

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

LATIN AMERICAN COMPETITION FORUM

**Session III - Mainstreaming competition policy into the overall economic policy
and government actions in Latin American and Caribbean Countries**

-- Call for Country Contributions --

16-17 September 2014, Montevideo, Uruguay

The attached document is circulated in preparation for the discussion under Session III of the Latin American Competition Forum at its forthcoming meeting to be held on 16-17 September 2014 in Uruguay. Delegates are requested to send written contributions for that session to the Secretariat by 21 August 2014 at the latest. Advance notice of contributions by Friday 28 July 2014 would be useful.

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LATIN AMERICAN COMPETITION FORUM



**12th Latin American Competition Forum
16-17 September 2014 • Montevideo • Uruguay**

Session III

Advocacy: Mainstreaming competition policy into the overall economic policy and government actions in Latin American and Caribbean Countries

CALL FOR COUNTRY CONTRIBUTIONS

1. Introduction

1. This request for contributions is circulated in preparation for the discussion to be held in Session III of the 2014 Latin American Competition Forum. Session III is entitled: **“Advocacy: Mainstreaming Competition Policy into the overall economic policy and government actions in Latin American and Caribbean Countries”**. You are invited to make a written contribution for this session.

2. In this call for contributions we identify some topics that you may wish to address in your written and oral contributions. Please note that this list is neither prescriptive nor exhaustive. You are free to raise other relevant issues that reflect your experiences of the sector. Please prepare a concise and synthetic contribution, even if that ignores some of the questions.

3. To assist the IDB and the OECD Secretariat in planning the session, please inform us by **28 July 2014** if you intend to submit a contribution. The contributions themselves should be sent by email (as a Word document in electronic format, 5 pages maximum in Spanish or English) to Erica Agostinho [Erica.Agostinho@oecd.org] and copied to: Mario A. Umana [mariou@iadb.org] and Ania Thiemann [Ania.Thiemann@oecd.org] by **21 August 2014** at the latest. Country contributions will be circulated to participants through the LACF website (www.oecd.org/competition/latinamerica).

2. Background

4. The vast majority of Latin American and Caribbean countries have enacted Competition Legislation in the past 20 years¹. There is ample literature available on the role that Competition

¹ In Latin America, only Guatemala does not have Competition legislation. In the Caribbean, there is a regional Competition Commission under CARICOM, and at the national level, Barbados, and Jamaica have competition functioning agencies. Trinidad and Tobago has legislation but not a functioning agency. Belize, Suriname and the OECS countries are working on draft legislations. Haiti has no legislation. See <http://www.caricomcompetitioncommission.com/en/competition/competition-authorities>

Advocacy² should play in the ordinary work of competition agencies and the benefits and constraints thereof. Less clear is, however, the success of this advocacy role in mainstreaming the principles of competition policy into the overall implementation of economic policy and the way government institutions act. To be sure, in their advocacy work, competition agencies normally can react to the presence of legal and regulatory barriers that cause distortions to markets but there is not clear data on the results of these efforts and, in most cases, competition advocacy translates into non-binding opinions for the administration.

5. According to realities of political economy, governments are keen to yield in the presence of interest groups, and often produce industrial policy that contains, by definition, protection to sectors and firms that fall under certain category (agriculture, utilities, SMEs, etc.)³. Even as the profile of Competition Policy is growing in the region, in most cases, it is still a Cinderella waiting to be invited to the royal dance.

3. Mainstreaming Competition Policy⁴

6. There is no clear picture on how competition policy principles are being used, or mainstreamed, in the overall economic policy architecture of countries in the region. Few countries use competition policy as a tool to improve procurement practices in the public sector, or as a policy that can help to improve the purchasing power of the poor, or to boost productivity of the private sector. The fact is that competition policy is not generally perceived by key policy makers as a fundamental pillar of economic policy, nor as part of the political agenda of most governments⁵, which is reflected, among other things, in the low-key profile of competition agencies and their scarce budget allocations. Moreover, competition policy issues are not generally a topic (at least directly) in most political campaigns, despite the fact that a large percentage of the population purchasing power (especially those with lower income) is affected by anticompetitive distortions in basic goods and services⁶. To be sure, political discourse often addresses the need to reduce prices of consumption goods and services, but seldom takes on the need to use competition policy as a valid tool of key policy makers.

² By competition advocacy it is commonly understood the proactive actions [by the Competition Authority] to bring about government policies that lower barriers to entry, promote deregulation and trade liberalization, and otherwise minimize unnecessary government intervention in the marketplace. *See* World Bank, OECD: A Framework for the Design and Implementation of Competition Law and Policy, Chapter 6, at 93, 1998. *See also* OECD: Competition Advocacy: Challenging for Developing Countries, available at <http://www.oecd.org/daf/competition/prosecutionandlawenforcement/32033710.pdf>

³ *See* TULCHIN, J, The political Economy of Regulation and Geopolitics of Regulatory Regimes, in COMPETITION POLICY, DEREGULATION, AND MODERNIZATION IN LATIN AMERICA (1999) on how “decades of protectionist, clientelistic, anticompetitive behavior, growing our of prevalent state intervention, import substitution ...created an entrenched web of collusive practices”.

⁴ Mainstreaming competition policy is vital for development. *See* <http://www.unctadxi.org/templates/NewsGroup.aspx?id=955>

⁵ Liberalization of some public services and infrastructure in the last 30 years may be an exception, where some evolution was observed from monopoly and public ownership to private participation. *See* IDB, Competition Policy in Regulated Industries, 2002. Trade policy developments may be also another area where competition principles are normally considered when defining dismantling of tariffs and non-tariff barriers. *See also* YAMANE, Deregulation and Competition Law Enforcement in Japan: Administratively Guided Competition? Journal of World Competition 23 (3); 1421-192 (2000).

⁶ Some exceptions may be found in debates about privatizing a public monopolies or opening sectors to competition.

7. The IDB background paper will offer some possible explanations: i) Competition policy has not always been able to explain and identify concrete benefits to consumers (which in turn are less organised than other interest groups); ii) legislative and executive branches often support competition policy for the wrong reasons: an ideological assault on big firms and transnationals, regardless of their behaviour, or as a way to implement SME policy to redistribute wealth and economic concentration; iii) evolving administrative and judicial competition jurisprudence may confuse consumers and economic actors on which conducts are anticompetitive or not; and iv) short term benefits of market efficiencies that competition policy advocates may not be always aligned with long term economic goals (i.e.: Intellectual property protection and innovation needs, industrial policy, etc.). Moreover, the private sector is often sceptic of its benefits and sometimes even a virulent opponent in cases where they perceive a threat to the status quo.

8. The IDB background note will argue that in a time where traditional economic policy tools (fiscal, monetary, and financial policies) show specific constraints to achieve the desired targets of economic development, the mainstreaming of competition policy into the overall economic policy may open additional doors to policy makers in Latin America and the Caribbean seeking ways to boost economic development while protecting market efficiencies and consumers. In fact, Competition Policy may contribute to: i) lower prices, thus increasing the purchasing power of consumers, especially those with lowest income, ii) fiscal savings by improving competition in public procurement processes, and iii) boost productivity (competitiveness) of the private sector by increasing rivalry conditions in the domestic market. Effective competition advocacy may indeed contribute to dismantle legal/regulatory barriers that impede normal functioning of markets. The question remains though as to *how* further develop and mainstream competition policy and where are the limits of the competition authority in this regard. The efforts of mainstreaming cannot be limited to the implementation of the law itself. It is clear that competition policy is broader and includes all areas that facilitate the efficient functioning of markets. The success in mainstreaming competition policy may be also tied to an adequate understanding of the political economy of each country and region.

9. Finally, it is important to recognise that this challenge is not unique to Latin America and the Caribbean. Other developing economies outside Latin America have started that quest.⁷

10. It is expected that country contributions will supplement the background information and form the basis for a roundtable discussion on why and how competition policy can be mainstreamed into economic policy making of Latin American and Caribbean countries.

11. The Annex identifies a number of relevant topics for this discussion.

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See MEHTA and AGARWAL, Time for Functional Competition Policy and Law in India: Mainstreaming competition principles into policy and legal framework is pro-development (2006), available at www.cuts-international.org/pdf/compol.pdf

ANNEX. QUESTIONS FOR CONSIDERATION IN COUNTRY CONTRIBUTIONS

In order to allow for as useful a discussion as possible, we invite the attending jurisdictions to address the following questions:

1. General questions

1.1 *On the mainstreaming of competition policy in the legal system.*

- Are the principles of competition policy included at the Constitutional level? Is it necessary?
- Are there any other laws (aside from the Competition Legislation) that incorporate competition principles?
- Are any sectors excluded altogether of competition regulation either by the Constitution and or the law?

1.2 *On the relationship between the institutional design of the competition agencies and the mainstreaming of competition policy*

- Does your agency deal with a multiplicity of areas such as consumer protection or procurement? If so, does such institutional design help to mainstream competition principles across the different areas?
- Does your agency have a specific department devoted to advocacy? If so, what percentage of the agency's staff works on advocacy? What is the percentage of the agency's budget dedicated to advocacy activities?
- What are the mechanisms that the competition agency utilises to mainstream competition policy and raise awareness amongst the civil society?
- Has the competition agency entered into co-operation agreements with national universities to promote the study of competition policy? Does the competition agency has a fellowship program to provide students with opportunities to work at the agency?
- How an agency may balance the role of advocacy towards mainstreaming competition policy with the need to remain independent from government? Does the institutional arrangement of the competition agency condition the advocacy role? (e.g. if the agency is part of a larger ministry or an independent institution)

2. Specific questions relevant to mainstreaming competition policy

- Is competition policy (or competition principles) present in National Development Strategies, Sector Strategies, Government pluri-annual plans, political party's manifestos?
- Is competition policy (or competition principles) present in the daily discourse of economic policy decision makers (Ministers of Economy, Trade, Industry, Finance, Heads of Central Banks, etc.)? Can you share examples?
- Are opinions of the competition authorities binding on policy makers, e.g. does any member of the competition authority participate in the political decision making processes (e.g. Korea)?
- Does the government still play a role as a market participant in any sector?

- If any, are there any exceptions from a competition policy perspective applicable to the public sector?
- If any, what happened after privatisation processes were completed?
- Are price controls used as a regular practice to curtail perceived anticompetitive behaviour in some sectors?
- Is trade policy influencing competition policy? Does increased market access negotiated in trade agreements increasing competition in the domestic market? Does enhanced protection of intellectual property rights (as required by trade agreements) a threat to competition? Are cartelised sectors related to those industries to which an import duty is levied?
- Is Industrial policy conflicting with competition principles? SME development policy?
- Which actors should participate in the mainstreaming process? Who should have the leadership? How can they influence the decision making process of economic policy?
- What is the role that competition advocacy plays in your agency? How does it compare in time and resources with the enforcement role and merger control? Does your legislation give “teeth” to the competition agency in its advocacy role? Is the agency able to issue binding opinions? In cases of “recommendations”, is there a compliance record?
- Are competition principles pursued by the competition authority similar to those observed by sector regulators? Does the competition agency have jurisdiction in regulated markets (on competition related issues)?
- Are competition principles being applied in public procurement? Has your agency enforce cases of bid-rigging? Has your agency done any competition advocacy in the area of public procurement? Has your agency extended technical support to government procurement agencies to include competition principles in the bidding process? Are there any success stories.
- What is the role that information on the way markets work plays in mainstreaming competition policy? How successful is your agency in getting reliable information on markets and barriers? How successful is your agency in explaining the benefits of competition.
- Is there credible data on the role of competition policy in poverty reduction, inflation control, control to public expenditures, and industry productivity? Has the government or your agency done any study that relates economic growth to the enforcement of competition policies (e.g. in terms of GDP growth)?
- Have Central Bankers a valid role in the promotion of competition?
- Do you see a conflict between competition policy and long term economic goals in the area of innovation, industrial policy, etc.? If so, is this part of barriers for mainstreaming competition policy?
- How the experience with the opening of markets in Telecom, Electricity, and Transport can help to document the case for mainstreaming competition policy?
- What should be the role of multilateral organisations in supporting the mainstreaming of competition policy?