

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

Working Party No. 3 on Co-operation and Enforcement

ROUNDTABLE ON CARTELS INVOLVING INTERMEDIATE GOODS

-- Costa Rica --

27 October 2015

This document reproduces a written contribution from Costa Rica submitted for Item 3 of the 122nd meeting of the Working Party No. 3 on Co-operation and Enforcement on 27 October 2015.

*More documents related to this discussion can be found at:
www.oecd.org/daf/competition/cartels-involving-intermediate-goods.htm*

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1. Analysis of Hypothetical Case: Country A

Question No. 1

1. Given the existence of a cartel such as the one that occurred between Alpha and Beta, what corresponds according to the scope of Law No. 7472, is to verify the existence of the agreement, and that this involves competitor companies. Article 11 of our Competition Law provides that the acts that may arise between competing agents in order to fix, raise, or manipulate the purchase or sale price which are offered or demanded the goods or services in markets which are considered as absolute competitive practices, listed as null and void and the ones that are most damaging.

Question No. 2

2. The figure of the price agreement is typified in our Competition Law as an illegal and null and void practice, so it is not necessary to prove the substantial power of the companies ALPHA and BETA, simply before the existence of price agreements between competitors to each other, it is considered that the cartel is null in itself without having to prove other elements. In this case it is from the application of a sanction as provided in Article 28 of our law, precisely because are actions which are the most harmful and damaging to the market.

Question No. 3

3. In this case it is necessary to clarify that if the companies agreed to the price increase in country A, and they have representation in the same country, it is appropriate to sanction. In those cases where the conduct involves other jurisdictions, and for purposes of applying the competition rules is necessary to have a far-reaching legislation, covering the other countries, so we would talk more of a regional or Community legislation which implies that the effects of the law would be applicable to other jurisdictions as would be countries B and C.

4. Currently our legislation does not have coverage outside the country, however, this is an issue that requires more attention to the extent that the effects of a price agreement could affect other countries as is the case in Central America and there is no possibility to applying another law that has coverage for all countries in the region.

2. Analysis of Hypothetical Case: Country B

Response to Question number 1.

5. The legal and jurisdictional requirements to execute a legal action in the terms consulted would be basically that the companies that have been cartelized have legal representation in the country B. This is due to basic and fundamental standards guaranteeing respect to due process, internationally recognized and adopted in the domestic legislation of each country.

6. In the hypothetical case that there is no legal representation of companies cartelized in the country B, it would be possible to collect evidentiary information on the case, in order to refer it to the competition agency of the country A, requesting the initiation of an investigation on the grounds of anticompetitive practices of the country B The Competence Agency of the country A once this requirement has been seen, may initiate ex officio, even the respective legal action against the cartelized companies. Such legal action would be justified in the country A by the commission of an infringement fact (cartelization) committed by two companies located within its jurisdiction, notwithstanding the effects that the practice may produce outside the country A.

Response to question number 2.

7. It remains Essentials that the cartelized companies have legal representation in the country B.

8. If this condition is not given, the possibilities that before a formal investigation requested by country B to country A the latter initiates a procedure, are diminished in the absence of the commission of an infringement in the jurisdiction of country A) as well as its effects.

Response to question number 3.

9. The sanction to be imposed --- which is determined by the domestic law of the country of the competition agency where the investigation research conducted by anticompetitive practices --- would be determined depending on the damage to the economy of country B.

Response to question number 4.

10. Regardless of what is available in other legislation, what rules are the provisions of the domestic law of country).

3. Analysis of Hypothetical Case: Country C

Response number 1.

11. According to the scope of the Competition Law of Costa Rica (Law No. 7472) for the purpose of investigating and punishing a cartel by agreement of prices or exchange of information under article 11 subsection a) of the Law, it is necessary that these behaviors may be determined in the country, that is, that companies must be represented in the country.

12. In this case the only thing that has to be checked is that the agents involved in the price agreement are competing among themselves and that are lawfully installed within the country. Since under our regulations, these practices are null and void and are one of the most damaging to the market, therefore it is not necessary to prove that the agents have substantial power.

13. In the case of Country C, Costa Rican law could not be applied, since the companies Alpha and Beta are not legally incorporated or represented in the country C. In terms of the rules of Costa Rica no action could be executed, however, other agencies may be approached to determine details about the cartel and other related aspects.

Response number 2.

14. Starting from the premise that the companies agreed prices in the country, Article 11 would apply as long as when the agents have legal representation in the country, they could be subject to possible investigation. In the case of country C it is not applicable.

Response number 3.

15. The fact that Alpha and Beta have contact in the territory it does not mean there is enough proof to be investigated according to our laws. In this case it would have to assess the nature of the relationship, participants, effects, indications, evidence, proofs to support the infringement.

Response number 4.

16. In this case Costa Rican law does not apply, however, it would be ideal to contact other agencies for guidance as to the situation, the effects that have been generated and the indirect and direct damages that could take other competition agencies. A preliminary investigation could be opened in order to ascertain the real situation of this case in the country to detect the degree of damage to the consumer.

Response number 5.

17. In this situation integrators did not originate on the price agreement therefore are not subject to application of the law. Even if they have representation in the country and some type of contact it does not mean there is enough evidence to be processed.

18. The location of the integrators could facilitate the collection of information on practices of Alpha and Beta for an analysis of the situation.

Response number 6.

19. In this case any type of action or sanction would operate due to the already explained facts. The only thing that could be applied is the level of coordination from other agencies with respect to the situation. In such cases the Costa Rican law establishes valuation criteria which include the damage caused, severity of the violation, ability to pay, the size of the market affected, duration of the practice and other aspects related etc.

Response number 7.

20. In these last cases it is used as reference material as it would depend on the market and Case casuistry.