

Competition Law and Policy in Latin America

Recent Developments

EDITED BY
PAULO BURNIER DA SILVEIRA



Wolters Kluwer

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Foreword

António Gomes

Competition Policy, Enforcement and Welfare in Latin America

Several countries in Latin America have undergone important economic and social transformation in the past two decades, engaging in reforms to favour open market economies which included the adoption of competition laws.

In the 90s and the 2000s, countries such as Argentina, Mexico, Brazil, Chile and Colombia, which have had competition laws for decades, have significantly modernized their competition laws whilst several countries introduced modern competition laws. More recently, further improvements based on national experience and international best practices were introduced, as is the case of the reforms of 2011 in Brazil or 2013 and 2014 in Mexico.

Effective competition is critical to guarantee a dynamic business environment and to deliver consumer welfare through lower prices, better quality and greater choice.

Competition among businesses can deliver efficiency improvements and brings newer and better products to consumers through innovation, leading to gains in productivity, competitiveness and economic growth. But a competitive environment with adequate competition rules and robust institutions also contributes to improve business confidence or to reduce the risk of corruption. Competition benefits not only consumers, but also firms, the State and taxpayers.

The OECD has been engaged in the development of competition law and policy in the region for many years. This has taken several forms. First, in partnership with the Inter-American Development Bank (IDB), the OECD has established, in 2003, the Latin American and Caribbean Competition Forum (LACCF). This Forum has been contributing to stronger and more effective competition law enforcers and advocates for pro-competitive reform, through the sharing of experiences and establishment of best practices in the region. The success of the LACCF also shows the growing importance

of regional cooperation as the economies in the region become more and more interdependent.

Second, the OECD has supported several countries in identifying scope for improvement in their competition frameworks, through reviews which have often served as guidance for implemented reforms (Argentina, 2009; Brazil, 2005 and 2010; Chile, 2004, 2010, 2014; Colombia, 2009, 2016; Costa Rica, 2014; El Salvador, 2008; Honduras, 2011; Mexico, 2004; Panama, 2010; Peru, 2004; as well as follow up, in 2007 and 2012, of the recommendations in previous peer reviews in Latin America).

Lastly, in many countries in the region, the OECD has been providing capacity building in competition policy and enforcement, promoting the fight against bid-rigging, and also developing competition assessment of legislation and regulation which may unduly restrict competition.

This book brings together authors with extensive experience in Latin America, who bring their first hand experience and insight on the developments in competition law and policy in the region. It will serve as a testament to the impressive changes that have strengthened competition laws and institutions in recent years to the benefit of consumers and the economies of the majority of countries in Latin America. By doing so, this book will certainly contribute to shaping our views on how competition law and policy will, or should, evolve in the years to come.

Presentation

Vinícius Marques de Carvalho

A New Era for Competition Policy in Latin America

The new competition legislation in place in Brazil since 2012 significantly changed the structure of the Administrative Council for Economic Defense (CADE) in its capacity of watchdog for competition law, including merger control, unilateral conduct and antitrust sanctions. The overall numbers are quite impressive: CADE has drastically reduced the average time analysis for merger review and has exponentially increased the number of anticompetitive practices condemnations. The new legal framework enabled CADE to become one of the most important competition authorities in the world.

Nevertheless, the Brazilian experience is not a sole man journey in the region. This trend of boosting competition enforcement may be noticed thorough Latin America. The Mexican recent reform is surely an interesting example, as the new institutional setup allows for greater competition enforcement policy in line with what was experienced in Brazil.

This book sheds light on the increasing role of competition law and policy in Latin America. In twenty chapters, including contributions from Argentina, Brazil, Chile, Colombia, Ecuador, El Salvador, Mexico and Paraguay, the readers will have the chance to confirm the trend mentioned above, which became a reality in a very short time. In addition, contributions from experts with great experience from international organizations, such as the OECD, UNCTAD and the World Bank, complements the national experiences shared by local competition experts. In total, thirty-one competition experts participated in the endeavor.

The book is divided into three sections: (i) Institutional setups and advocacy efforts; (ii) Enforcement experiences, including anticompetitive practices and merger control; and (iii) International cooperation.

In a first section, new Latin American setups for competition policy are presented, including the recent legislation changes in Mexico and Paraguay. Some

different advocacy initiatives are also addressed in other contributions, for instance those related to compliance in Brazil as well as efforts lead by the World Bank and the OECD in the region. The section reflects the constant effort to improve the governing rules about competition protection in the Latin America.

A second section focus on the analysis of concrete enforcement experiences in Latin America. It includes chapters covering predatory pricing, the use of indirect evidences, liability of company directors, bid-rigging, among others. The authors did not hesitate to put forward some difficult issues in the daily life of a competition authority, which may assist other competition authorities in the region to seek for solutions to similar challenges.

Finally, a third section will serve to illustrate international cooperation efforts in the region. It demonstrates the importance of international cooperation for competition protection, as well as ways to improve international cooperation among Latin American countries. Cooperation in enforcement activities, future of competition policy within Mercour and Trans-Pacific Partnership are topics addressed in this section

In a nutshell, competition law and policy in Latin America have taken huge steps towards development in the last decade, which enables us to speak of a “New Era” for competition enforcement in the region. Companies should be aware of this trend in order to increase efforts to comply with competition legislation, which are subject to modern investigation techniques and heavy fines.

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