

Unclassified**English - Or. English****19 November 2020****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****SUMMARY RECORD****LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM****-- Note by the Secretariat --****18th Meeting, 28-29 September 2020, Virtual**

This document prepared by the OECD Secretariat is a summary record of the eighteenth meeting of the OECD-IDB Latin American and Caribbean Competition Forum held on 28-29 September 2020 in a virtual format.

More documents related to the Forum can be found at: oe.cd/laccf.

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Latin American and Caribbean Competition Forum

28 – 29 September 2020, Virtual Zoom meeting

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. Traditionally, heads of agencies and senior officials of Latin American and Caribbean competition institutions along with representatives of regional competition authorities participate in the Forum. This year, because the LACCF was held virtually, staff from across the participating agencies joined their senior level colleagues. Competition experts and international organisations were invited to participate to provide additional perspectives and experiences.
2. The eighteenth meeting of the Latin American and Caribbean Competition Forum co-hosted by the OECD and the IDB took place virtually, 28 – 29 September 2020. The Ibero-American Forum on Competition followed the LACCF on 30 September 2020.
3. This note will summarise the LACCF discussions and 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 virtually over two days respecting the western hemisphere time zone. . The agenda included two sessions: i) Roundtable on Digital Evidence Gathering in Cartel Investigations, and; ii) Peer Review of Ecuador's Competition Law and Policy.
5. Around 215 individual delegates representing 26 different delegations, five international/regional organisations and two regional competition authorities connected to at least one of the sessions.¹ Once more, the IDB played a key role by providing intellectual support to the event.
6. The LACCF was opened by videos from the OECD Secretary-General, Angel Gurría and the President of the IDB, Luis Alberto Moreno.

¹ Antigua, Argentina, Brazil, Canada, Chili, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Latvia, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Saint Lucia, Spain, Trinidad & Tobago, United States, Uruguay and European Commission, CARICOM, UN ECLAC, UNCTAD.

7. In his presentation, Mr. Gurría noted the importance of competition in the economic recovery of the Latin America and Caribbean region.² He cited examples from Brazil and Colombia of initiatives undertaken by competition authorities to safe guard competition in markets during the pandemic He reminded delegates of the OECD's collaboration with Peru (Indecopi) to provide capacity building for authorities across the region while also inviting delegates to consult the OECD's work on COVID. Mr. Gurría thanked the IDB for its collaboration on the LACCF and looked forward to its continuation.

8. In his address to delegates, Mr. Moreno reminded delegates of the benefits of competition regarding productivity, innovation, efficiency, investment, employment as well the reduction of poverty and inequality. Lack of competition hurts the most vulnerable and leads to the misspending of public resources. President Moreno cited the example of a recent case of collusion in the health sector represented a loss equivalent to the cost of 727 ambulances, 2,168 incubators or 5 clinics. He ended his speech by encouraging the continuation of the successful IDB-OECD collaboration.³

9. Frédéric Jenny, Chairman of the OECD Competition Committee also welcomed delegates to the 18th LACCF and provided an overview of the agenda. He noted the challenges posed by the digital sector to competition, many of which have been discussed by the OECD Competition Committee.⁴ Many of the approaches used by competition authorities in their enforcement practices are less effective in the digital sector, for example, traditional market definition, or the use of pricing. However, the digital sector can also provide tools to facilitate the work of authorities these tools are explored in the first session. Mr. Jenny described the peer examination of Ecuador as an exacting exercise and highly interesting that he hoped would allow Ecuador to push forward reforms to their competition system.

1.1. Session I - Roundtable on Digital Evidence Gathering in Cartel Investigations

10. Mario Umaña [Lead Trade and Competition Specialist Integration and Trade Sector, Inter-American Development Bank (IDB)] chaired the Roundtable on Digital Evidence Gathering in Cartel Investigations on 28 September. The session discussed legal and practical challenges arising from digital evidence gathering in cartel investigations and identified ways for competition authorities to overcome these challenges.⁵ The roundtable received 10 contributions from Brazil, Colombia, Costa Rica, Ecuador, Mexico, Peru, Portugal, Spain, UNCTAD and the US (DOJ). Around 171 delegates representing 27 delegations attended the session.

11. After introductory remarks from the Chair, the Secretariat, Cristina Volpin, presented the Secretariat background paper [DAF/COMP/LACF(2020)2] by explaining that while digitalization change how companies operate and generates challenges for competition authorities in their fight against cartels, it also provides remarkable opportunities for them to strength their ability to detect cartels more efficiently.

² <https://www.youtube.com/watch?v=0VuT8XBXOB4&feature=youtu.be>

³ <https://www.youtube.com/watch?v=gXIYff3Pqlk&feature=youtu.be>

⁴ <http://www.oecd.org/daf/competition/digital-economy-innovation-and-competition.htm>

⁵ See forthcoming Executive Summary [DAF/COMP/LACF(2020)15] and Summary of Discussions [DAF/COMP/LACF(2020)16]. Videos of the 2020 speeches and LACCF related videos are available at: www.youtube.com/playlist?list=PLYBGvyEYBNloD6MuYu8WK-KNBWrF1faOI.

12. The expert speaker, Dirk Van Erps (Adviser to the Deputy Director General for Antitrust & Cartels, European Commission), presented the resources required and the best practices for conducting digital evidence gathering in cartel investigations based on his experience gained at the European Commission. He also explained how the European Commission adjusted to the challenges posed by COVID-19 in its inspections.

1.2. Session II - Peer Examination of Ecuador's Competition Law and Policy

13. Frédéric Jenny chaired the Peer examination of Ecuador's competition law and policy on 29 September. The examination was based on a draft report prepared by the Secretariat [DAF/COMP/LACF(2020)3]. Canada, Panama, Spain, and Uruguay acted as Lead Examiners: Matthew Boswell, Commissioner of Competition, Competition Bureau of Canada; Marco Carrizo, Director Nacional de Libre Competencia, ACODECO, María Ortiz Aguilar, Member of the Board, CNMC; and Luciana Macedo, President, Comisión de Promoción y Defensa de la Competencia. The delegation of Ecuador was lead by Danilo Sylva, Superintendent for Market Power Control, Super-Intendancy of Market Power Control (SCPM). A virtual examination allowed Ecuador to ensure that the right experts from the authority, five in total, were present to respond to questions allowing for very precise replies.

14. During the examination, Canada enquired about the merger control regime and whether notifications of mergers if the merging parties exceed a certain market share threshold may create uncertainties. SCPM recognised that this might be the case also due to limited precedents but that this threshold is useful to trigger the notification of potentially problematic mergers that would not meet the turnover threshold. SCPM also confirmed that the acquisition of a company with marginal presence in Ecuador may need to be notified, if the acquirer's turnover meets the notification thresholds. In addition, Ecuador recognised that the deadline to notify mergers is very short.

15. Panama's questions focused on institutional arrangements. Ecuador pointed out that although the members of the First Instance Resolution Commission's (SCPM's decision-making body) are appointed and can be removed by SCPM's Superintendent (which manages SCPM's investigation units), the current Superintendent has respected their independence. However, SCPM is open to considering arrangements to reinforce the independence of the Commission. Further, SCPM indicated that the powers of the Regulation Board and SCPM to issue rules overlap and that their remits should be clarified. SCPM also pointed out that it aims to increase the number of employees working on anticompetitive practices and advocacy and to adopt measures to incentivise employees to stay at SCPM. SCPM has little financial autonomy, given that the fees it collects and the fines it imposes are transferred to Ecuador's general budget. Finally, SCPM is working on improving its cooperation with the National Public Procurement Service in the context of competition enforcement.

16. Spain enquired about competition enforcement. SCPM is considering shifting its focus from abuse of dominance to cartels, including increasing the number of persons working on cartel prosecution, improving its leniency programme and aiming to imposing higher fines. SCPM has also decided to use commitments less frequently in order to incentivise leniency applications. In addition, ESCPM pointed out that a simplification of the provision on abuse of dominance would be positive and that the provision on abuse of economic dependence would be best removed from the competition law.

17. Finally, Uruguay addressed the advocacy activities carried out by SCPM. Over the last years, SCPM has been reducing the number of outreach activities in order to have a more targeted approach and issues less, but more sophisticated market studies. SCPM wants to focus on promoting procompetitive regulation. SCPM stressed that it is important that judges gain competition expertise. In addition, it pointed out that the country's cooperation with the Andean Community of Nations as regards competition law should improve.

18. The research and examination showed reform is needed to bring Ecuador's competition framework up to international standards. However, the discussion during the examination highlighted positive recent developments in Ecuador that are likely to lead to more effective antitrust enforcement, such as the focus on cartel prosecution, and a better use of the commitments system and advocacy tools.

19. Over the next weeks, the Lead Examiners, Professor Jenny and the Secretariat will discuss, revise and finalise the draft recommendations taking into account this examination. This is the first virtual peer examination held by OECD Competition. However, the number of participants and delegations - over 150 participants representing 27 delegations - as well as their additional questions, indicates a strong interest in peer examinations opening for consideration the possibility of future virtual or hybrid in-person-virtual examinations. The final report will be issued and available online over the coming months.

2. Results of participants' evaluations and next meeting

20. The participants considered the first virtual LACCF to have been successful giving a score of 4.73 out of 5, and judging by the replies to the evaluation questionnaires. However, the virtual format also created challenges. Delegates suggested, for examples, that the topics be more narrowly defined to raise the quality and deepen discussions, responses to the Calls could be used to frame discussions in other formats (e.g. fireside chat), and presentations given in formats that can be then distributed amongst colleagues. If this virtual format needs to be repeated in the future, many delegates asked for two substantive sessions. Other delegates also suggested that a virtual element should remain a characteristic of the LACCF as it provides for a wider participation by the agencies staff.

21. The next LACCF is scheduled for the week of 20 September 2021, in Rio de Janeiro, Brazil hosted by CADE.

22. A meeting of the LACCF delegations will take place virtually on 11 December 2020, 17:00 – 18:15 (Paris time) in the margins of the virtual OECD Global Forum on Competition.

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

23. A virtual meeting of the *Ibero-American Forum on Competition* hosted on the OECD platform was held after the LACCF on 30 September 2020 also respecting the western hemisphere time zone. 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. However, the virtual format allowed for a wider range of staff to participate and for the Forum to offer for the first time an open session welcoming the broader anti-trust community.

24. The discussions engaged authorities in a peer-exchanging exercise, with agencies sharing case studies and experiences in a lively discussion. The event was opened by Margarida Matos Rosa, Presidenta, Autoridad de Competencia (AdC), Portugal and Mario Umaña, IDB. The first roundtable moderated by Spain (CNMC) on *Advocacy To Boost Economic Recovery* included presentations from Brazil (CADE), Ecuador (SCPM), Honduras (CDPC), COFECE (Mexico) and IFT (Mexico),. Portugal (AdC) moderated the roundtable which was open to the Latin American and Caribbean anti-trust community on, *How to Keep Antitrust Enforcement Effective in the COVID-19 Context and Beyond* supported by presentations from Spain (CNMC), Mexico (COFECE), Brazil (CADE), Colombia (SIC) Peru (INDECOPI), and United States (DOJ). Frédéric Jenny and Cani Fernández, President, National Commission of Markets and Competition (CNMC), Spain closed the event.

ANNEX I
EVENT SUMMARY

EVENT TITLE	LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM
PLACE	Zoom virtual meeting
DATES (DAY, MONTH, YEAR)	28 – 29 September 2020
EXPERTS (NAMES AND COUNTRY)	Dirk Van Erps (Adviser to the Deputy Director General for Antitrust & Cartels, European Commission) <i>Lead Examiners</i> : Matthew Boswell, Commissioner of Competition, Competition Bureau of Canada; Marco Carrizo, Director Nacional de Libre Competencia, ACODECO, Panama, María Ortiz Aguilar, Member of the Board, CNMC, Spain; and Luciana Macedo, President, Comisión de Promoción y Defensa de la Competencia, Uruguay.
TOTAL NUMBER OF PARTICIPANTS	Approximately 215
PARTICIPANT COUNTRIES (NUMBER FROM EACH)	Antigua (1), Argentina (2), Brazil (9), Canada (4), Chile (4), Colombia (13), Costa Rica (12), Dominican Republic (6), Ecuador (24), El Salvador (3), Guatemala (2), Honduras (12), Jamaica (5), Latvia (4), Mexico (14), Nicaragua (3), Panama (3), Paraguay (5), Peru (15), Portugal (4), Saint-Lucia (4), Spain (6), Trinidad and Tobago (3), United States (2), Uruguay (4), European Commission (1), CARICOM (1), IDB (1), OECD (15), UN ECLAC (1), UNCTAD (1).