



INTER-AMERICAN DEVELOPMENT BANK



**LATIN AMERICAN COMPETITION FORUM
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-- Session III: The Role of Economic Analysis in Judicial Decisions --

Note by Panama

1. What is the role of the courts in your country, i.e. do the courts make enforcement decisions on cases brought by the competition agency, or do they only review the legitimacy of administrative decisions taken by the competition agency?

R. The role of the courts in Panama, regarding the enforcement of Free Competition Law is to declare when the law has been broken. The Free Competition defense system has three stages: a) The competition agency investigates the possible law breach. b) The competition agency sues in court. c) Once the judicial process has finished, the competition agency fines. This fine is subject to an administrative review process. Affected parties can also sue in court. They can ask for treble damages.

2. Is your judicial system inquisitorial or adversarial?

R. Our judicial system, for Free Competition Cases, is basically inquisitorial.

3. Are your courts able to build economic arguments independently from the submission made by the parties –e.g. by using court-appointed consultants? If so, how do the courts define the mandate of such consultants?

R. No. Our courts are not able to build economic arguments independently from the submission made by the parties.

4. What are your actual experiences as a competition authority with presenting complex economic theories or sophisticated economic evidence to courts? Which technique proved most effective: use of external economic consultants or internal staff? Written or oral pleadings?

R. In the only case decided yet, it has been good. The case was a Bid-Rigging one decided only on the base of statistical evidence. We used only internal staff. The pleadings were both written and oral.

5. In your country, are the issues different when a case is brought before an appellate judge (higher court) as opposed to a judge who is responsible for making factual (lower court)?

R. No they are not. The higher courts can and should review both questions of fact and law.

6. Should economic experts be sitting in higher/lower courts with the judges dealing with antitrust cases?

R. When experts are needed, both parties can appoint them, and, usually, the court appoints a neutral one.

7. Is it practical to have specialized courts reviewing antitrust cases which can build up the necessary economic experience to deal with this area of law?

R. Yes. That's the case in Panama. But special provisions have to be adopted to avoid excessive litigation and delays.