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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****SURVEY RESULTS****LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM****-- Note by the Secretariat --****15th Meeting, 4-5 April 2017, Nicaragua**

This document prepared by the OECD Secretariat is the survey results of the fifteenth meeting of the OECD-IDB Latin American and Caribbean Competition Forum held on 4-5 April 2017 in Nicaragua.

More documents related to the Forum can be found at: <http://www.oecd.org/competition/latinamerica/>.

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Latin American and Caribbean Competition Forum

Survey Results 2017

Sixteen responses were received. Of note, sixteen country delegations participated in the LACCF.

1. What are the common challenges that authorities in this region face now or anticipate in the future?

1. Almost all of the respondents used one or more of the following to describe the Latin America and Caribbean region. The economies of the region are characterised as highly concentrated with significant state participation and primarily commodity based. Integration into global value chains is low, however, regional integration is deepening resulting in growing competition enforcement concerns. The informal economy in most of the jurisdictions is significant. Competition policy has not yet been mainstreamed in the overall economic policy framework. One respondent noted, there is a culture of institutionalised protectionism through the accumulation of privileges guaranteed by legal norms at different levels of governments in the region.

2. Eleven responses identified a lack of a competition culture and understanding about competition: across government, amongst the private sector as well as throughout society. As one respondent noted, "...government policies create market distortions and facilitate the creation and sustainability of anti-competitive market behaviour among firms, hindering economic efficiency and affecting the welfare of consumers. This makes it very difficult when attempting to apply advocacy faculties to correct procedures, legal acts or public aid that run contrary to the law and impact negatively the functioning of markets and firms.What is needed is that competition policies are conceived and become part of the broader economic structural reform agenda". Across the region, many governments provide little support: either in resources or, in many cases, political will. Without adequate resources and government commitment, agencies do not have the capacity to hire, train and retain enough sufficiently qualified staff. Agencies cannot achieve a minimum amount of enforcement and advocacy to have a notable impact. In some jurisdictions, family ties, culture, and the risk of ostracisation undermine the effectiveness of leniency programmes. Furthermore, some agencies expressed concerns about their independence.

3. According to five responses regional cartels are a serious issue and five replies cited international/regional mergers and acquisitions. In both cases, the respondents related these issues to the need for better international cooperation amongst the agencies of the region. Specifically on international cooperation, nine replies cited the need for more, and for discussion on enhancing, which the LACCF is well placed to facilitate.

4. According to one respondent, the subsidiaries of multinational enterprises (MNE) dominate many of the smaller economies and may also benefit from significant political support due to their importance to the local economy. Agencies lack the resources, and often government support, even if it does not expressly support these firms, to sanction the predatory tactics and other anticompetitive behaviours by these firms. The respondent

noted that these firms inhibit the development and growth of domestic firms and industries, but agencies did not know if there is a role they can play to address these concerns. More generally, political capture was cited frequently as an issue of concern both in small and large LAC economies.

5. Six respondents cited issues of concern regarding the legal community in their respective countries. In some cases, the local legal community has a distrust of competition law and its enforcement. While the country's legal system may be based on civil law, the relatively new competition laws have a common law origin. Competition law infringements are framed in a very broad manner which the local community is unaccustomed to. With a few exceptions, generally the countries lack both specialised judges and courts as well as lawyers. The legal community is ill prepared to litigate and has difficulties relating to the competition authority.

6. In all areas, several respondents distinguished between specific issues facing younger agencies as well as those located in very small jurisdictions noting the possibly of learning from older/more experienced agencies or even possible economies of scale by co-operating with more experienced agencies on international mergers, market studies, cartel enforcement.

2. What are the competition issues, arising from the features that characterise Latin America and the Caribbean, which are best addressed in a dedicated LACCF rather than at, for example, the ICN, the Global Forum on Competition or other fora?

7. Respondents were positive about the usefulness of the LACCF to address a multitude of competition issues facing authorities across the region given the characteristics shared by the countries. The answers also reflected a concern about how competition can contribute to a broader agenda of economic growth and noted that the LACCF is a good forum to discuss these wider issues. It is in this question that the differences between the larger, more established agencies, and the newer or agencies in small countries were the most evident. However, several responses noted that the latter can benefit from the experiences of the former and encouraged the LACCF to develop mechanisms to enhance peer learning.

Advocacy: Developing credibility and establishing independence

8. Some responses stated that agencies need to establish a clear reputation as enforcers of competition law and learn to conduct effective advocacy activities. They should be in the vanguard of establishing competition as a key principle of economic development in each country and the LACCF can help. Respondents from smaller agencies would like to address creating a competition culture with scarce resources. What are the most cost effective advocacy strategies and actions that can result in maximum impact light of resource constraints? Furthermore, agencies are interested in compelling advocacy strategies as catalysts to reform of anticompetitive legislation and policies. Learning the experiences of older, more established agencies could be of interest.

Institutional Design and Independence

9. Of the seventeen respondents, eight specified that they would like to address institutional design. While in many countries, there has been significant progress in the legal frameworks and on the creation of the competition authority, there is still a long way to go to building strong, specialised, reputable agencies and to raise technical standards to international best practice (see section on technical sessions) for example, appointment and tenure of officials, priority setting, staff training and capacity building. Agencies are interested in addressing issues of independence and the role and relationship with the central government.

Technical Sessions

10. While agencies noted a strong interest in using the LACCF to discuss broader policy issues, they also felt that much could be learned by focussing on practical enforcement issues. Through these sessions, some respondents felt that the LACCF can best contribute to reinforcing regional co-operation among agencies. Therefore, delegations should be composed of not only heads of authorities (for whom a special closed session could be organised as well), but also include senior technical managers who would benefit from back-to-basics type exchanges on enforcement techniques and processes. These sessions would address, for example, investigative techniques processes and experiences, with special consideration for those agencies facing severe resource constraints. Some respondents would like to see the aforementioned topics take special account of the challenges facing young/small agencies. Other topics cited include, how to promote compliance programmes, leniency programmes, dawn raids, bid-rigging in public procurement (including relation to other crimes), IT forensic tools, challenges in relevant market definition due to innovation, and structural remedies in mergers, particularly for international mergers. Respondents would like to address strengthening research and economic analysis. Agencies would like to know about how to gather and use statistical data, and how to proceed if reliable market data is unavailable, notably regarding the informal sector. More advanced authorities could share their enforcement experiences in markets that lesser developed agencies will eventually get into: airline mergers, pharmaceutical, financial markets.

Sessions to promote regional co-operation and convergence

11. The LACCF can help promote regional co-operation and examine the technicalities of co-operation and convergence. Smaller jurisdictions may be limited in their capacity and resources to cooperate with counter parts from other countries even though working with better resourced/experienced agencies can facilitate enforcement investigations. Agencies can use the LACCF to build each other's enforcement and market study capabilities, share information for a more efficient use of resources, establish effective communication mechanisms, particularly on competition jurisprudence and real time enforcement discussions. The LACCF could examine how best to deal with regional cartels, for example, policies to define the scope of co-operation among national competition authorities; how to protect the effectiveness of leniency programs and access

to competition files and issues of confidentiality: how to strike the right balance between protecting the markets (strategic information) and the fundamental right to due process. Respondents would like the LACCF to examine similarly international mergers and acquisitions, and, specifically, structural remedies, as noted previously. Two delegations suggested a closed heads of authorities meeting to promote regional integration and talk provide a space for heads to talk more freely about their current issues, challenges and necessities.

Relations with the Legal Community

12. Six respondents cited the LACCF as a good venue to address challenges with the legal community given that so many countries share similar legal traditions. As cited in question 1, these issues included dealing with non-specialised courts, judges and lawyers who are unprepared to litigate or relate to competition agencies; legal communities accustomed to civil law understanding competition law which often has its origins in common law; the relationship between statutory provisions in the competition laws and the interpretation and jurisprudence fashioned by the judiciary.

Competitions Concerns Created by the Informal Sectors

13. The informal sector will likely remain an important factor of their economies leading many respondents to suggest that examining the implications for the competition agencies would be suitable within the LACCF. As mentioned previously, respondents asked for assistance in assessing the informal sector in light of the lack of reliable statistical data about how the market functions, its size and all the stakeholders involved in it. Other questions raised which could be addressed in the LACCF included the following. How does informality affect competition?; How should agencies take into account informality when evaluating a merger?; If the informal sector in a market is large, accounting only for the formal sector may overestimate the impact of a particular merger on competition; Does informality facilitate collusion?

Broader Policy Issues/Other Specific Topics

14. The following issues were suggested for the LACCF:
- Competition and concentrated markets;
 - Competition in regulated sectors;
 - Competition and domestic industry promotion;
 - Competition and participation business in the region;
 - Estimation of damages as well as private enforcement;
 - Promoting growth through well-functioning market economies;
 - Commodity market monopolies e.g. coffee;
 - The balance of emphasis in terms of the contest between orthodox approaches which stress an almost exclusive concern with protecting competition and those which embrace a growing degree of sensitivity to the wider ecosystem.

3. How should the LACCF evolve over the next 15 years? Elements that could be considered include geographical representation, level of representation, outputs, length of the LACCF, ancillary events and so forth.

15. Respondents agreed that the LACCF should continue although diverse, and sometimes conflicting, suggestions were provided to improve the Forum.

16. The LACCF should be innovative and forward looking in its efforts to promote competition. The Forum can act as a mechanism to generate trust amongst the agencies in order to promote better transborder co-operation on investigations.

17. The LACCF is an important opportunity for interaction and exchange – drawing Caribbean countries closer to Latin America: e.g. trade in goods and services, growing expectation and evidence of cross border mergers and acquisitions.

Who should come to the LACCF?

18. The LACCF should work with countries that do not yet have a competition regime and help with the implementation of new laws. All LAC countries, whether they have a competition law or not, should be encouraged to attend the LACCF in order to promote regional integration and co-operation.

19. Respondents suggested more private sector participation when appropriate. Other multilateral, and bilateral organisations can contribute to the agenda and also provide funding for those who cannot afford to attend in person.

20. Economic policymakers should be invited to attend dedicated sessions that address relevant issues and could contribute to economic reform.

21. With resource constraints, many potential delegates cannot afford to come to the meeting. The LACCF should provide facilities for virtual participation so more can participate.

Composition of delegations

22. Delegations should be comprised of the heads of authorities, as well as those leading international co-operation, and managerial technical staff thus reflecting the different types of sessions that should be offered.

Duration and side events

23. Some respondents felt that the current duration of 1.5 days, as well as the size, and level of representation are sufficient to cover all topics of interest. Other respondents called for an extension of the LACCF to two or three full days with a limited number of highly focused issues.

Types of sessions

24. Generally, respondents cited that they would like the sessions to be more interactive, with a suggestion to provide more case studies. Some replied that the LACCF should not be a presentation event, which is the framework of many other international meetings, but include technical enforcement issues on the second day (see replies under question 2).

25. Sessions should focus on technical assistance from more advance to less advanced authorities. There should be a more active participation from the authorities and other players in the session panels, not only academics. Other respondents requested more high level sessions, dynamic workshops as well as public hearings with outside experts from, for example, the OECD.

26. There should be topics for younger authorities, which could be structured as interactive breakout-out sessions.

What else: logistics, new elements

27. Other suggestions note yet cited include:

- Topic related workshops between the annual meetings to promote capacity building;
- Ancillary, practical outputs: regional analysis, guidelines newsletters;
- Provide awards to the agency that has eradicated a procedure more creatively efficiently and effectively;
- If first day heads of agency, second day focussing on technical/enforcement issues, i.e. Day 1 heads of agency meeting to promote regional integration and talk more freely about their current issues challenges and necessities. The second day would be devoted to more technical, enforcement;
- Dedicated CARICOM session recognising the specific features of the Caribbean countries;
- Consider webcasts;
- Consider finding funding from other sources to cover travel costs of delegations.