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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Cancels & replaces the same document of 27 May 2024**

**Latin American and Caribbean Competition Forum**

**Session III: Ex officio Investigations – Call for contributions**

9-10 October 2024

This document is circulated in preparation of the discussion under Session III of the Latin American and Caribbean Competition Forum (LACCF) that will take place during 9-10 October 2024 in Santo Domingo, Dominican Republic.

Delegates are invited to submit their written contributions to the Secretariat by **31 July 2024, Wednesday**.

In case you need additional information related to this session, please contact:

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## Session III: Ex officio Investigations

### – Call for Contributions –

1. This year's Latin American and Caribbean Competition Forum (LACCF) will feature a session on "Ex officio Investigations" in the fight against cartels. This document provides some background information on the topic and invites delegates to make a written submission to the discussions.
2. Traditionally, competition authorities' cartel detection tools are classified into reactive and proactive methods. Reactive tools rely on an external event to occur before the competition authority becomes aware of an issue, whereas proactive tools are agency generated, enabling investigations to be initiated from within the competition authority. Examples of reactive detection tools include leniency applications, complaints (e.g. by competitors or customers) and external information (such as whistle-blowers and informants). Proactive tools range from more traditional methods (such as co-operation with other agencies, industry monitoring and following a market study) to more advanced digital and technological instruments (namely, cartel screens). However, the distinction between reactive and proactive detection tools is not always clear, and they often overlap (e.g. complaints that require active initiative from the competition authority to open an investigation).
3. Although many jurisdictions worldwide have relied on leniency programmes to fight cartels, in recent years several competition authorities started investing more in alternative detection methods in order to foster cartel enforcement, in light of the limitations of leniency, which also depends heavily on the good functioning of other detection methods.
4. In Latin America and the Caribbean (LAC), cartel enforcement has improved in the last decades with several jurisdictions adopting competition laws or strengthening existing competition legal frameworks, for instance with the adoption of leniency and whistleblower programmes. However, the overall number of cartel decisions in the region is still below the OECD average according to the [OECD CompStats Database](#), which compiles general statistics relating to 77 jurisdictions, including 16 LAC countries, between 2015 and 2022. In addition, cartel enforcement is highly concentrated in a handful of LAC jurisdictions.
5. While many have adopted a leniency programme, only a few LAC countries have been successful in implementing an effective leniency policy. The use of proactive methods seems also modest, with a reduced number of ex officio investigations when compared to OECD countries, which also help explain why leniency programmes are not effective in most LAC jurisdictions.
6. In this context, LAC competition authorities have been seeking to enhance their cartel detection tools in recent years, particularly by expanding the use of proactive techniques. This suggests that it is timely to address the topic, allowing delegates to share their experiences, including challenges and positive outcomes.
7. Several sessions held by the OECD Competition Committee, the Global Forum on Competition and the LACCF over the last years have discussed the topic of cartel detection techniques, including ex officio investigations. These include the Roundtables on [The Optimal Design, Organisation and Powers of Competition Authorities](#) (2023), [Alternatives to Leniency Programmes](#) (2023), [The Use of Economic Evidence in Cartel Cases](#) (2023), [The Future of Effective Leniency Programmes: Advancing Detection and Deterrence of Cartels](#) (2023), [Data Screening Tools for Competition Investigations](#) (2022), [Digital Evidence Gathering in Cartel Investigations](#) (2020), [Promoting Effective Competition in Public Procurement](#) (2016) and [Ex officio Cartel Investigations and the Use of Screens to Detect Cartels](#) (2013).

8. Building up on these discussions, the session will focus on ex officio investigations to fight cartels, in particular the proactive cartel detection tools. More specifically, this Roundtable will examine:

- Recent trends on cartel enforcement in Latin America and the Caribbean.
- The classification of cartel detection tools into proactive and reactive, and how these techniques can be combined to benefit each other.
- How competition authorities can use technology to increase cartel detection.
- Experiences with ex officio investigations in the region, including the most successful proactive cartel detection tools.

9. As in past years, the quality and utility of this session will be greatly strengthened by written contributions, which should be sent to the OECD Secretariat by **Wednesday 31 July 2024**. In order to assist you with the preparation of your contribution, the Annex includes a number of questions on which you may wish to focus and a suggested bibliography. The list in the Annex is not exhaustive, and you are encouraged to raise and address other issues in your submissions and during the discussion. We also strongly encourage you to discuss and comment on your relevant enforcement experience in this area.

10. The session will be supported by a Secretariat background paper, which will compile the main issues related to the topic. The LACCF webpage will be the primary vehicle for conveying documentation and related links on this subject. It will become available on its main page at [www.oecd.org/competition/latinamerica](http://www.oecd.org/competition/latinamerica). Unless explicitly requested not to do so, the Secretariat will reproduce all written contributions on the LACCF website.

11. All communications regarding the documentation for this session should be sent to Ms. Nasli Aouka ([Nasli.AOUKA@oecd.org](mailto:Nasli.AOUKA@oecd.org)). Please address any substantive queries relating to this discussion to Mr. Marcelo Guimarães ([Marcelo.Guimaraes@oecd.org](mailto:Marcelo.Guimaraes@oecd.org)).

## Annex A.

### Suggested questions for written contributions to Session III on Ex officio Investigations

This Annex provides a list of questions for consideration in preparing your written contribution. A contribution does not need to cover every listed question, and you may wish to address issues not listed here. You are encouraged to refer to relevant indicators and cases where appropriate to illustrate your answers. Please prepare your contribution as an integrated essay rather than a list of answers to questions.

#### A. Interplay between proactive and reactive cartel detection tools

- What are the main cartel detection tools in place in your jurisdiction?
- How are these detection tools classified (e.g. reactive and proactive methods)?
- What is the ratio of cartels detected via reactive v. proactive tools?
- Has the ratio of cartels detected via reactive v. proactive tools changed over time? If so, what do you think are the reasons for such a change?
- Do you see any complementarity or trade-offs between proactive and reactive detection tools?
- What is the standard of proof required to open cartel investigations?
- Do you have an intelligence unit? If so, what type of skills does the staff have?
- Do you use data analytics and technology to improve existing or develop new cartel detection tools?

#### B. Industry monitoring

- Do you have industry monitoring mechanisms in place? If so, what types of tools?
- Do these tools focus on specific sectors or industries or are they broadly applicable?
- Have any of these mechanisms resulted in the opening of cases?
- Have you used any public documents (e.g. business annual reports, media, specialised press and social networks) to detect cartels? If so, what types of documents were used?
- How do you ensure the accuracy and reliability of the information gathered from industry monitoring tools?
- Have you faced any challenges or limitations related to the use of these tools? If so, how are these challenges managed?

#### C. Cartel screening

- Do you use screenings to detect cartels? If so, what type of screenings, e.g. are they structural and/or behavioural?<sup>1</sup>

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<sup>1</sup> Structural screenings seek to identify markets with traits that are conducive to collusion based on structural market and product characteristics, such as market concentration and product homogeneity, while behavioural screenings look for firm activity that may indicate collusion in a given market, through patterns of unusual and unexplained behaviour that could show the existence of a cartel.

- Do these tools focus on specific sectors or industries (e.g. regulated sectors and public procurement) or are they broadly applicable?
- When developing and/or using cartel screenings, have you faced any challenges or limitations (e.g. related to resources and data collection)? If so, how are these challenges managed?
- When developing and/or using cartel screenings, have you co-operated with other foreign and/or domestic authorities?
- Have you incorporated advanced technology-led mechanisms (e.g. data science and artificial intelligence) into cartel screenings?
- Has the use of cartel screenings resulted in the opening of cases? If so, have these cases resulted in sanctions or have they been dismissed?
- Has the use of cartel screenings had other benefits or uses beyond the opening of cases?
- Have you abandoned cartel screenings that you experimented with in the past? If so, why?

#### **D. Co-operation with other agencies**

- Do you have any formal or informal collaboration with other domestic authorities (e.g. criminal prosecutors, procurement authorities and sector regulators) in the area of cartel detection?
- Do you have any formal or informal collaboration with foreign competition authorities in the area of cartel detection?
- Have any of the co-operation efforts resulted in the opening of cases?
- Have you faced any challenges or limitations when co-operating with other agencies (either foreign or domestic)? How are these challenges managed?

## Suggested bibliography

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- ICN (2021), *Anti-Cartel Enforcement Manual - Chapter 4: Cartel Case Initiation*, [https://internationalcompetitionnetwork.org/wp-content/uploads/2022/01/CWG\\_ACEM\\_Case\\_Initiation\\_CH4-2021.pdf](https://internationalcompetitionnetwork.org/wp-content/uploads/2022/01/CWG_ACEM_Case_Initiation_CH4-2021.pdf)
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- Schrepel, T. and Groza, T. (2023), The Adoption of Computational Antitrust by Agencies: 2nd Annual Report, *Stanford Computational Antitrust*, v. 3, pp. 55-157, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4476321](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4476321)