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

SUMMARY RECORD

LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM

- Note by the Secretariat -

20th Meeting 27-28 September 2022, Brazil

This document prepared by the OECD Secretariat is a summary record of the twentieth meeting of the OECD-IDB Latin American and Caribbean Competition Forum held on 27-28 September 2022 in Rio de Janeiro, Brazil.

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

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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 (LAC) competition institutions along with representatives of regional competition authorities participate in the Forum.
2. The 20th edition of the LACCF was hosted by the Brazilian Administrative Council for Economic Defence (CADE) during 27-28 September 2022 in Rio de Janeiro, Brazil. It was the first in-person LACCF after two editions hosted by the OECD due to the sanitarian crisis in 2020-2021. The LACCF meeting was preceded by the National Competition Day in Brazil and followed by the Ibero-American Forum on Competition and a meeting of the Regional Competition Center for the Americas (CRC) on 29 September 2022.
3. This note provides a summary record of this LACCF meeting and focus on (i) the main sessions including substantive discussions, (ii) the evaluation results from participants, and (iii) an overview of the additional meetings held in the margins of the LACCF during that week.

1. Summary of LACCF Annual Meeting

4. The agenda of the LACCF comprised three substantive sessions that covered the following topics: (i) Strengthening Incentives for Leniency Agreements (coordinated by Brazil, namely the CADE); (ii) Market Definition in the Oil and Gas Sector; and (iii) Media Mergers (coordinated by Mexico, namely the Federal Economic Competition Commission – COFECE; and Federal Telecommunications Institute – IFT). In total, 219 participants attended the LACCF: 100 in person in Rio de Janeiro and 119 virtually given the hybrid format adopted for this year. They represented 18 from LAC, 4 non-LAC and 3 international organizations.¹
5. The LACCF was opened by Alexandre Cordeiro Macedo, President of CADE, Alexandre Barreto de Souza, Superintendent of CADE, along with Professor Frédéric Jenny, Chair of the OECD Competition Committee and Mr. Mario Umaña, Lead Trade and Competition Specialist, Integration and Trade Sector, IDB.
6. In their opening remarks, Mr. Cordeiro and Mr. Barreto highlighted the strategic partnership between CADE and the OECD in the field of competition policy including the recent Associate status achieved by Brazil in the OECD Competition Committee in 2019. They also expressed an interest to further support the OECD work streams in Latin America and the Caribbean, acknowledging the benefits that competition policy has for consumers in each of these countries and at the regional level more broadly.

¹ Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, European Union, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Spain, Trinidad & Tobago, United States, Uruguay, CARICOM, IDB, OECD, and World Bank.

7. Mr. Frédéric Jenny reviewed the achievements of the countries of the region in adopting competition laws and cited developments in enforcement across the LAC region using data extracted from the COMPStats database. Amongst the findings, the Mr. Frédéric Jenny highlighted that jurisdictions from the region have steadily increased their competition budget by more than 15% since 2015; 20% increase in cartel cases in 2020 compared to 2019; between 2015 and 2020, an increase of approximately 15% of abuse of dominance cases; and that market studies have increased 50% in 2020 compared to 2019.

8. In his address to delegates, Mr. Mario Umaña, thanked the Chairman of the Competition Committee, Frédéric Jenny, for the very fruitful alliance between the IDB and the OECD, which has completed 20 years in 2022. He noted with appreciation the opportunity to share the IDB's vision of the importance of competition to regional integration and investment promotion. Mr. Mario Umaña also reminded delegates that competition is an essential ingredient of productivity, which in turn leads to economic growth, investment, and employment.

9. IDB-OECD collaboration combines the Bank's knowledge and experience in the region, with the great technical capacity of the OECD to provide Latin American and Caribbean countries with a world-class space for the analysis and discussion of the central issues of competition policy and legislation, both in the theoretical development, and in the evolution of administrative and judicial jurisprudence.

1.1. Session I on “Strengthening Incentives for Leniency Agreements”

10. Session I of the LACCF addressed the challenges to strengthen incentives for leniency agreements. Leniency programmes are an essential investigative tool to enforce antitrust law in the Latin America and the Caribbean region, complementing other investigation strategies, like screening, dawn raids, and inspections. By 2020, at least 12 countries in the region have adopted a leniency programme, i.e. Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Peru and Uruguay demonstrating a generalised consensus about the usefulness of this enforcement tool.

11. Mrs. Fernanda Machado, Deputy Superintendent of CADE, chaired the Session; and Mr. Felipe Roquete, Head of Leniency Unit at CADE, presented the Background paper prepared by CADE. The paper highlighted the possible causes for the drop in the number of leniency applications, and described recent amendments and initiatives to strengthen incentives for leniency programmes. The main challenge relates to the rise in the number of private damages actions, because cartelists take into account the costs and duration of civil damage proceedings when deciding to apply (or not) to leniency programmes.

12. The following invited speakers added to the discussions as guest experts: (i) Mr. Scott D. Hammond (participating remotely), Partner of Gibson, Dunn & Crutcher and co-chair of the firm's Antitrust and Competition Practice Group, who focused on reviewing the cornerstones of leniency programmes; (ii) Mrs. Natalie Harsdorf-Borsch (participating remotely), Acting Director General of the Federal Austrian Competition Authority, who presented the new challenges of leniency agreements; and (iii) Mr. Francisco Schertel Mendes, Legislative Consultant of the Brazilian Federal Senate, who covered issues related to the cooperation with criminal investigators in leniency programmes.

13. The following delegations contributed with written contributions to the discussions: Argentina, Colombia, Costa Rica, Ecuador, El Salvador, Mexico, Peru, Spain and the US. They also had an active participation during the Session, with oral contributions covering national amendments and recent initiatives to increase incentives to leniency (Peru and Spain), recent challenges to build trust in the leniency programme (Ecuador and El Salvador), the robust results derived of leniency applications (Mexico) and the pathway to regulate the leniency programme (Argentina).

14. In conclusion, the Chair highlighted that all jurisdictions are facing challenges to (re)calibrate incentives to foster leniency applications, and the discussions confirmed that leniency is an essential investigative tool to enforce antitrust law.

1.2. Session II on “Market Definition in the Oil and Gas Sector”

15. Session II of the LACCF addressed market definition in the oil and gas sector. Oil and gas are major energy sources in the world and play a key role in the global economy including in Latin America and the Caribbean. They represent together around 67% of the world’s total final consumption by energy source, followed by electricity related sources (i.e. hydroelectric, nuclear plants), biofuels, and coal. As for its main applications in Latin America, oil is largely used in road transportation and aviation sectors, whereas natural gas is largely purchased by various industrial and residential customers (IEA, 2021).

16. Mr. Frédéric Jenny chaired the Session and Mr. Paulo Burnier da Silveira presented the Issues Note prepared by the OECD Secretariat. The Secretariat’s note highlights the main issues of market definition in this sector in Latin America and the Caribbean, which includes both the particularities of the industry and the region. The main challenges relate to the legal provisions for market definition in the region, the product and the geographic dimensions of market definition, in addition to cooperation between competition authorities and energy regulators.

17. The following invited speakers added to the discussions as guest experts: (i) Pamela Sittenfeld (participating remotely), chief of staff of Minister of Foreign Trade in Costa Rica, who focused on aspects related to market definition in Latin America; (ii) Javier Tapia, Executive Director at *Asociación de Transmisores* in Chile, who covered issues related to the product dimension of market definition in this sector; (iii) Vinicius Marques de Carvalho, Professor at University of São Paulo in Brazil, who presented aspects related to the geographic dimension of the topic; and (iv) Pablo Trevisán, private lawyer in Argentina, who stressed the importance of cooperation between energy regulators and competition authorities.

18. The following delegations contributed with written contributions to the discussions: Colombia, Mexico and the EU. They also had an active participation during the Session, with oral contributions covering the national legal provisions related to market definition (Mexico), the developments in the regulatory framework affecting market definition (Mexico and EU), and new methodologies to define relevant markets in the retail fuel sector (Colombia).

19. Brazil, Chile, Trinidad and Tobago, and the U.S. also added value to the discussions with oral contributions. These contributions included recent cases on abuse of dominance involving Petrobrás (Brazil), a topical market study in the gas sector with recommendations to increase competition (Chile), ongoing advocacy efforts in co-operation with regulators (Trinidad and Tobago), as well as wider experience sharing derived from decades of enforcement experience in this area particularly in the market of distribution of gasoline (U.S.).

20. In conclusion, the Chair highlighted that oil and gas are crucial energy sources for the global economy including in Latin America and the Caribbean. The discussions also confirmed that international cooperation, including at the regional level, will remain a key instrument for assessing and tackling the challenges addressed during Session.

1.3. Session III on “Media Mergers”

21. Session III of the LACCF addressed the economic competition assessment of media mergers considering the actual configuration of the media industry driven by the technological evolution, the digitization of traditional media and changes in consumer behavior, as well as the growing importance of online services and large tech companies. In particular, the session considered the role played by the digital platforms and the OTT content distributors in the media industry, and their implications in merger analysis.

22. The session was chaired by Mexico's Federal Telecommunications Institute (IFT) and the Federal Economic Competition Commission (COFECE). Mr. Ramiro Camacho Castillo, Commissioner of the IFT chaired the experts' panel and Ms. Brenda Hernández Ramírez, Chairwoman of COFECE chaired the country contributions and experiences panel.

23. Ms. Hernandez introduced the session describing the media sector as the one that includes the production and distribution of contents as well as the sale of advertising. Mergers in the media sector may lead to vertical consolidation or conglomerate integration, which can result in efficiencies but may also raise concerns of competition and bring challenges for authorities such as the definition of relevant market, multi-sided market analysis, exclusivities, design of remedies, among others.

24. Mr. Salvador Flores, Head of the Economic Competition Unit at the IFT, and Mr. Isaac Alcalá, Director General of Digital Markets at COFECE, presented the Background Note prepared by Mexico. In their presentation they explained how the media industry has evolved, mainly driven by technological innovation, changes on content production, distribution, access, and on how new business models in online content distribution have changed consumer behavior. Also, it was addressed how impacts in the value chain and competition dynamics of this industry have raised some competition concerns, especially given the complex relations between content providers, distributors, advertisers, and users. The presentation included some key aspects that authorities have considered in the economic assessment of horizontal, vertical and conglomerate mergers, and the relevance in the design of appropriate structural and behavioral remedies in the Latin American region.

25. Regarding the experts' panel, guests speakers added to the following considerations to the discussion: (i) Martin Peitz, Professor of Economics at the University of Mannheim, focused on the definition of media and media players as multi-sided platforms, market definitions and pricing structures, the importance of analyzing advertising effects of media mergers; (ii) Feng Zhu, Professor of Business Administration at Harvard University, stressed the importance to understand the impact of: direct and cross-side network effects, data positive feedback loops, multi-homing, network clustering, economies of scale from disintermediation, on platform's performance and competitiveness; (iii) Aleksandra Boutin, Founding Partner of Positive Competition, presented a practitioner's perspective on recent decisions in media mergers in Europe, where technological convergence and new business models are increasingly being considered, however traditional concerns in merger assessments remain; (iv) Diana Moss, President of the American Antitrust Institute discussed structural changes and technological transitions in the video marketplace, and explained some relevant competition concerns on the following: exclusive content, the role of some platforms as "gatekeepers" and programming distribution; she considered that in merger analysis, competition authorities should also consider the implications on content diversity and plurality, cross-subsidization, as well as the careful design of behavioral remedies to address competition concerns.

26. The following delegations contributed with written contributions to the discussions: Mexico, Portugal and Spain. They, together with Colombia, Chile and Brazil had an active participation during the Session, with oral contributions. These interventions included relevant aspects for the review of media mergers paired with cases of mergers analysed in the region of Ibero-America.

27. In this regard, the delegations shared, among other issues: (i) theories of harm that have been considered in the analysis of a vertical media merger (Portugal); (ii) the need to define a relevant market as a preliminary tool to evaluate competitive effects and how separate relevant markets for OTT platforms and pay-TV had to be considered in the AT&T/Time Warner merger (Chile); (iii) the economic analysis conducted by the authority and the corresponding structural remedies imposed (Mexico-IFT); (iv) aspects of cross-ownership that were considered for the assessment of the Disney/21st Century Fox merger (Mexico-COFECE); (v) a merger case in the free-to-air TV sector where the commitments imposed were overhauled by the Council of Ministers for reasons of general interest - decision that later led to anticompetitive practices and a sanction of 77 million euros (Spain); and (vi) the importance of international cooperation to review media mergers that have a global scope (Brazil).

1.4. Launch of the OECD Competition Trends Report in LAC

28. Launched on 27 September, the report entitled “OECD Competition Trends in Latin American and the Caribbean” presents some of the main competition enforcement trends in Latin America and the Caribbean. It is based on an analysis of data from a total of 14 OECD and non-OECD jurisdictions in the region from 2015 to 2020, who together represent approximately 85% of both GDP and population in the region. By providing multi-year data on competition enforcement indicators, this report can support informed policy making and contributes to the continual improvement of competition law and policy in the region.

29. As highlighted in the report, data on competition enforcement indicators can support informed policy making and contribute to the continuous improvement of competition law and policy. This descriptive analysis does not determine causal relationships but instead highlights overall trends in the region and presents some correlations. The report is structured as follows: the evolution of competition law and policy in LAC; competition authorities’ resources; merger control, cartel enforcement; enforcement of abuse of dominance; and, advocacy activities. The full report is available [here](#).

1.5. Presentation of the Annual Report of the OECD Regional Center for Competition (RCC)

30. This LACCF was the first in-person edition after the creation of the OECD Regional Center for Competition (RCC) in Latin America, a joint venture between the OECD and the Peruvian INDECOPI, launched in November 2019 in Lima, Peru. Since then, it has benefited more than 1.000 participants, including competition officials, regulators and judges. It provides a training centre for capacity-building activities related to competition for 25 jurisdictions in the region. The annual report of the RCC was presented by INDECOPI’s Chairman, Mr. Julian Fernando Palacín, and is available [here](#).

2. Evaluation results from participants

31. The participants considered the LACCF to have been successful giving a score of 4.7 out of 5, and judging by the replies to the evaluation questionnaires, which is in line with the average score of past years. In additional, delegations provided comments and suggestions for the next LACCF including:

- Compliments to the social events particularly the one in Maracanã Stadium
- Suggestion to reduce the number of speakers per session
- Support to limit/improve hybrid format (e.g. having all speakers attending in-person)

32. The next LACCF is planned for September 2023 in Ecuador and hosted by *Superintendencia de Control del Poder de Mercado* (SCPM).

33. A meeting of the LACCF delegations will take place in Paris on 2 December 2022 from 8:30 to 9:30 at the OECD in the margins of the OECD Global Forum on Competition (GFC).

3. Overview of additional meetings held alongside the LACCF

34. The **National Day of Brazil** was held before the LACCF on the morning of 27 September 2022. The first session was dedicated to the launch of the OECD Competition Assessment Review of Brazil, which analysed the Brazilian civil aviation and ports sectors in order to identify potential barriers to competition and make recommendations for pro-competitive reforms. The session was opened by Mr. Alexandre Cordeiro Macedo, President of CADE, and Mr. Frédéric Jenny, Chair of the OECD Competition Committee. Then, the key recommendations for each sector were presented by the OECD Competition Assessment team and commented by representatives from the Ministry of Infrastructure and sector regulators (ANAC and ANTAQ). The session was closed by Mr. Alexandre Barreto de Souza, General Superintendent of CADE, and Mr. António Gomes, Deputy Director of the Directorate for Financial and Enterprise Affairs of the OECD. In the second session of the event, the “Anuário de Concorrência do Mercosul” (Mercosur’s competition annual journal) was launched by Mr. Alexandre Cordeiro Macedo, President of CADE, Mr. Rolando Porfirio Díaz Delgado, President of CONACOM (Paraguay), Mrs. Natália Jul, President of CPDC (Uruguay) and Mr. Rodrigo Luchinsky, President of CNDC (Argentina).

35. A meeting of the **Ibero-American Forum on Competition** was held after the LACCF on 29 September 2022. 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. 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 Mr. Alexandre Cordeiro Macedo, President of CADE, and Mr. Carlos Aguilar Paredes, Member of the CMNC Board (Spain). The first roundtable was moderated by Mrs. Margarida Matos Rosa, President of AdC (Portugal), on “competition issues in labour markets: advocacy and enforcement”, including speakers from Brazil (CADE), Mexico (COFECE) and the United States (FTC). The second roundtable was moderated by Mr. Carlos Aguilar Paredes, Member of the CMNC Board (Spain), on “preventing collusion and improving competition in public bidding”, with presentations from Ecuador (SCPM), Paraguay (CONACOM) and Peru (Indecopi). Mrs. Margarida Matos Rosa, President of AdC (Portugal), closed the event.

36. The Annual Assembly of the **“Centro Regional de Competencia” (CRC)** was also held on 29 September 2022. The opening remarks were delivered by Mrs. Branda Hernández, Acting Chairwoman of COFECE (Mexico), Mr. Fernanda Machado, Deputy General Superintendent of CADE, Mr. Frédéric Jenny, Chair of the OECD Competition Committee and Mr. Mario Umaña, Lead Trade and Competition Specialist, Integration and Trade Sector, IDB. Besides CRC’s administrative announcements, the meeting was composed by two substantive parts on “regulatory initiatives in the digital sector” and “enforcement and advocacy actions in digital markets”. Panellists discussed recent experiences in several jurisdictions, including the United Kingdom (CMA), the European Union (DG Comp), the United States (FTC), Canada (Competition Bureau), Spain (CNMC), the Dominican Republic (ProCompetencia), Argentina (CNDC), Brazil (CADE), Peru (Indecopi), Colombia (SIC) and Ecuador (SCPM). Mrs. Branda Hernández closed the event.

Annex I – Number of attendees and countries

EVENT SUMMARY

EVENT TITLE	LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM (LACCF)
PLACE	Rio de Janeiro, Brazil
DATES (DAY, MONTH, YEAR)	27-28 September 2022
EXPERTS (NAMES AND COUNTRY)	Scott D. Hammond (United States). Natalie Harsdorf-Borsch (Austria). Francisco Schertel Mendes (Brazil). Vinicius Carvalho (Brazil). Javier Tapia (Chile). Pablo Trevisan (Argentina). Pamela Sittenfeld (Costa Rica). Aleksandra Boutin (Belgium). Diana Moss (United States). Martin Peitz (Germany). Feng Zhu (United States). Desiree Delgado Arcos (Mexico). Armando González Palacios (Mexico). António Seabra Ferreira (Portugal). Francisca Levin V. (Chile). Carolina Liévano (Colombia). Diogo Thomson de Andrade (Brazil). Marisa Tierno (Spain).
TOTAL NUMBER OF PARTICIPANTS	219 (100 in person and 119 virtually)
PARTICIPANT COUNTRIES (NUMBER FROM EACH)	Argentina (3), Brazil (53), Chile (3), Colombia (24), Costa Rica (7), Dominican Republic (1), Ecuador (8), El Salvador (6), European Union (1), Honduras (12), Jamaica (1), Mexico (49), Nicaragua (4), Panama (1), Paraguay (7), Peru (10), Portugal (2), Spain (8), Trinidad & Tobago (1), United States (3), Uruguay (1), CARICOM (1), IDB (1), OECD (11), World Bank (1).