

**Unclassified****English - Or. English****1 December 2019****DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE****SUMMARY RECORD****LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM****-- Note by the Secretariat --****17th Meeting, 24-25 September 2019, Honduras**

This document prepared by the OECD Secretariat is a summary record of the seventeenth meeting of the OECD-IDB Latin American and Caribbean Competition Forum held on 24-25 September 2019 in Honduras.

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

**JT03455584**

## *Latin American and Caribbean Competition Forum*

*San Pedro Sula, Honduras, 24 – 25 September 2019*

### **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 seventeenth meeting of the Latin American and Caribbean Competition Forum took place in San Pedro Sula, Honduras, 24 – 25 September 2019 hosted by the Comisión para la Defensa y Promoción de la Competencia (CDPC). The morning of 24 September was devoted to the *Honduras Competition Day* conference. The *Ibero-American Forum on Competition* followed the LACCF on 26 September 2019.
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 on the afternoon of 24 September and all day on 25 September 2019. The agenda included three sessions: i) Fining methodologies for competition law infringements; ii) Peer Review of El Salvador's Competition Law and Policy, and; iii) Practical approaches to assessing digital platform markets for competition law enforcement.
5. Over 70 delegates from 16 countries, as well as representatives from CARICOM, the OECD, and the IDB, 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 Maria Antonia Rivera Presidential Designate; Lila Umana, Vice Mayor San Pedro Sula; Antonio Lozano Ferrero Commissioner President, Comisión para la Defensa y Promoción de la Competencia (CDPC), Honduras; Mario Umana, Lead Trade and Competition Specialist Integration and Trade Sector Inter-American Development Bank (IDB); and Frédéric Jenny, Chair of the OECD Competition Committee.

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<sup>1</sup> The sixteen countries were: Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Paraguay, Peru, Spain, Trinidad and Tobago, United States and Uruguay.

7. Ms Rivera welcomed delegates and recognised the importance of the LACCF in supporting competition across the region; but also, to promote dialogue, consensus building and networking among policy makers. She noted that sound competition law and policies provide important incentives for companies to innovate and respond more quickly to market trends. Furthermore, she highlighted the links between competition and transparency and the creation of a level playing field. Finally, Ms. Rivera noted efforts by the government of Honduras to strengthen its competition regime.

8. While Mr. Lozano recognised the challenges facing Honduras in its competition regime, he also provided examples of the impact that competition enforcement has made in Honduras. Enforcement actions have resulted in benefits to consumers of approximately 1.3 billion lempiras per year, equivalent to one tenth of the country's gross domestic product. Work on the elimination of anticompetitive regulation in the pharmaceutical sector has resulted in a decrease in pharmaceutical prices of approximately 5 – 10 %, representing an annual savings of around 700 million Lempiras. Furthermore the CPDC has carried out 26 sector studies and possible savings, related to the implementation of the related recommendations are approximately 11 000 million Lempiras per year and have the potential to increase GDP by one percentage point.

9. Mr. Mario Umaña congratulated Honduras on the excellent organisation of the 17<sup>th</sup> meeting of the LACCF. He recounted the longstanding support that the IDB has provided to the CDPC since its creation in 2006, including a peer review in 2011. Mr. Umaña remarked on increasing market concentrations in several sectors, which calls for strong competition enforcement and vigilance in order to ensure that markets remain competitive. The IDB remains ready to work with countries requesting its support. Technical co-operation projects currently span across Latin America and the Caribbean. As such, Mr. Umaña noted the pleasure of the IDB to sponsor the Peer Review of El Salvador's Competition Law and Policy.

10. Mr. Frédéric Jenny, Chairman of the OECD Competition Committee also welcomed delegates to the 17<sup>th</sup> LACCF. 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. While the 2018 LACCF focused on policy issues, the 2019 agenda is focused on the application of the law and the exchange of enforcement experiences. He noted the particular difficulties facing authorities as they tackle a rapidly changing world with the digital economy growing in importance and posing new challenges.

### **1.1. Session I - Fining methodologies for competition law infringements**

1. Fines for competition law infringements are one of the most important tools available to competition authorities in their efforts to promote effectively compliance with competition law. Authorities around the world have imposed increasingly substantial fines for competition law violations over the last few decades. Several common steps are observed in setting fines: (i) determination of base fine; (ii) adjustment of the base fine for aggravating and mitigating circumstances; (iii) additional adjustments related to statutory limits and financial capability of the offender; and (iv) considerations of leniency programmes. A majority of competition authorities refer to the relevant turnover as the basis for the calculation of the fine while other authorities calculate basic fine to be imposed with reference to the global turnover. In determining the amount of fines, most competition authorities take into account aggravating or mitigating circumstances, including: recidivism; the role of the undertaking in the infringement; co-operation with the investigating authorities; and existence of a compliance programme. To ensure the principle of proportionality, a number of jurisdictions institute a maximum fining cap and

take the financial capability of the undertakings into consideration. In cartel cases, leniency programmes may be considered, if applicable. Despite these divergences, it is widely accepted that adoption and publication of guidelines that detail the fining methodology of a jurisdiction brings positive effects. This session reviewed current fining methodologies in a variety of jurisdictions, highlighting both similarities and differences in the way fines are calculated and applied.

2. Mr. Mario Umaña, chaired the session. Ms. Lynn Robertson from the Secretariat presented the background note. Mr. Juan David Gutiérrez, Partner, Avante Lawyers was the expert speaker.

3. Mr. Gutiérrez's presentation addressed: (i) whether fines have proven to be an effective tool across Latin America; (ii) what are the challenges regarding the graduation of fines; and, (iii) what changes could be introduced to fining methodologies. During the last two decades, at least a third of the region's jurisdictions have introduced reforms to increase the maximum value of fines. Mr. Gutiérrez noted that only one jurisdiction (Mexico) assesses systematically the impact of its antitrust decisions. Hence, most of the region's authorities lack robust evidence on the effects of the fines imposed. Furthermore, Mr. Gutiérrez noted that not all jurisdiction have published fining guidelines advising that this lack of transparency is one of the challenges that competition authorities should address in the near future.

4. Peru and Ecuador provided innovative examples of fining methodologies. Peru explained that its methodology takes into account the illicit benefit that the economic agent expected or actually obtained because of the anticompetitive conduct; the probability of detection; duration as well as attenuating or mitigating circumstances. Ecuador presented a proposal for the calculation of fines that seeks to eliminate or attenuate the potentially ambiguous interpretations of the criteria established by the law Chile explained its 2-step methodology for determining fine amounts. Furthermore, on August 2019, Chile published a new Guía Interna para Solicitudes de Multa de la Fiscalía Nacional Económica to enhance transparency and legal certainty

5. In Mexico, the Poder Judicial de la Federación has determined that the Commission must analyse the particular circumstances of each case and the criteria must not be applied rigidly, which challenges to legal certainty. Honduras cited challenges with transparency, legal certainty and predictability generated by its current methodology The Dominican Republic is advocating for changes to their law. In particular, the maximum level of fines bears no correlation to the size of the undertakings in the markets. The United States informed delegates about how they evaluate and consider compliance programmes within their methodology.

## **1.2. Session II - Peer Review of El Salvador's Competition Law and Policy**

6. The OECD/IADB undertook a Peer Review of El Salvador's Competition Law and Policy. Frédéric Jenny chaired the Peer Review, and the Lead Examiners were from Colombia, Honduras and Peru: Juan Pablo Herrera Saavedra, Deputy Superintendent for Competition Protection, SIC; Alberto Lozano Ferrera, Commissioner President, CDPC; and, Jesus Espinoza, Technical Secretary, INDECOPI The report by the OECD Secretariat and its recommendations provided the basis for questions and discussion, see [DAF/COMP/LACF(2019)3].

7. This review finds that El Salvador's competition agency, the Superintendency of Competition (the 'Superintendency') is a serious competition authority with the typical limitations of a small competition authority in Latin America. El Salvador's competition law covers the three typical areas of anticompetitive conduct – restrictive agreements, abuse of dominance and anticompetitive mergers – and employs the commonly used substantive tests for each of these three types of conduct. In effect, the basic pillars of competition law in El Salvador are in line with good international best practices. Recent reform proposals show the efforts of El Salvador to increase the effectiveness of the competition law.

8. While historically serious about enforcement, the number of decisions has diminished substantially over the last five years. The current mechanism for appointing the members of the Board of the Superintendency could be improved. In line with Central American practice, the authority has few resources when compared to other economic regulators in El Salvador. The budget of the superintendence is among the lowest of the institutions dealing with economic affairs. Other issues identified by this peer review include difficulties in prioritisation the amount of penalties imposed, which are rather small, and the difficulties in collecting fines.

9. The Secretariat Peer Review Report provides several recommendations that if implemented would build on El Salvador's efforts to date to strengthen its competition regime. These recommendations include most notably to reform its legal and institutional framework, increase resources, strengthen enforcement against cartels and abuses of dominance; improve prioritisation of the allocation of resources; reform the leniency regime; align the merger notification thresholds with the El Salvadorian economy.

10. Gerardo Henríquez Angulo, led the El Salvadorian delegation. He emphasised the commitment of El Salvador to reform and reinforce 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 - Practical approaches to assessing digital platform markets for competition law enforcement**

11. The third session discussed some practical approaches for competition authorities pursuing digital platform enforcement cases. It was chaired by Frédéric Jenny, Chair of the OECD Competition Committee. Mrs. Iratxe Gurpegui from the Secretariat presented the background note, explaining the key features of digital platform market dynamics. She explained the challenges of market definition due to multi-sidedness and the limitations of some tools for assessing market power for digital platforms. Frédéric Jenny talked about issues not addressed in detail in the background paper but equally relevant to competition enforcement in the digital economy (e.g. big data and algorithmic collusion).

12. Brazil, Colombia, Ecuador, Mexico, CARICOM, Spain, Chile and the US took the floor. Different issues were discussed during these interventions. Brazil explained its experience with digital platforms in merger and anticompetitive conduct cases, as well as market studies. Colombia presented cases related to digital platforms in the tourism, banking and ride-hailing sectors. Spain shared its experience with online platforms for food delivery. CARICOM shared its findings of recent discussions on how to define markets and assess market power in digital platform markets. Ecuador's contribution focused on the sharing economy. The US Federal Trade Commission talked about the hearings on the subject of whether we need significant changes to our analytical and legal competition frameworks in response to the growth of digital platforms. Mexico and Chile talked about

the Walmart/Cornershop merger and the reasons why the two competition agencies took opposite decisions regarding the transaction.

#### 1.4. Final session

13. 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 5 December 2019 in the margins of the OECD Global Forum on Competition. A tentative date has been identified and will be confirmed at in December: week of 21 September 2020.

14. Delegations were encouraged to fill in the evaluation form the results of which will be discussed on 5 December.

15. As noted, LACCF delegations are invited to attend an informal meeting on 5 December in Paris on the margins of the GFC.

#### 2. Results of participants' evaluations and next meeting

16. The participants considered the Forum to have been successful giving a score of 4.8 out of 5, and judging by the replies to the evaluation questionnaires. However, there is always room for improvement. Delegates in particular requested that calls for contributions are circulated earlier, more time for free discussion, more case studies, and more networking time. Delegates also suggested expanding the event to two full days.

17. The next LACCF is scheduled for the week of 21 September 2020.

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

18. Honduras held its **National Competition Day** on the morning of 19 September before the start of the LACCF and was opened by Antonio Lozano Ferrero, Commissioner President, Comisión para la Defensa y Promoción de la Competencia (CDPC), Honduras.

19. The National Competition Day focussed on merger control in Honduras with a panel consisting of the panel consisting of, Carolina Echeverria Haylock, Secretary to the Plenary of the CDPC, Antonio Gomes, Deputy Director of the Directorate for Financial and Enterprise Affairs, OECD, Arturo Ochoa, Economic Director of the CDPC. Presentations focussed on merger control methodologies for the information of the antitrust community who attended the event.

20. The *Ibero-American Forum on Competition* was held after the LACCF on the morning of the 26 September 2019. 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.

21. 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 José María Marín Quemada, President, National Authority for Markets and Competition (CNMC), Spain and Antonio Lozano Ferrera, Commissioner President Comisión para la Defensa y Promoción de la Competencia (CDPC), Honduras. The first session focused on

*Ex-officio detection and public tenders, [with presentations from Spain \(CNMC\), Mexico \(COFECE\), Peru \(INDECOPI\) and Brazil \(CADE\)](#). The second session entitled, *Protection of Leniency programmes as a result of increasing damage claims* supported by presentations from [Spain \(CNMC\), Mexico \(COFECE\), Peru \(INDECOPI\), Brazil \(CADE\) and Ecuador \(SCPM\)](#).*

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

<b>EVENT TITLE</b>	<b>LATIN AMERICAN COMPETITION FORUM</b>
<b>PLACE</b>	San Pedro Sula, Honduras
<b>DATES (DAY, MONTH, YEAR)</b>	24 – 25 September 2019
<b>OECD/IDB STAFF AT EVENT</b>	Antonio Gomes (OECD), Lynn Robertson (OECD), Iratxe Gurpegui, (OECD), Frédéric Jenny (Chair OECD Competition Committee; Mario A Umaña (IDB)
<b>EXPERTS (NAMES AND COUNTRY)</b>	Juan David Gutiérrez R., Partner, Avante Lawyers <i>Lead Examiners:</i> Juan Pablo Herrera Saavedra, Deputy Superintendent for Competition Protection, SIC, Colombia; Alberto Lozano Ferrera, Commissioner President, CDPC, Honduras; and, Jesus Espinoza, Technical Secretary, INDECOPI, Peru.
<b>TOTAL NUMBER OF PARTICIPANTS</b>	Approximately 70
<b>PARTICIPANT COUNTRIES (NUMBER FROM EACH)</b>	Brazil (1), Chile (2), Colombia (2), Costa Rica (7), Dominican Republic (2), Ecuador (4), El Salvador (1), Guatemala (1), Honduras (13), Mexico (10), Paraguay (2) Peru (2), Spain (6), Trinidad and Tobago (1), United States (3), Uruguay (1).