose weighing scales were properly set. This was done by installing scales close to markets and offering consumers a chance to re-weigh what they had bought and see whether the weight shown on the merchant’s scale had been accurate. If it was, the merchant received an award in front of his customers and a diploma. Finally, for the first time in the region, the Paraguay project encouraged and supported the formation of consumers’ associations.
- 3.40 **In both Peru and Panama, alternative conflict resolution mechanisms were promoted to deal with consumer relations disputes.** When consumers complained to

⁵⁰ www.elagora.com

INDECOPI and CLICAC, these two bodies offered to mediate to reach an agreement with the entrepreneur or merchant involved. These mechanisms resulted in a high percentage of reconciliation between the parties and fulfillment of the agreements reached, thereby markedly shortening the time it took to settle claims.

- 3.41 **In Brazil and Argentina, civil society was instrumental in implementing the strategy designed to improve consumer protection. The idea behind this was to provide a more sustainable long-term framework for the reform by bolstering the negotiating capacity of customers when it came to safeguarding their interests in rate adjustment, public hearings, and quality control proceedings in connection with privatized services.** The MIF supported IDEC (Brazil) and ADELCO (Argentina), respectively, in their efforts to conduct various consumer information and education activities. In Brazil such activities focused on the protection of the users of public utilities and consumers were encouraged to perform a compliance-monitoring role with respect to quality requirements and rates. The Argentina project was equally innovative inasmuch as it promoted consumer education by including relevant material on the subject in primary and secondary school curricula.
- 3.42 **Some projects in this portfolio managed to generate a “demonstration effect.” In other words, they became benchmarks for their respective branches of activity and were imitated locally and/or internationally. INDECOPI’s success in Peru has caught the eye of academics, government officials, and international organizations and has been the subject of numerous studies, articles, and publications.**⁵¹ This institution has become a model for the region as a whole and the reasons why it has been so effective have been scrutinized by countries seeking to establish systems for consumer protection, defense of competition, or protection of intellectual property. For several years running, INDECOPI was regarded in Peruvian society as the most credible public institution. CLICAC in Panama is moving in the same direction. The excellent results it has achieved in a very short time have earned it considerable respect throughout the region and its prestige was further boosted by its success in preventing the merger of the two largest breweries in the market.
- 3.43 **In Ecuador, the IEPI is also the subject of studies and has caught the eye, in particular, of the World Intellectual Property Organization (WIPO), the international regulatory body for intellectual property issues.** IEPI is described as an example for developing countries that wish to design, strengthen, or improve their intellectual property registries.

⁵¹ See, for instance, Becker, David “*Is the Good the Enemy of the Better? Peru’s Indecopi and Judicial Reform.*” Paper presented at the 2001 Annual Conference of the Latin American Studies Association. See also Boza, Beatriz (editor) (2000) “The Role of the State in Competition and Intellectual Property Policy in Latin America: Towards an Academic Audit of INDECOPI” and Boza Beatriz (editor) (1998) “Lessons from the First Five Years of INDECOPI. Peru’s Experience in Market Regulatory Reform. 1993-1998.” These last two contain articles by writers such as Robert Sherwood, Luis Tineo, Ana Julia Jatar, Luis Guasch, Geoffrey Shepherd, Carol Wise, and Saraj Rajapatirana, who have considerable internacional expertise in regulatory matters.

- 3.44 **There were also operational innovations, that is to say, in the way in which the MIF carried out its operations. For instance, in the Uruguay project, meeting the operation's targets was a condition for disbursement of an IDB sector loan, thereby providing a further incentive for execution in line with a broader reform process.** This had a very positive effect, because the executing agency had a very strong incentive to execute the project within the established timeframe. Which is what happened. In Paraguay, the sector specialist organized meetings attended by the executing agencies for the different MIF projects he handled. This innovation meant that the executing agencies were able to benefit from each other's experience and establish cooperation ties among themselves.
- 3.45 **One of the main obstacles this group of projects faced, despite their encouraging outcomes, in attempting to achieve a sizable demonstration effect, was the lack of a critical mass and the limited amount of interaction and monitoring of the interventions.** It is extremely difficult to achieve such an effect without a critical mass of projects, or sufficient familiarity with the areas concerned, or the appropriate institutional experience needed to take on the challenge and meet the established goals. Just one intellectual property project is not enough to generate change in the region. The same is true of the other fields addressed by the portfolio. In many cases, the MIF did not acquire the in-depth knowledge of the sector needed to be able to identify new products or niches, exploiting the additionality and comparative advantages of the institution and the Bank Group. This could have been done by conducting research studies or hiring consultants or staff with expertise in the various fields covered in the portfolio.
- 3.46 **It transpired from interviews with staff at Headquarters and with sector specialists in the Country Offices, that there was a certain lack of definition or clarity as to the reasons why the institution thought it should intervene in the region with these projects.** In many cases, evaluators had the impression that there had been no detailed definition of the way these projects fit in with the MIF's institutional strategy, or what the direct benefits to the private sector were. These differing views were also perceived in the Donors Committee, according to statements by Bank Group staff. This may partially explain the low volume of operations and the absence of a strategic approach with respect to the portfolio.

E. Sustainability

- 3.47 The purpose of this dimension is to evaluate the ability of the countries and the executing agencies to maintain the benefits of the interventions in the long term together with delivery of services supported with MIF financing. This is measured by evaluating the project in terms of partner analysis at the design stage, monitoring of partners during execution, and subsequent institutionalization of the project. It aims to establish the bases for measuring the sustainability of the project in the short, medium, and long term.

Table 3.3: Rethinking Project Sustainability: Argentina and Ecuador

Case I: Argentina

The Institutional Strengthening for Consumer Protection Program consisted of a series of mainly information and education-oriented activities. In coordination with ADELCO, a pioneer in Argentina and in Latin America in the field of consumer protection, the MIF supported educational activities in primary and secondary schools, the preparation of promotional material, and the carrying out of five studies of privatized public utilities.

Although ADELCO managed the program's activities efficiently and energetically and expected outcomes were achieved, the project was unable to generate sustainable services or have a lasting impact. Today, the association cannot afford to continue the activities financed by the MIF. This leaves the impact and sustainability of the program in doubt, along with its ability to achieve the desired effect.

Case II: Ecuador

In 2002, the MIF approved a program coordinated by the Ecuadorian Institute of Intellectual Property (IEPI), aimed at enhancing legal security in the field of intellectual property. Founded in 1998, IEPI is an association under public law, with its own capital and operational autonomy. Its objective is to further the protection and defense of intellectual property rights and to promote intellectual creativeness, be it literary, artistic, scientific, or industrial. It also seeks to disseminate technological knowledge in the cultural and productive sectors.

The program consisted of educating owners of small businesses, craftworkers, media personnel, think tanks, and government officials with respect to the advantages of intellectual property and the various tools available for protecting those rights. Efforts were also made to brief the general public on these matters. Project execution so far has been dynamic and has shown several very positive sides. For example, the training sessions are highly innovative, especially those for small-scale entrepreneurs and craftworkers. The work being done with government officials, judges, the police, and customs officers has also proved particularly relevant, given the prevalence of commercial piracy. Nevertheless, the sustainability or medium and long-term impact of the project's activities are in doubt. When funds run out, the information and training activities are likely to be discontinued.

Points in common

One of the problems with both operations is that the work was done in isolation. No effort was made to enter into partnership or coordinate activities with players in the private sector, such as chambers of commerce, universities, or associations of SMEs or research institutes. Coordination with other institutions would have boosted the impact of the activities carried out and increased their chances of survival in the longer term. In the case of the Ecuador project, partnerships could have been formed with private institutions and entities associated with small enterprises or with supranational bodies, such as the Andean Development Corporation (CAF).

Nor were mechanisms included to replicate the experience acquired by the institutions or to trigger a multiplier effect. In other words, it was not anticipated that the training manuals, information materials, and institutional strengthening activities could be made available to other institutions. The consumer protection program in Brazil, for instance, explicitly included transfers of IDEC know-how to other consumers' associations. In addition, adopting too broad an approach may also come to pose a risk for projects by diluting the impact of activities. In Argentina, despite the program's stated intentions, issues for users of public utilities were not addressed, even though that whole field has been the subject of intense debate for several years. Addressing them could have added continuity to ADELCO's work and placed it more prominently in the public eye, which in turn might have helped make the project's activities sustainable.

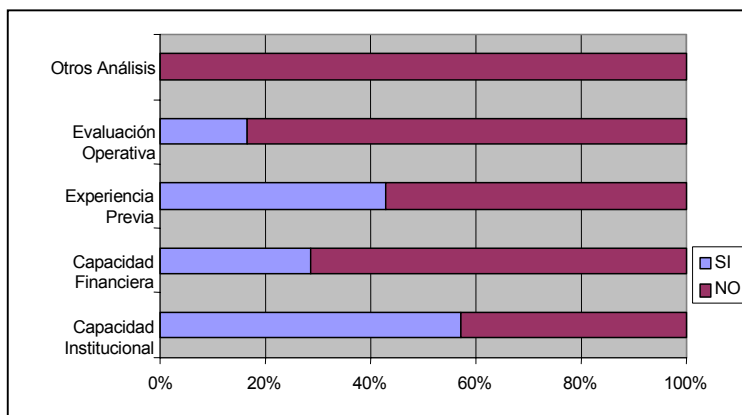
3.48 While 84 percent of the projects were managed through governmental executing agencies, nongovernmental organizations were used to administer the remaining 16 percent.⁵² In the former, the executing agencies were part of a ministry, secretariat,

⁵² These are percentages of the total number of projects (including the three operations that were cancelled).

or other agency, or were decentralized government agencies.⁵³ In the latter, the MIF resorted to civil society organizations specializing in the areas addressed by the projects.

Graph 3.1: Prior Analysis of Executing Agency

3.49 **Generally speaking, little was done in the way of partnership analysis, given that most of the partners were government bodies in charge of the area concerned, which in theory left little room for maneuver. Nevertheless, more disciplined institutional analysis would have made it possible to**



Note: Graph not available in English

avoid embarking on operations that subsequently have to be cancelled or that risk tarnishing the image of a new kind of intervention. In other words, when the idea is to execute a project that falls within the jurisdiction of the Ministry of Economy, there is usually no choice but to work with that ministry. Nevertheless, it is possible to require improvements in the way the executing unit is organized, better qualified staff, etc. In the cases in which NGOs were chosen to execute projects, some extra tasks were performed, such as analysis of institutional and operating capacity, a financial evaluation, and a study of the institution's record.

3.50 **Although relations between the executing agencies and the Bank/MIF were in line with expectations and might be characterized as "good," there were numerous complaints about delays caused by the Country Office's failure to respond to questions in a timely fashion.** These delays affected execution of the programs (on top of the delays caused by the executing agencies themselves) and concerned requests for nonobjection, requests for disbursements, and approval of terms of reference. Some executing agencies said they had hoped for more support from the specialist and greater interest in the activities carried out by the project.

3.51 **The great majority of agencies continue to provide the services initiated under the project, which indicates that they have attained a high level of institutionalization.** In terms of learning processes and institutional growth, the executing agencies have benefited. Some have opened new branches, while others have hired additional personnel, expanded their offices, or upgraded their technological infrastructure.

⁵³ The terminology varies from one country to another. In some countries these entities are known as independent, in others deconcentrated, autonomous, or decentralized, even though they denote more or less the same thing. In some cases hierarchical or political independence is not absolute, since in practice it tends to differ from what the law requires.

- 3.52 **In countries where execution is still at an initial or intermediate stage, institutionalization outcomes cannot yet be measured, as is the case of both the Paraguay projects.** However, in the Paraguay consumer protection project, some serious obstacles have already been identified with respect to the sustainability of the services provided by the municipalities taking part in the national consumer protection system. Although the municipalities have shown interest in the subject, their weak financial situation prevents them from making appropriate budget allocations to allow the consumer protection offices to function. In the case of Argentina, ADELCO has had funding problems because it lacks a services model that could generate stable income for it. Add to this the deep economic crisis that Argentina has undergone in the past few years, and the result was discontinuity—especially with respect to information dissemination and training activities in schools.
- 3.53 **Governmental executing agencies, especially those that are decentralized, may suffer from institutional viability setbacks. The two most worrisome aspects of this have to do with budget restrictions and high staff turnover rates.** As regards the former, cutbacks did occur vis-à-vis historically typical appropriations. This happened in the case of CLICAC in Panama, for example. With respect to staff rotation, professional staff in the agencies usually did not stay long on the job. This is principally due to the low salaries they receive. In addition, once the executing agency professionals have been trained—usually at the expense of the project—and have acquired experience, private sector salaries are a temptation that is difficult to resist, particularly when government wage policies tend not to be based on civil servants’ abilities and qualifications.

F. Additionality

- 3.54 The additionality dimension evaluates the extent to which the MIF’s financial and technical resources were essential to achieving the results sought by the project. Additionality also covers such aspects as whether lessons were learned that could be applied to other similar projects or contain ideas or suggestions as to how executing agencies or the MIF might manage these kinds of project in future.
- 3.55 **The value added attributable to the MIF in the projects under review has been high, since these operations typically address issues about which little local knowledge existed.** It is also highly unlikely that the majority of these projects would have materialized without intervention by the Bank/MIF in the form of contributions of ideas and resources. Out of a total of nine projects either in progress or already executed, four received a “high” additionality ranking and two “medium-to-high.”
- 3.56 **In the CLICAC project in Panama, for example, the Bank/MIF participated in the development of the idea, in discussions and negotiations with the government, the choice of activities and outcomes, and in debates related to the institutional structure of the new organization.** In the consumer protection project in Paraguay, the Bank/MIF contributed the ideas and the funds to design and execute the project. Furthermore, the principal consultants in the project are former civil servants from institutions in other countries that received MIF financing.

- 3.57 **In some countries, the MIF was also instrumental in bringing about the consensus needed for a project's activities.** This was the case with the government procurement project in Paraguay, for example, where the MIF played a prominent role in eliciting agreements and synergies among key players in civil society and the public sector in support of the reforms it sponsored.
- 3.58 **Where the MIF contributed less value added was in projects in which it restricted itself to supporting ideas that were already being developed or to providing mainly financial assistance.** In the case of INDECOPI, the MIF's backing was a key factor in its consolidation as an institution, but the needs addressed had for the most part already been identified by INDECOPI itself. In the project aimed at pruning government-related costs to the private sector (Uruguay), all the activities had been designed by CEPRE, without MIF input.
- 3.59 **Generally speaking, opportunities for establishing synergies between projects were neglected.** Five out of eight projects ranked "low" or "medium-to-low" on this score. The three remaining projects were rated "medium-to-high." In the case of Peru, for instance, there was no interaction with other Bank Group projects. There was, nevertheless, interaction with projects run by other organizations, such as the OAS, CIDA, and the World Bank. The MIF project picked up on a number of ideas and needs identified by some of these organizations and put them into effect in a coordinated fashion and in that way generated some degree of complementarity between programs.
- 3.60 **A special kind of synergy was exploited in the Uruguay project, in the form of close interaction with sector loan 1336/OC, even though precisely that linkage proved to be a hurdle when it came to granting eligibility.** The evaluators were able to ascertain the difficulties that demonstrated the appropriateness of adopting a synergy-oriented approach in the circumstances, selecting key ingredients in the reform processes that would constitute the "last mile" in bringing the benefits, more swiftly and rapidly, to thousands of SMEs. Meeting the targets of the MIF operation was a condition for disbursements under the aforementioned sector loan. That was a huge incentive for the executing agency to keep to the activities timeline. In other words, linking technical cooperation to the sector loan proved highly effective in the sense that the former made rapid progress.
- 3.61 **Synergies were established in the Paraguay projects thanks to an innovation of the MIF's sector specialist in the Country Office, who thought of organizing a meeting of all the executing agencies of his projects.** Thanks to that initiative, the officers responsible for the various MIF programs had an opportunity to get to know each other and establish ties. As a result, they were able to exchange ideas and share lessons learned. In some cases these contacts led to the identification of opportunities for joint activities. Specifically, synergies were established among MIF projects in the areas of alternative dispute resolution, government procurement, and consumer protection.
- 3.62 **The projects helped to accelerate domestic processes in the countries concerned.** MIF interventions also played a part in cementing activities and changes at various levels, thereby generating positive additionality. At the national level, the projects

sought to bolster the economic reform processes of the late 1990s, especially with respect to regulatory frameworks. They also sought to boost projects designed to stimulate expansion of the private sector and enhance its competitiveness. Finally, the projects were geared to stimulating reforms in their own particular branches of industry and foster those changes by contributing know-how and resources.

- 3.63 **Four out of nine projects were rated “medium-to-high” or “high” in terms of additionality.** The MIF’s interventions effectively accelerated the pace of domestic change and had a catalytic effect. There were numerous reasons for that. On the one hand, country needs were correctly identified. At the same time, the MIF’s comparative advantages were accurately gauged and the specific areas to support were well chosen. Other factors contributing to the success of the operations were the availability of appropriate instruments for assisting countries and good timing.
- 3.64 **In the case of Brazil, for instance, consumer protection, especially on behalf of the users of public utilities, has become an irreversible movement that has grown markedly following MIF support for IDEC.** Consumer organization has consolidated itself in Brazil and internationally as a key player in the utilities arena, not just because of the specific part it plays in supporting individual consumer claims but also because of its role in disseminating knowledge to other civil society organizations and in actively participating in the formulation of national public utility policies.
- 3.65 When the MIF decided to support CLICAC, the latter was still incipient, with little experience as an institution, and fairly pressing structural needs. Thanks to the support it received in the MIF project, CLICAC managed to consolidate its role, expand its institutional capacity, and effectively fulfill the functions assigned to it under Panamanian law.
- 3.66 The situation of Ecuador’s various property registries was serious. There were shortcomings of every kind: a lack of human resources, administrative disorder, infrastructure problems, and above all a lack of efficiency and transparency in procedures. MIF support complemented IEPI efforts and the latter now stands out as an exemplary agency in Ecuador’s public administration. The time it takes to register properties has been dramatically shortened, the institution is run according to established managerial criteria, steps have been taken to enhance transparency, and customer service has been improved beyond recognition. IEPI has managed to bring about the transformation it set out to achieve and for which it received MIF support.

Table 3.4: MIF Support for the “Last Mile” of Reforms in Paraguay: Extending the Benefits to a Broad Base of SMEs and Promoting Competition in Public Procurement

One of the core components of the Program to Reduce State Costs to the Private Sector in Uruguay was the design of an electronic government procurement system. Briefly, the purpose of setting up such a system was to generate transparent mechanisms for government purchases, with clearly defined rules and enhanced access for the private sector. Approved in 2001, the project built on foundations laid by a public administration reform process financed by the IDB and led by the Executive Committee for Reform of the State (CEPRE). The three principal areas to be addressed with respect to public procurement were: (i) revision of the institutional and legal framework; (ii) development and installation of new information systems; and (iii) development of a system to track the costs of purchases.

There are four particularly notable features of the program. First, it was emphasized from the start of the project that the new system would generate information on what and how much the government procures, how much it pays, and who buys. Second, the improved access to data would be useful in procurement planning, the idea being to generate framework agreements in order to obtain better purchasing terms. A similar scheme for medicine purchases had yielded excellent results. Third, the system sought to align procurement management with budget appropriations, adjusting purchases in line with the availability of resources. Finally, the program fostered the search for ways to achieve direct private sector participation in the operation of the system.

With regard to this last aspect, the project has some highly innovative features. Once the installation phase was completed, the electronic system began generating information on government purchases. Although this system can be accessed via the Internet and the information is therefore public (<http://www.comprasestatales.gub.uy/>), CEPRE’s idea was also to distribute the information free of charge to the private sector.

That was how a local enterprise called El Ágora, which is mainly devoted to B2B services, became interested in the subject and asked to have access to the information. Based on prior experience it had acquired working on purchases by the Governor (*Intendente*) of Montevideo, El Ágora quickly put together a scheme that would allow it to maximize the impact of the information generated by the electronic procurement system and at the same time convert this work into a sustainable business. Today, the company processes the information it receives from the CEPRE on a daily basis—up to four times a day—classifies it by category, and distributes it to its users in accordance with each user’s profile and activities. To access this service, businesses and merchants are required to pay a minimum monthly fee.

In short, through its Internet website (<http://www.elagora.com>), this enterprise provides value added to the information on business opportunities with the government generated by the government procurement system in what amounts to a highly innovative partnership between the public and the private sectors. However, there are still opportunities for a further expansion of the system. The Centro de Almaceneros Minoristas, Baristas y Afines del Uruguay (CAMBADU), an association of mainly microenterprises and small businesses, has expressed interest in accessing the information in the system and distributing it to its members. That would also enable it to put together joint sales bids and thereby overcome the obstacle posed by each member’s small size. CAMBADU lacks the institutional capability and technology required to do this, however. For its part, El Ágora has expanded the services it provides and today offers information on procurement opportunities and bidding processes in Chile, Mexico, Argentina, Paraguay, and the Caribbean. It has also entered into strategic partnerships with institutions such as the Governor’s Office in Montevideo and the National Chamber of Commerce and Services. In the meantime, it has received several awards for its dynamic entrepreneurship.

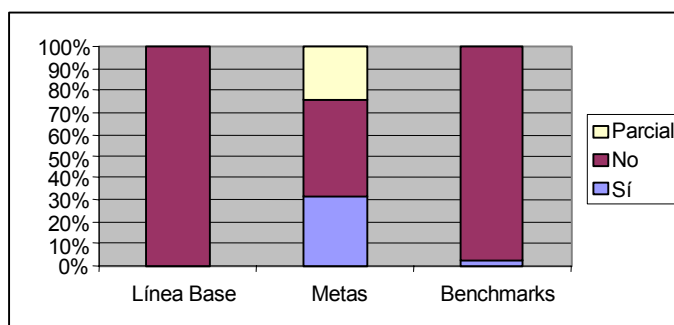
G. Evaluability

- 3.67 This dimension examines whether the projects were designed in a way that allows for measurable results and the steps that were taken to make evaluation of them possible. This involves, among other things, checking to see if the projects included appropriate indicators, if the information needed to measure the impact of the projects was generated, and whether funding for monitoring and evaluation was included.

3.68 **The evaluability of the portfolio projects under review is very low.** Only one project was rated “medium-to-high”; all the others were “medium-to-low” or “low.” In assigning these ratings, special attention was paid to three aspects. The first was the existence of a baseline, which is the information generally collected at the design stage that makes it possible to visualize the starting point or the scenario that the project is supposed to affect; second, the existence of clearly defined and measurable goals; and third, the inclusion of measurable benchmarks.

3.69 **The principal shortcomings were the lack of indicators or existence of poorly defined indicators, a mismatch between the indicators and the activities they refer to, the complete absence of baselines and benchmarks, and the lack of goals.** These defects make it significantly more difficult to measure the results of the components, in terms of both outcomes and immediate impact.

Graph 3.2: Selected Project Progress Indicators



Note: Graph not available in English

3.70 **The situation regarding results indicators is even worse.** Less effort was put into defining them at the design stage. Generally speaking, the indicators included for assessing the impact of the projects are vague and impossible to measure, both because there are no qualitative, quantitative, or temporal benchmarks and for lack of baseline data.

3.71 **The absence of indicators may reflect the incipient grasp in the Bank and in the MIF of some of the issues under review.** The lack of specialists and of in-depth studies in these fields renders the task of defining appropriate indicators to gauge project impact extremely arduous. However, it would be wrong to think that the process of drawing up indicators is a complex challenge per se. The apparent complexity is a product of the lack of expertise in these particular operational areas of the Bank Group.⁵⁴ One of many examples of indicator shortcomings is the program to strengthen the consumer protection system in Paraguay, which cites as an end-of-project indicator “consumers obtain satisfactory and prompt responses to their claims.”

3.72 **Better results were obtained with respect to midterm and final evaluations.** Of the 12 projects, 75 percent included provisions for a midterm evaluation and 83 percent provided for a final evaluation. Approximately US\$255,000 was set aside for these evaluations.

⁵⁴ In consumer protection, for instance, indicators related to the level of consumer demands could be developed. One such indicator might be: (quantity of requests for information + number of claims + complaints) / EAP in thousands. The efficiency of the oversight agencies could be measured using the following indicator: (Fines imposed + Corrective measures imposed) / GDP in US\$ millions.

Table 3.3: Project Evaluation

Country	Midterm evaluation	Impact assessment	Budget (US\$)
Argentina (consumer prot.)	No	No	0
Argentina (competition)	No	Yes	30,000
Brazil (consumer prot.)	Yes	Yes	31,000
Brazil (competition)	No	Yes	30,000
Ecuador	No	Yes	5,000
Nicaragua	Yes	Yes	40,000
Panama	No	No	0
Paraguay (consumer prot.)	Yes	Yes	21,000
Paraguay (procurement)	Yes	Yes	38,000
Peru	Yes	Yes	0
Uruguay	Yes	Yes	50,000
Venezuela	Yes	Yes	10,000
Total			255,000

3.73 **However, it would appear from interviews conducted that the staff in charge of new Bank and MIF operations are not familiar with the results of the projects in this area and think that performance was bad because of the cancellation of the competition projects.** This evaluation work and appropriate use of the funds for impact assessments may be of considerable benefit by providing data and solid information on which to base the MIF's decisions as to which projects it will or will not continue to finance.

IV. SUMMARY EVALUATION OF THE GROUP OF PROJECTS

A. Portfolio developments

- 4.1 **The portfolio of projects under review only began in 1997 and consisted of a group that did not attain critical mass in any of the types of interventions it comprised.** From that year on, an average of two operations a year were approved, until they totaled 12 projects in 2002. In the strict sense of the term, therefore, they did not officially qualify as a “portfolio.” Rather, they formed part of a group of projects labeled “Market Functioning,” which encompassed other subjects as well, such as Export Promotion and Trade, Alternative Dispute Resolution, Private Investment in Infrastructure, and Regulatory Capacity.
- 4.2 **The purpose of the MIF’s involvement in these projects was to lend support to the economic reforms of the 1990s by complementing national efforts to consolidate the opening up of the economy and liberalization of markets.** For that, it was necessary to focus on a new series of reforms emphasizing regulatory aspects and geared not only to generating greater market transparency but also to facilitating responsible participation by the private sector in the new economic setting and to strengthening the State’s capacity to oversee compliance with the new rules of the game.
- 4.3 **When the first operation was approved in 1997, however, involvement in the form of these projects had not been conceptually developed enough to offer them both to the Bank Group and the market.** Although that did not prevent new operations being approved year after year, no critical mass was achieved in any of the areas addressed and in many cases, ex ante, there was no clear notion of the role that the Bank Group would play in these reforms. As of 1997, an average of two operations a year were approved, rising to three in 2001, at which point the subject ceased to attract priority attention in the MIF. There was only one approval per year thereafter and very few new operation profiles are in the pipeline.
- 4.4 **As explained above, the operations were homogeneous and there were no major changes in the form of intervention.** Altogether nine new operations were carried out, of which 50 percent are still being executed. Initial results are promising inasmuch as 44 percent of the projects have already made progress toward achieving their objectives.

B. Gap analysis: MIF Actions versus the Context

- 4.5 **The MIF’s involvement responded to the needs of the context, but without having identified specific issues in which the MIF could play a strategic role vis-à-vis action by the Bank, for instance by completing the “last mile” in reform processes that would permit thousands of SMEs and users access to**

the benefits. There was a real and concrete need to reinforce certain key features of the new economic scenario. The privatization process presupposed approval of regulatory frameworks for the different sectors and the establishment of mechanisms to protect users' rights. Trade and market liberalization and deregulation also triggered significant changes in the number and size of enterprises operating in the market, especially in activities in which the State had played a prominent role. That made it necessary to establish not only regulatory agencies to monitor monopolistic practices and safeguard transparency in market transactions, but also agencies devoted to protecting consumer rights.

- 4.6 **At the same time, the new rules of the game also required greater transparency in government activities and clear rules governing relations between the public and private sectors.** Countries needed assistance in reforming and modernizing their government procurement and hiring procedures and improving the climate for participation by entrepreneurs and merchants in public sector business opportunities.
- 4.7 **In short, the MIF projects responded to a series of needs derived from changes that had occurred in the economic and political environment and they accurately identified a series of issues in which the MIF was well positioned to intervene.** Nevertheless, more effort should have gone into acquiring prior knowledge and monitoring in order to enhance the strategic dimension of the actions undertaken. The MIF's willingness to embark on projects with a high degree of innovation also helped spark interest within the institution for the issues that been identified.

C. **Gap Analysis: Consistency of the Actions Undertaken**

- 4.8 **A review of the MIF's basic documents suggests that the strategic intentionality expressed was not always put into practice. On the one hand, there were operational recommendations that were not implemented, such as the establishment of the line of action recommended by Working Group 2000. Even more remarkable was the failure to establish the cluster, which would focus on consumer protection, promotion of competition, and government procurement projects.** Paradoxically, the MIF identified these areas as priorities for its actions in the region but then failed to take the steps needed to put its priorities into effect.

Table 4.1: Institutional Documents and MIF Projects, by year

Documents	Perry Report				- Working Group 2000	- Project Clusters - Progress Report (WG 2000)	- Progress Report (WG 2000)
Year	1996	1997	1998	1999	2000	2001	2002
Projects		- Venezuela (C)	- Argentina (CP) - Panama (C, CP) - Peru (C, CP, IP)	- Argentina (C) - Brazil (CP)	- Brazil (C) - Paraguay (GP)	- Nicaragua (GP) - Uruguay (GP) - Paraguay (CP)	- Ecuador (IP)

Abbreviations: C = Competition, CP = Consumer Protection, GP = Government Procurement, and IP = Intellectual Property

- 4.9 **At the same time, some areas did not receive the same degree of attention or the importance attached to them in documents of the institution. Protection of industrial property rights was underscored in the Agreement establishing the MIF and in the Perry Report, and yet only one operation exclusively devoted to this issue was approved in a 10-year period, along with one component inserted into the institutional strengthening of INDECOPI (Peru) operation. It is worth pointing out that in the same period other institutions did manage to conduct intellectual property operations using tools (technical cooperation) similar to those employed by the MIF.**
- 4.10 **If one compares the dates on which the projects were approved and the date of publication of the institution’s documents examined above, the portfolio appears to have been boosted by the 2000 Report of the Working Group.** That year two operations were approved, followed by three in 2001.⁵⁵ However, after that there is a significant decline in new operations. It should be noted that that decline was not a result of instructions by the institution to cancel the portfolio or to reduce the funds channeled to it.
- 4.11 **In short, there is a high degree of inconsistency between actions at the institutional level, the MIF’s institutional goals, and actions taken to fulfill them, since the recommendations of the Working Group 2000 and those contained in the document establishing project clusters were not put into practice.** The priority attached in those documents to the areas addressed by the projects under review did not translate into concrete steps. On the contrary, the MIF’s interest in these areas gradually declined and there now appears to be little likelihood that the portfolio will pick up momentum. On the other hand, almost all the operations demonstrated internal consistency, in the sense that the goals of each project were consistent with the activities designed to achieve them. Here it was possible to show sustained consistency between objectives and proposed activities.

⁵⁵ The year 2000 operations entered the pipeline in 1999 (Paraguay) and 1997 (Brazil). The three operations in 2001 entered the pipeline in 2000 (Nicaragua), 2001 (Uruguay), and 2000 (Paraguay).

4.12 **Another aspect of consistency with respect to actions consists of determining whether all necessary steps were taken to attain the desired results.** Here certain weaknesses emerged, since both the MIF and the Bank proposed intervening in fields in which they lacked previous experience, without looking for ways to deepen their knowledge of those areas and without generating a critical mass of projects to buttress that investment in specialized knowledge of the sectors. In addition, the Bank Group lacked experts in these areas as well as a program for placing these operations in a strategic setting.

D. Areas of Opportunity for MIF Intervention

1. General aspects

4.13 **The volume of operations is low, as a result of which intensive experience has not been acquired due to the lack of a critical mass and of systematic support in the areas mentioned.** Yet the cases analyzed in the previous chapter show that in some cases expected results were achieved and at the same time the still incipient development of these areas in the region generates, as explained in previous chapters, opportunities for more interventions by the Bank Group. Against that backdrop, it becomes necessary to discern the specific role that the MIF might play.

a) The MIF as a laboratory of ideas

4.14 **The MIF should exploit one of its comparative advantages in the areas addressed by the projects under review, especially the possibility of its acting as a laboratory of ideas.** Given that only a few operations have been conducted so far by either the MIF or other multilateral agencies, there is still fertile ground for further operations and the identification of new areas. The region has serious deficiencies, and ultimately needs, in the four areas analyzed. Nevertheless, given the magnitude of the problems in all these areas, a conceptual effort should first be made to identify the special conditions and circumstances under which the MIF may play a unique role in testing new business concepts and models that constitute the “last mile” of already well advanced reform processes, so that these interventions may help to make the benefits of reform a reality for a large number of SMEs.

4.15 **However, the MIF cannot effectively perform its role as a laboratory of ideas if the other units in the Bank do not support it in the reflection process.** The Bank Group must participate and contribute by identifying its needs and determining which areas could offer opportunities for complementary activities by the Bank and the MIF. Some of the problems detected by this evaluation, such as the small number of projects or lack of a critical mass, derive from a lack of reflection on the part of both the MIF and the Bank regarding the manner and scope of the institution’s approach to the subjects under review.

b) The importance of a conceptual approach

- 4.16 **If, in light of the results of the actions undertaken, the Donors agree to continue financing projects in these areas of market functioning, it will be necessary to invest more in knowledge so as to achieve a clearer strategic orientation in the intervention program.** Under present conditions, there is little likelihood of the project portfolio acquiring either the size or the quality needed to match the importance assigned to these issues by Working Group 2000 and subsequent documents. To reverse the current situation, it is necessary to work out a development plan for the portfolio.
- 4.17 **The first step to be taken in this direction is to get to know the sector better.** In-depth analysis of each of the areas is needed in order to be able to identify key issues, experiences financed by the Bank and other donors, and the needs of the countries of the region. That in-depth analysis would have numerous positive repercussions since it would make it possible to discern with greater accuracy the areas of opportunity for interventions by the MIF and the Bank; it would help to determine the initial criteria governing MIF involvement; and it would enhance complementarity with actions taken by the Bank.
- 4.18 **Better knowledge of the sector would also sharpen the definition of desired objectives and facilitate the use of appropriate indicators to measure the impact of the interventions.** For example, although it is clear that consumer protection programs seek to produce more informed consumers and to achieve greater protection of their rights, it is worth asking how degrees of consumer protection are measured and to what extent the agencies concerned are effective. The programs under review frequently used very basic criteria, since in some cases there were no laws or agencies needed for a consumer protection system to work. The MIF and the Bank have to face up to the challenge posed by the lack of information and expertise in the institution with respect to these areas in order to improve their performance at the design and evaluation stages.
- 4.19 **The second step is to define the scope of the MIF's involvement.** Once it has familiarized itself with the current situation in each sector, the MIF will be in a position to select the specific areas of intervention for its new operations. For example, with respect to government procurement, it will be possible to determine whether the idea is to design and implement electronic systems or just to concentrate on developing interfaces to ensure greater participation by the private sector. Or even more importantly, whether the idea is to work only with electronic purchases or, in addition, with other areas of e-government that matter to the private sector. With respect to promotion of competition, the MIF will be able to decide whether it will finance the institutional strengthening of agencies at the national level, specific policies for the privatized sector, or the development of competition policies in the framework of regional integration processes.

- 4.20 **The third step is to define the criteria for intervention.** Determining the circumstances under which the MIF is prepared to act may not only facilitate the identification of new operations but also enhance the chances of achieving the desired results. Just by way of an example, in promotion of competition or consumer protection, it would be possible to set as an initial criterion that the agencies concerned should already have been established and have permanent staff, and that mechanisms exist to ensure that they are genuinely autonomous vis-à-vis the political authorities. Or criteria could be established to determine what kinds of consumers' associations qualify for MIF financing.
- 4.21 **The fourth and last step is to publicize the priorities.** Once the areas and criteria for its intervention have been chosen, the MIF should make an effort to disseminate and market its new priorities. This would help it to fine-tune coordination with the Bank. Almost all the interviews conducted with Bank staff revealed concern about not knowing what topics were on the MIF "menu" and what the eligibility criteria were.

c) Institutional aspects

- 4.22 **The gap between design and execution.** There is a tendency to treat design and execution as separate compartments, in which what happens in one is completely disconnected from what happens in the other. Once the design phase has been finished and the operations have been approved, the staff involved in that phase lose contact with it. The operation remains from then on in the hands of the Country Office concerned until execution is completed. Thus, the project design team normally has no knowledge of how execution fared.
- 4.23 **Improvement of evaluation practices.** To grasp the impact of projects and the lessons to be drawn from execution, it is not enough to include evaluations in the operations. An effective process needs to be established to ensure that those evaluation documents have an impact on the program planning process. To that end, it is not only necessary to compile the evaluations and have them available in the MIF's offices but also to have mechanisms generating a learning process among the staff in charge of new operations. In other words, it is not enough to have evaluations on file. This is no easy matter, given the large volume of projects and of material to be absorbed by the staff.
- 4.24 **Ignorance of successes and failures, and the reasons for them.** The problems described above lead to ignorance regarding the successes of the various projects. For instance, the Brazil, Peru, and Panama operations have become regional benchmarks in their respective fields. With varying degrees of success, the three projects today serve as models for countries in the region wishing to introduce similar reforms. Nevertheless, inside the MIF and the Bank there is little familiarity with those achievements.
- 4.25 **The advantages of links to specialized institutions.** Given that the MIF does not have experts for each of the areas it addresses, partnerships could be forged

with think tanks, specialized nongovernmental organizations, universities, etc. in order to gain access to cutting-edge information. That would ensure that the MIF remains on top of the latest developments and able to spot new areas of activity. Some of the institutions that played a part in this first round of interventions and demonstrated ample institutional capabilities could be strategic partners in this new phase.

- 4.26 **Coordination with other donors and multilateral organizations.** Improved coordination with other institutions would make it possible to take advantage not only of opportunities for project synergies but also of opportunities to learn from the lessons of other regions. The OECD and UNCTAD, for example, have acquired ample international experience with consumer protection and competition policies. The WTO has developed research and working groups in the area of government procurement. WIPO is the leading international organization for intellectual property issues. Closer contact with those institutions would benefit the MIF as it would facilitate access to relevant experience and specialists.
- 4.27 **Innovation and failures.** Given that the MIF makes innovation one of the hallmarks of its projects, it is only natural that some fail, are cancelled, or simply do not yield the expected results. These are the natural risks associated with exploration of innovative areas. Nevertheless such “setbacks” should not be viewed as failures but rather as excellent learning opportunities that point to the reasons or factors that prevented achievement of desired outcomes. One example in which this dimension was ignored was the area of promotion of competition, in which three out of five operations were canceled.
- 4.28 **Improved notification of priorities.** The MIF has not managed to make its priorities known within the Bank Group, in respect of this group of projects. The Bank staff interviewed frequently mentioned problems in connection with the MIF, such as the lack of clarity in its eligibility criteria or lack of information regarding the strategy pursued by the MIF in relation to these areas. They also mentioned cases of projects that had been rejected even though they were ostensibly similar to others that had been accepted. This was particularly the case with government procurement.
- 4.29 **Integration with Bank actions.** This point is closely related to that mentioned in the previous paragraph. Not much coordination was perceived between the Bank’s actions and those of the MIF. There was only one case in which Bank and MIF operations complemented one another with a view to achieving the desired objectives (the government procurement program in Uruguay). Numerous opportunities for coordination exist, especially with respect to modernization of the State.

2. Regarding the “Group of Projects” status

4.30 The MIF has done pioneering work in the areas under review by identifying a series of issues of great importance for the private sector. Its projects helped open new fields for Bank Group operations. Almost seven years after the first project in this portfolio got under way, the MIF’s interest in these areas has declined. Nevertheless, areas of opportunity still exist in the specific topics addressed by this group of projects, which will be reviewed below.

a) General considerations

4.31 **The MIF’s initial approach to the projects under review was actually rather broad and flexible. As time passed, however, it began imposing some restrictions and defining the scope for action in order to focus its activities on certain specific areas, although they were never clearly identified or substantiated.** Gradually, general criteria were developed for the eligibility of new operations. Some examples of criteria were that projects had to be innovative; have an impact on the private sector; could not compete or overlap with Bank operations; and that if a project involved working with the State, institutional strengthening could be an important component but not the ultimate objective.

4.32 **In this way, the MIF has gradually evolved in terms of its approach and priorities. Currently, the project portfolio lacks definition and clear goals.** While some MIF documents attached high priority to these projects, in practice the MIF appears to have lost interest in them. The intellectual property area never managed to turn into a critical mass of projects. The competition projects are being questioned due to the cancellations of programs in Argentina, Brazil, and Venezuela. The government procurement operations have come under fire and MIF staff doubt whether they will continue. On the one hand, some point out that this area is the exclusive preserve of the divisions dealing with modernization of the State and the MIF should ultimately withdraw from the area. On the other hand, the Bank has intervened in this sector via loans, while the MIF has done so using technical cooperation funds, which has led to claims from the countries that processed operations under the first type of arrangement. Finally, while the consumer protection operations are the least controversial and the most numerous, they have not shown significant growth.

4.33 **The indecision in this matter is the result of the lack of precise and clearly defined objectives for these areas.** When the MIF embarked on this portfolio, it made no effort to get to know the sector and define a specific niche for its projects. While at first this could be excused on the grounds of a lack of experience in the subjects addressed, the breadth of the initial approach has gradually turned into a significant handicap. So much so that, seven years down the road, the MIF still has not found the appropriate way to involve itself with these operations. Nor has it accumulated a critical mass of expertise in these fields.

- 4.34 **There are two aspects of coordination between the MIF and the Bank that have not been addressed satisfactorily: complementarity in their actions and a segmented vision of the areas concerned.** At the same time, as mentioned above, both the Bank and the MIF should work jointly to ensure greater complementarity in their interventions. This implies an effort of reflection to identify areas for action and mechanisms for intervention. At the same time, the Bank's segmented view of some of the areas under review is an obstacle to Bank Group-MIF coordination. For example, the competition issue falls within the sphere of the units dealing with modernization of the State, but also of the infrastructure and capital markets divisions, in respect of public utilities. Intellectual property rights come under modernization of the State when they involve institutional strengthening projects, but under the jurisdiction of the science and technology departments if they involve innovation systems. All this fragmentation makes it difficult for the MIF and the Bank to address these issues clearly. A joint vision could, moreover, help identify new approaches to alleviate the challenges typically posed by the political economy of these projects.
- 4.35 **The aforementioned problems can be faced by pinpointing existing areas of opportunity, while not losing sight of the MIF's comparative advantages.** This makes it possible to determine areas in which its intervention can be effective and comply with institutional parameters (impact on the private sector, innovation, additionality, etc.). Intervention using typical institutional strengthening programs is where the MIF has least additionality, or at least where it is limited simply to the financial aspect, compared with other funding sources that the Bank can offer.
- 4.36 **Defining the form of intervention.** Some of the reforms in which the MIF plays a part involve intervention on a major scale. In the public procurement area, for instance, it consists of identifying the system best suited to the country, designing it, getting it up and running, offering training for the public and private sectors, and reforming and standardizing internal hiring and procurement procedures in the various spheres of public administration. In some cases, it even involves designing a new legal framework and enactment of a law. This last task is the hardest and the one for which results are the hardest for any donor to predict. Therefore it is important for the MIF to define the moment of "entry" and the role it will play, adjusting that role to the circumstances on which its success depends. The operations in Peru and Uruguay may throw some light on these aspects. In the case of INDECOPI, the MIF made its contribution after the institute was up and running. The timing of that contribution was appropriate since it was able to consolidate INDECOPI's activities and allow it to fulfill its potential as an institution. In the case of the Uruguay project, the MIF financed the design and implementation of the government procurement system. Its contribution also came at the right time, since the country had previously identified its needs and had coordinated and integrated this project with other, earlier and complementary reforms carried out by CEPRE. In short, the MIF's intervention does not necessarily have to launch the project. It can intervene at

more advanced stages of the process without thereby diminishing the importance of its contribution, which may, perhaps, achieve better results in terms of impact.

- 4.37 **Exploiting comparative advantages.** One aspect applying to all four areas under review that deserves special mention is the innovation that the MIF looks for in its projects. This enables it to risk forays into unusual territory and areas that have barely been explored. The MIF can capitalize on this comparative advantage by financing pilot experiences in untapped areas. Given that the MIF avoids competing with the Bank and duplicating efforts, it has an important role to play in identifying new opportunities. Apparently, that advantage was not fully exploited in the portfolio under review.
- 4.38 **Another advantage of the MIF is that it operates with nonreimbursable technical-cooperation funding. This gives it a very flexible tool for working with the State in areas that benefit the private sector.** Well used, nonreimbursable funds and the temptation to benefit from them can encourage the adoption of highly valuable reforms, especially in key areas for the private sector that are not on the political sector's list of priorities.

b) Specific considerations

- 4.39 Below we address specific considerations for each of the four areas analyzed: consumer protection, competition, competition in public procurement, and intellectual property. It should be underscored that although frequent reference is made to areas of opportunity for MIF actions, this is only by way of illustration. Any final decision to intervene in the proposed areas should be based on more in-depth reflection and research into the opportunities.
- 4.40 **Consumer protection.** Consumer protection has been the most prolific and least controversial area in the portfolio. The projects financed in Peru, Panama, Brazil, Argentina, and Paraguay provide very valuable lessons and experience for the preparation of new projects and for identifying new areas of intervention.⁵⁶
- 4.41 **Numerous opportunities exist in the public utilities area.** On the one hand, the sectoral regulatory bodies have not lived up to expectations with respect to attending to and protecting users. Rather, in many cases, they have taken a passive stance, failing to distance themselves equally from service providers and users. On the other hand, exacerbating matters, there were no consumer associations to exert pressure on the demand side and to publicize consumer rights and educate the community. The experience of IDEC in Brazil provides a wealth of examples, models, and strategies to be taken as benchmarks in future operations.

⁵⁶ As this report was being written, a consumer protection and promotion of competition project was approved in Uruguay (October 2003).

- 4.42 **Protection of users of public utilities is an area in which synergies could have been exploited between the MIF's consumer protection projects and those establishing sectoral regulatory bodies.** There could also have been closer coordination with some of the Bank Group's infrastructure operations. The IDEC case also shows the benefits that can be obtained when consumers' associations and the regulators coordinate their efforts. IDEC, for example, advises the oversight bodies regarding the quality of customer service. It also provides them with valuable information obtained in the course of its periodic independent performance evaluations of those bodies.
- 4.43 **Another area of opportunity involves the private sector, which has hitherto been absent from activities financed by consumer protection projects.** Future operations should provide for an active role on the part of associations of merchants and entrepreneurs, so as to rope them, on a collaborative basis, into the strategy for developing or strengthening consumer protection systems. Partnerships with the private sector, universities, or research centers may also be promoted with a view to monitoring the quality of products and compliance with international standards. This would not only raise the levels of consumer protection but also the international competitiveness of products.
- 4.44 **Advantage can also be taken of the MIF's experience with arbitration and conciliation to boost the impact of the consumer protection projects and facilitate the setting up of dispute resolution services.** In Peru, significant progress has been made in the use of conciliation to settle consumer claims, thanks to two MIF interventions. This experience could prove of great assistance to countries with still incipient consumer protection systems. At the same time, countries like Argentina have acquired interesting experiences in consumer arbitration. This is a variant that uses arbitration as a mechanism for resolving disputes between consumers and merchants. In this system, a register is usually kept of enterprises that agree to submit to arbitration in the event of a conflict with a consumer, the incentive in this case being the publicity an enterprise receives for its good customer service policy. Given the MIF's familiarity with these areas, its experience could be tapped for incorporation into new operations,
- 4.45 **Finally, considerable opportunities exist for working with civil society organizations.** As with the model applied in the cases of ADELCO (Argentina) and IDEC (Brazil), intervention of this type by the MIF could not only promote a more active role for institutions such as consumers' associations, think tanks, and universities; it could also lead to concentration on areas previously identified as priorities (public utilities, banking, supermarkets, etc.).
- 4.46 **Promotion of competition.** Operations aimed at promoting competition have had excellent results. The programs in Peru (INDECOPI) and in Panama (CLICAC) have become models for the countries in the region. They have provided a wealth of experience that could prove useful for designing new operations in the Bank Group.

- 4.47 **The areas of opportunity to be found in this sphere result from an ongoing shortage of institutional supports for competition.** A large number of countries in the region have no systems or agencies for monitoring competition in markets. In other cases, there are problems associated with the weakness of institutions, such as the shortage of trained personnel, lack of familiarity with best practices, and difficulties in enforcing the regulations established in the regulatory frameworks.
- 4.48 **Problems with respect to competition and consumer protection vis-à-vis public utilities have been extensively publicized in recent years.** The inability of the agencies and sectoral oversight bodies to ensure compliance with the provisions contained in the regulatory frameworks and safeguard the interests of consumers and users has underscored the shortcomings of the system.⁵⁷ There are extensive opportunities to coordinate competition and consumer protection policies with infrastructure regulation policy.
- 4.49 **Analysis of the experiments financed by the MIF suggests possible new lines of action for the Bank Group.** The interface between the system for promoting competition and the judiciary is a bottleneck in many countries. Courts are not familiar with the issues involved and their lack of training in this field limits the effectiveness of the work of the competition agencies. The internal capabilities of the agencies also need to be strengthened by promoting more extensive participation by the high-level government authorities responsible for economic decision-making and by tying in competition with other functions associated with market transparency.
- 4.50 **Although preserving competition is important, it is also necessary to create more of it.** This can be done by including some key issues on the reform agenda, such as the development of market rules to replace State intervention; revision of patterns of entrepreneurial behavior inherited from former redistribution policies and opposition to the barriers to market access created by government regulations. The current emphasis is on reviewing mergers and acquisitions, which is a cumbersome task compared to other lesser but equally important areas.
- 4.51 **Another area of opportunity for the portfolio is the harmonization of competition policies in the framework of regional integration agreements.** The deficiencies already described with respect to competition at the national level are replicated at the international level. Intervention by the MIF could, in

⁵⁷ In Argentina, for example, the Nacional Audit Office (*Auditoría General de la Nación*) carried out an evaluation in 2003 of compliance with the obligations established in the regulatory framework for privatized public utility providers. The Final Report identifies severe deficiencies in the provision of services and in the degree of compliance with the obligations taken on by the providers. (ánse with theEl informe final identifica severas deficiencias en la prestación de los servicios como así también en el nivel de cumplimiento con las obligaciones asumidas por las empresas prestatarias. Auditoria General de la Nación (2003).

some cases, have a doubly beneficial effect since it would impact two dimensions simultaneously.⁵⁸ For instance, in 1996 the member States of MERCOSUR signed a protocol establishing directives for coordination of regional competition policy. However, that effort presupposes the need to establish local competition agencies, with the capacity to control all areas of the economy and to interact with the government in formulating public policies, which is something that so far only half the States parties to the Agreement have managed to do.

- 4.52 **Conflict resolution in the area of competition is of the utmost importance.** The use of alternative dispute settlement mechanisms may have a highly beneficial impact since it means that not all the investigations of the competition agencies have to be settled through administrative or judicial channels. Here it is possible to build on the experience acquired by the MIF in its projects concerning arbitration and mediation in commercial conflicts.⁵⁹
- 4.53 **There are also very valuable opportunities for working constructively with enterprises in promoting competition, shifting the emphasis from punitive aspects to active cooperation with the private sector.** One example of this approach is the certification program for enterprises that operate fairly on the market. This kind of Antitrust ISO standard acknowledges enterprises that are demonstrably fair competitors and comply with the laws promoting competition. In this way, companies can make use of this acknowledgement in their relations with their consumers and at the same time benefit directly from complying with the law.⁶⁰
- 4.54 **The changes described in the retail sector, as a result of the irruption into the market and concentration of the large chain stores, open up new avenues of activity such as the application of corporate responsibility standards that foster mutually beneficial agreements with local supplier SMEs.** The increased purchasing power of the large supermarkets, new business practices, and the entry of new competitors have led to friction between supermarkets, suppliers, and retailers. To solve these problems and their negative effects on competition and consumers rights, some countries have adopted codes of business conduct or other contractual regulations designed to optimize relations between retailers and suppliers.

⁵⁸ See, for instance, Tavares de Araujo, Jose and Luis Tineo, "The Harmonization of Competition Policies among MERCOSUR Countries." Organization of American States, 1997.

⁵⁹ For an analysis of the challenges posed by dispute resolution in connection with the promotion of competition, see Basanes, Federico, Eduardo Saavedra, and Raimundo Soto, "Post-Privatization Renegotiation and Disputes in Chile." Washington, D.C., September 1999, IFM-116. Inter-American Development Bank.

⁶⁰ This program called "Programa de Prevenção de Infrações à Ordem Econômica" is run by the Economic Law Secretariat of the Department of Justice in coordination with CADE.

- 4.55 **The changes in marketing chains and more stringent rules regarding packaging, hygiene, and product processing have marginalized a large number of farmers and small producers, and created interesting business opportunities.** There are major opportunities for exploring regulatory definitions and commercial agreements that allow for new arrangements that mitigate the impact on smaller enterprises and tie in with experiences gained with the development of certification already promoted by the MIF (e.g. the ISO standards). To that end, some multilateral agencies have devised programs to reverse this situation, for example by training producers to reach the standards required by supermarkets (Guatemala) or through technical assistance with marketing, processing, and packaging their products (Brazil). For its part, the MIF has had experiences in Uruguay and Argentina aimed at strengthening the retail sector vis-à-vis the large supermarkets.⁶¹ These kinds of projects serve to let those who appear to be “victims” or “losers” as a result of market changes undergo a reengineering process and reinsert themselves in the productive process.
- 4.56 **Finally, the MIF and the Bank have an opportunity to learn from the cancellation of the promotion of competition programs in Argentina, Brazil and Venezuela.** Close scrutiny of the circumstances that led to those cancellations could enrich the institutional experience of the Bank Group and deepen its grasp of the needs of those kinds of project. This would also preempt the growing perception in the MIF that such projects were canceled because they are innately too complicated and it is therefore not worth continuing to invest in this area. The detailed study of those projects would also make it possible to determine the criteria for MIF involvement in this area. Some staff at the Bank pointed out, for instance, that before intervening the Bank Group needs to conduct a cautious evaluation of governments’ political, institutional, and financial commitment.
- 4.57 **Competition in government procurement.** Overlapping with the Bank’s activities was one of the factors that led to the slow-down in the MIF activities in this area. In addition, the overlap has caused confusion in the Bank’s operations departments regarding MIF policy for this sector. It is necessary to define the institution’s role in this area and how it relates to the operations carried out by the modernization of the State units.
- 4.58 **The government procurement program in Uruguay paves the way for possibly identifying new forms of intervention that can assist with the “last mile” of the major reforms and open up access to the benefits for a large number of SMEs.** That project emphasized **dissemination of information to the private sector** and managed to generate an interface between the electronic

⁶¹ Since 1999, the MIF and the Cámara de Almacenes Minoristas, Baristas y Afines have been operating the Program to Strengthen Retail Trade. The purpose of this program is to reposition food retailers following a re-engineering process to raise their competitiveness. So far over 960 enterprises have taken part in this project’s activities in Uruguay.

system for government purchases and potential suppliers of inputs. Thanks to the intervention of an enterprise that had already acquired experience with municipal procurement, entrepreneurs and merchants gained increased access to information about business opportunities with the State. At the same time, there was a snag: the Asociación de Almaceneros, Baristas y Minoristas expressed interest in the subject but lacked the technology and institutional capability to link up with the electronic system and generate opportunities for its members.

- 4.59 **There are also opportunities for more active private sector participation in government procurement systems.** There is room to explore the possibility of outsourcing management of the systems to the private sector. In addition, emphasis could be placed on more active participation by business associations and chambers of commerce in the design and operation of the systems.
- 4.60 **Opportunities to work with civil society organizations also exist.** As with the protection of consumer rights, much of the demand for transparency in government procurement is generated by civil society. Some experience has been acquired in the region with “integrity pacts,” designed to enhance transparency in government procurement and tenders, reduce corruption, and improve the rules of the game for private sector participation. These practices are promoted by NGOs through strategic partnerships with the government and the private sector and they may be local, provincial, or national in scope.
- 4.61 **Further opportunities exist for developing government procurement in connection with integration processes.** This is a crucial topic for the future of the region, especially for the private sector, since it will trigger transnational business opportunities.
- 4.62 **Finally, if the MIF is interested in improving the business climate with the public sector, which would lead to more opportunities for the private sector, it should not restrict itself only to electronic procurement (e-procurement) operations. There are a number of areas within e-government** that are also based on the incorporation of technology to improve relations between the State and the private sector.⁶² Some experience has already been acquired in the areas of taxation and social security.⁶³
- 4.63 **Intellectual property.** This is one of the areas with the fewest projects and one in which there is possibly less clarity as to the activities that the MIF should finance. The challenge is to develop an approach geared not so much to protection but rather to promotion of intellectual property as a factor that facilitates business. Although this presupposes an effort to obtain an in-depth understanding of the sector, it would be possible to offer new products to

⁶² “Manual.Gob. E-Government Strategies in Region 1 Countries: Definition of an Analysis Model and Case Studies.” Inter-American Development Bank, Washington D.C., March 2003.

⁶³ As this report is being prepared, the MIF is evaluating an operation to incorporate the use of technology in tax payment over the Internet in Chile.

promote private sector development in the region. The franchising phenomenon described in Chapter I is one example of how these tools can be used to expand business. Another challenge is how to expand activities beyond the property registries. Although they are the linchpin of the system, an effort should also be made to seek mechanisms to achieve more active private sector participation, via, for example, business associations and chambers of commerce. There is also a part to be played by universities, think tanks, and research agencies.

- 4.64 **There are some areas still not explored by the MIF, such as promotion of franchising and appellations of origin.** The former has proved to be a key factor in facilitating the expansion of new business models by SMEs in the region, and even for surviving difficult economic times. The latter may serve as a tool for differentiating products and thereby opening up new markets for producers, especially in association with emigration processes and the incorporation of new ingredients in diets prompted by globalization.