

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

**SUMMARY RECORD**

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM**

**-- Note by the Secretariat --**

**16th Meeting, 18-19 September 2018, Argentina**

This document prepared by the OECD Secretariat is a summary record of the sixteenth meeting of the OECD-IDB Latin American and Caribbean Competition Forum held on 18-19 September 2018 in Argentina.

More documents related to the Forum can be found at: [oe.cd/laccf](http://oe.cd/laccf).

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## *Latin American and Caribbean Competition Forum*

*Buenos Aires, Argentina, 18 – 19 September 2018*

### **Introduction**

1. The OECD and the Inter-American Development Bank (IDB) sponsor and organise the Latin American and Caribbean Competition Forum (LACCF) together. The LACCF is used to identify, and disseminate best practices in competition law and policy while promoting a sharing of experiences and networking among the region's competition policymakers and law enforcers. Heads of agencies and senior officials of Latin American and Caribbean competition institutions along with representatives of regional competition authorities participate in the Forum. Competition experts and international organisations are invited to participate to provide additional perspectives and experiences.
2. The sixteenth meeting of the Latin American and Caribbean Competition Forum took place in Buenos Aires, Argentina 18 – 19 September 2018 hosted by the Comisión Nacional de Defensa de la Competencia (CNDC). The morning of 18 September was devoted to the *Argentina Competition Day* conference. The *Ibero-American Forum on Competition* and the seventh seminar of the *Regional Competition Center of Latin America* followed the LACCF on 20 September 2018.
3. This note will: i) summarise the LACCF discussions; ii) provide an overview participants' evaluations and suggestions for future Forum topics; and, iii) give an overview of the other meetings held during the week.

### **1. Summary of the Latin American and Caribbean Competition Forum meeting**

4. The Latin American and Caribbean Competition Forum took place on the afternoon of 18 September and all day on 19 September 2018. The agenda included three sessions: i) Informal Economy: Implications for Competition Policy, a two part session with the second devoted to a dialogue with the private sector; ii) Peer Review of Peru's Competition Law and Policy; iii) Industrial Policy and the Promotion of Domestic Industry.
5. Over 70 delegates from 19 countries, as well as representatives from CARICOM, the OECD, IDB, and the World Bank and the local antitrust community attended the event.<sup>1</sup> Once more, the IDB played a key role by providing both financial and intellectual support to the event.
6. The LACCF was opened by Eseban Greco, President of the Comisión Nacional de Defensa de la Competencia of Argentina (CNDC); Gustavo Beliz, Director INTAL-BID; and Frédéric Jenny, Chair of the OECD Competition Committee.

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<sup>1</sup> The nineteen countries were: Argentina, Brazil, Chile, Costa Rica, Curacao, Dominican Republic, El Salvador, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Spain, United States. Colombia and Uruguay were unable to join.

7. Mr. Greco welcomed delegates and described the progress that Argentina has made in recent years to reinvigorate its competition regime aligning it to international standards. These efforts culminated in May 2018 when a new competition law came into effect. The new law creates a new competition authority comprised of (i) the Defence of Competition Tribunal; (ii) the Anticompetitive Conducts Secretariat; and (iii) Economic Concentrations Secretariat. The law also, amongst other provisions, modifies the merger control regime, increases fines, and creates a leniency programme – the topic of morning’s National Competition Day.

8. Gustavo Beliz, [Director INTAL-BID](#), welcomed delegates stating that the Institute for the Integration of Latin America and the Caribbean (INTAL) is honoured to host this meeting of the LACCF. In his remarks, Mr. Beliz noted that the efficient operation of the markets is a fundamental element for the success of the policies that drive the development and growth of the regions’ economies. He noted the benefits competition, such as helping to reduce inflationary pressures by producing prices that are more efficient; generating efficiencies in public procurement; spurring innovation; encouraging investment and so forth. Mr. Beliz congratulated Argentina on the adoption of its new competition law and recognised the reforms undertaken in other jurisdictions across the region, emphasizing in particular the importance of merger control.

9. Frédéric Jenny, Chairman of the OECD Competition Committee, opened the Forum. He observed the changing agenda of the LACCF over the years as an indication of the growing sophistication and experience of the region’s national competition authorities. In recent years, the focus of the LACCF has moved away from a discussion of specific competition instruments to the relationship between competition and other policy areas and the impact competition can have on, for example, addressing poverty and inequalities in society.

### 1.1. Session I - Informal economy: Implications for Competition Policy

10. This session discussed the interface between informality and competition law and policy in Latin America and the Caribbean. In particular, the advocacy efforts that competition authorities in the region devote to fight informality and the challenges that they may face when enforcing competition law in markets where informal firms operate. The first part of the session consisted of a discussion with delegations based on the Secretariat’s background note, the presentation by the expert speaker and the contributions submitted. The second part of the session took the form of an informal discussion with the private anti-trust community and delegates on the topic.

11. Mario Umaña, Lead Trade and Competition Specialist Integration and Trade Sector, IADB chaired the first part of the session. Iratxe Gurpegui from the Secretariat presented the background note, the expert speaker Professor Tyler C. Schipper presented his recent co-authored work regarding productivity patterns of formal and informal firms in India, *Strict Duality and Overlapping Productivity Distributions between Formal and Informal Firms*.

12. Some delegations admitted the difficulty of defining the informal economy and discussed how the characteristics of an informal economy can be different from one country to another and more relevant for certain economies. Most delegates agree that, irrespective of the definition, informality is significant in Latin America and Caribbean markets and affects negatively the economy and the competitive process. Particular concerns arise in markets where formal and informal firms effectively compete. Professor Schipper discussed the interaction between formal and informal firms drawing conclusions from his

work in India that are applicable in the Latin American and Caribbean contexts. . He explained the paradoxical findings of his work: while lower productivity industries will have, as expected, a greater percentage of informal firms, industries that are more productive will tend to have a greater overlap in productivity between formal and informal firms. This means that informal firms in these industries are much more similar to their formal counterparts. CARICOM presented the framework it is developing for estimating the extent to which the informal economy acts as a competitive constraint of the formal economy by using the relationship between inflation and informality.

13. To reduce the size of informal economy, competition agencies should consider focussing their efforts on competition advocacy. When competition agencies deal with industries that are most affected by informality, agencies can direct their advocacy actions towards the relevant government agencies to explain the impact on competition and help address the causes of informality example, overly burdensome taxes, restrictive labour and private regulations, high administrative costs to set up and operate a business and difficulties in accessing capital. Delegates from Argentina, Costa Rica and the US presented advocacy actions undertaken in relation to the informal sector in markets such as the mate herb, beef, telecommunications and the urban transportation sector. In particular, the US FTC's competition advocacy efforts on eliminating superfluous occupational restrictions aimed at increasing competition, but have also had the effect of moving resources from the informal to the formal economy.

14. Regarding enforcement actions against informal firms, most of the competition agencies in Latin America and the Caribbean apply competition law to all economic activities and undertakings' activities, including conducts of formal firms. Peru has enforced competition law in markets where informal firms were active, but they consider that the best tool they have to tackle informality are the unfair competition law and the legislation dealing with the elimination of bureaucratic barriers. The delegates from the Dominican Republic and México talked about the challenges they faced when enforcing competition law in informal markets especially in relation to imposing fines when financial information about the informal firms is lacking.

15. Cecilia de Mendoza, Director of Market Investigations and Market Monitoring CNDC chaired the informal dialogue, the second part of the session. The panel was composed of Ana Paula Martínez, Partner at Levy & Salomão Advogados, Marcelo Celani, Economist, University Torcuato di Tella; and Aldo González Tissinetti, Professor, University of Chile. Marcelo Celani's presentation focused on the importance of incorporating the informal sector in the competitive analysis of cases and mergers and the methodological issues that have to be overcome when considering informality in competitive analysis. Aldo Gonzalez Tissinetti's presentation addressed the issue of the implications of antitrust enforcement in informal economies by using case examples from Chile in the fish market, tourist transportation and cryptocurrency and platform markets like Airbnb and Uber. Ana Paula Martinez talked about the legal challenges of enforcing competition law to informal firms, namely, unregistered firms, firms without a legal formal address or undeclared financial statements. Mrs. Martinez emphasised that the best way for a competition agency to play a role when dealing with informality is through advocacy efforts.

## 1.2. Session II - Peer Review of Peru's Competition Law and Policy

16. The OECD/IADB undertook a Peer Review of Peru's Competition Law and Policy. Frédéric Jenny chaired the Peer Review, and the Lead Examiners were from Brazil, El Salvador and Mexico: Paulo Burnier da Silveira, Comisionado, CADE; Nelson Guzmán Mendoza, Superintendente, Superintendencia de Competencia; and, Alejandro Faya Rodríguez, Comisionado, COFECE. The report by the OECD Secretariat and its recommendations provided the basis for questions and discussion, see [DAF/COMP/LACF(2018)3].

17. This review finds that Peru's competition regime is active and broadly in line with internationally recognised standards and practices, with certain exceptions. Peru lacks a merger control regime. Furthermore, of particular concern, is that the legal framework poses risks to the autonomy and independence of Indecopi and of its decision-making bodies.

18. The Secretariat Peer Review Report provides several recommendations that if implemented would build on Peru's efforts to date to strengthen its competition regime: most notably, adopt a merger control regime; introduce mechanisms to safeguard Indecopi's independence and autonomy; and, broaden enforcement efforts to also target anticompetitive vertical agreements, unilateral conduct and bid-rigging.

19. Ivo Gagliuffi, Chairman of the Board/Presidente del Consejo Directivo, of Peru's competition authority, Defense of Competition and the Protection of Intellectual Property (Indecopi), led the Peruvian delegation. He emphasised the commitment of Peru to reinforcing its competition regime and the usefulness of the review exercise as it provided additional guidance and support during the current reform efforts.

## 1.3. Session III - Industrial Policy and the Promotion of Domestic Industry

20. The third session looked at industrial policy and the promotion of domestic industry. It explored both horizontal and selective industrial policies and discussed the experiences of competition agencies in Latin American and the Caribbean when encountering these different types of industrial policy. It identified that horizontal approaches include competition policy itself, but also investment in education and skills, infrastructure, and the adoption of competitive neutrality frameworks. It suggested that these horizontal approaches help to create a level playing field, and to resolve common market failures, not only the tendency of markets to be monopolised or cartelised, but also for example their failure to internalise important externalities. It suggested that selective approaches can also be used to address more specific market failures, and so can be complementary to competition policy. However, they are often also used to obtain, on behalf of those firms located within a country, a competitive advantage in a key market over other regions or countries. In such cases, they are therefore likely to conflict with competition policy.

21. Frédéric Jenny chaired the session, Pedro Caro de Sousa from the Secretariat presented the background note written by Chris Pike and Dr. Graciela Moguillansky was the invited expert speaker.

22. The session kicked off with a presentation by the Secretariat, which emphasised that industrial policy should play an active role in resolving market failures, and argued that there is a weak case for industrial policies that create or support a specific national champion, or protect local firms through discriminatory procurement. However, it suggested that there is a stronger case for industrial policies that create and provide products

that would not otherwise be provided, encourage co-location of firms to generate clustering externalities, and tackle specific market failures in places that have earned no dividend from increasingly competitive markets. It argued that this is particularly true where the policies are delivered by strong institutions that can deter inefficient rent seeking.

23. Dr. Moguillansky then made a presentation to introduce the first part of the session, which focused on the emergence of a new generation of modern industrial policies, and the extent to which they complement or conflict with competition policy. It was noted that in recent years the trend has been towards industrial policies that focus not on who to support (or ‘picking winners’), but instead on those that are willing to themselves take risks and invest in innovating to achieve a specific (and hence measurable) mission (or ‘picking the willing’). Dr. Moguillansky pointed in particular to the capability of the state to have a ‘crowding-in’ effect on private investment.

24. The second half of the discussion focused on case studies and the way that agencies have interacted and influenced the formation of industrial policies. The discussion explored efforts to influence support directed towards the car industry. It also heard about the impact that support for certain shipbuilders had on prices paid by consumers. The use of anti-dumping measures and local content policies was also discussed. The session finished by trying to draw out how best competition agencies could engage with government to influence these policies. A number of stories were shared and it was emphasized that agencies need to be proactive and constructive in identifying alternative non-distortionary solutions when providing critical opinions on more distortionary policies that are sometimes proposed.

#### **1.4. Final session**

25. In the closing session, a host for the 2019 LACCF was discussed but no decision taken. The host is expected to be announced at the informal meeting of LACCF delegations to take place on 30 November in the margins of the OECD Global Forum on Competition.

26. The roundtable discussion on future topics revealed several interesting topics such as investigative techniques, mergers, leniency, private damages, digital economy, abuse of dominance, and cartels. Further discussion to decide the topics will also take place during the informal meeting on 30 November.

27. As noted, LACCF delegations are invited to attend an informal meeting on 30 November in Paris on the margins of the GFC.

## **2. Results of participants’ evaluations and next meeting**

28. The participants considered the Forum to have been successful, judging by their feedback in the concluding session and replies to the evaluation questionnaires, although there is always room for improvement. Delegates in particular requested more time for discussion, earlier availability of documents and topics that have practical applications.

29. The next LACCF is scheduled for the week of 23 September 2019.

### 3. Additional meetings held alongside the Latin American and Caribbean Competition Forum

30. Argentina held its **National Competition Day** on the morning of 19 September before the start of the LACCF. The event was opened by Marcos Peña, Chief of Cabinet; Germán Garavano, Minister of Justice and Human Rights; and, Esteban Greco.

31. After the opening, the event focussed on Argentina's new leniency programme. Frédéric Jenny, along with Alexandre Cordeiro Macedo, General Superintendent, Conselho Administrativo De Defesa Econômica CADE, Brazil; and Francisco Tellez García, Director General of Monopolistic Practices, COFECE Mexico provided both theory and practical application to a substantial audience comprised of Argentina's anti-trust community. Mr. Federico Volujewicz, Director of the Promotion of Competition CNDC moderated the panel discussion.

32. The **Ibero-American Forum on Competition** was held after the LACCF on the morning of the 20 September 2018. A principal aim of this Forum is further co-operation between the Heads of Latin American competition authorities, as well as the Heads of the competition agencies in Spain and Portugal.

33. The discussions engaged authorities in a peer-exchanging exercise, with agencies sharing case studies and experiences in a lively discussion. The first session focused on the *Competition in Professional Services*, noting in particular the recently published report on [Competition Assessment in Portugal](#). The second session dealt with *Leniency Co-ordination between Countries*.

34. A closed meeting of the seventh **Seminar for the Regional Competition Centre for Latin America** took place during the afternoon of 20 September 2018. The main session discussed *Dinámicas de competencia y resultados de mercado en América Latina y el Caribe -Nuevos hallazgos empíricos del programa conjunto Banco Mundial-CRC* (Dynamics of competition and market results in Latin America and the Caribbean -New empirical findings of the joint program World Bank-CRC).

**ANNEX I**  
**EVENT SUMMARY**

<b>EVENT TITLE</b>	<b>LATIN AMERICAN COMPETITION FORUM</b>
<b>PLACE</b>	Buenos Aires, Argentina
<b>DATES (DAY, MONTH, YEAR)</b>	18 – 19 September 2018
<b>OECD/IDB STAFF AT EVENT</b>	Antonio Gomes (OECD), Lynn Robertson (OECD), Pedro Caro de Sousa (OECD), Iratxe Guipegui, (OECD), Angélique Servin (OECD); Frédéric Jenny (Chair OECD Competition Committee; Mario A Umaña (IDB)
<b>EXPERTS (NAMES AND COUNTRY)</b>	Tyler C. Schipper, Assistant Professor, Department of Economics, University of St. Thomas; Cecilia de Mendoza, Director of Market Investigations and Market Monitoring, CNDC; Ana Paula Martínez, Partner at Levy & Salomão Advogados; Marcelo Celani, Economist, University Torcuato di Tella; Aldo González Tissinetti, Professor, University of Chile; Eduardo Frade, Partner, VMCA;  <i>Lead Examiners:</i> Paulo Burnier da Silveira, Commissioner, CADE; Nelson Guzmán, Superintendent, Superintendencia de Competencia, El Salvador; Alejandro Faya Rodríguez, Commissioner, COFECE; Graciela Moguillansky, Economist, University of Chile.
<b>TOTAL NUMBER OF PARTICIPANTS</b>	Approximately 70
<b>PARTICIPANT COUNTRIES (NUMBER FROM EACH)</b>	Argentina (8), Brazil (5), Chile (2), Costa Rica (5), Curacao (1), Dominican Republic (2), El Salvador (2), Ecuador (1), Honduras (2), Mexico (5), Nicaragua (2), Panama (1), Paraguay (4) Peru (3) Portugal (1), Spain (3), United States (2).  <i>Note: Colombia (2) and Uruguay (2) were unable to join.</i>