



Regional Competition Center for Latin America
presents:

First Seminar for Latin American Judges to
Discuss Rulings on Competition Cases

Alain De Remes

CRCLA

&

Rodrigo Ríos

CRCLA

This month, the Regional Competition Center for Latin America (or CRCAL by its acronym in Spanish) presents a summary of the first seminar of competition for Latin American Judges to discuss rulings on competition cases.ⁱ

One of the central goals of the Regional Competition Center for Latin America (or CRCAL, by its acronym in Spanish) is to build a bridge of communication between competition authorities and the judiciary, since a great number of competition cases end in courts. This informal exchange of communication does not intend to tell judicial authorities how they should rule on competition cases, but rather to establish a common language and ground that facilitates an understanding of the complex economic factors that competition authorities assess before reaching their verdicts.

Two factors make judicial rulings on competition in Latin America a complex task. First, competition is a relatively new subject in Latin America since the most experienced competition agencies have around 20 years (and some of them are much younger), and in many cases courts that review competition cases are dealing with topics in which there is no precedent or jurisprudence. Second, the civil law tradition that is prevalent in most Latin American judicial systems is not accustomed to rulings that are based on circumstantial evidence, a key factor that most competition agencies use in assessment of abuse of dominance, for example. This requires the courts to take an extremely “legalistic and procedural” approach to competition issues, disregarding key economic factors and evidence presented by the agencies.

Since its beginning CRCAL has aimed to address these issues by fostering competition seminars among the judiciary. In February 28 and March 1, CRCAL held its first seminar on competition for Latin American Judges at CIDE, one of the most prestigious research centers in Mexico. The event gathered judges from Argentina, Chile, Colombia, Honduras, and Mexico, and counted with the leading presence of Vaughn Walker, former district judge of the United States District Court for the Northern District of California, with great experience on competition cases.

The two-day event started with a presentation by the Mexican Judge Adriana Campuzano, who spoke about the Mexican experience with cartels and trade

chambers. Afterwards, Judge Antonio Velilla from Colombia shared with the attendees the role of the state in assuring competitive conditions in certain strategic economic sectors. The event continued with a presentation by Chilean Judge Tomás Menchaca, who explained economic principles considered by agencies while making a decision on competition related matters. The presence of Judge Menchaca was important for the seminar, since Chile is the only Latin American country with a specialized tribunal that oversees the rulings made by the competition authority. Judge Román Pineda from Honduras presented the only case dealt with by Honduras's Judiciary. It was precisely Judge Pineda who stressed out the importance of doing more often this type of seminars for Judges, especially for countries in which the competition law is relatively new. The ending of first day of work saw three Mexican judges discussing a cartel case in the Mexican carbonated drinks market.

During the second day of activities, Judge Alfredo Gusman from Argentina shared two relevant cases in the Argentinian markets which were useful to explain the role of cautionary measures in competition cases. For the rest of the day the attendees participated in a lengthy discussion about the lessons learned during this exercise and how it could be improved in the future.

Several conclusions can be drawn from this first seminar. First, the economic sectors where agencies' rulings end in courts tend to be similar across nations. In fact, several judges coincided on signaling telecom or pharmaceuticals as sectors that almost always end with judicial rulings. Second, through this type of seminar, some more inexperienced judges - like the case of Honduras, which had never ruled on competition cases related to collusion before 2007 - can learn from more experienced judiciary such as Chile or México, which sometimes have already dealt with similar cases. Third, all participants at the seminar agreed that a network of judges and a database on judicial rulings for Latin American judges could become a powerful search tool that would ease judiciary work in the region. Fourth, the judicial ruling on competition cases requires that judges be sensitized to economic principles used by competition agencies in at least three different areas: a) unilateral conducts; b) cartels and c) mergers. The organization of workshops in which judges can be exposed to these principles could be extremely useful to create a common base of understanding between agencies and the judiciary. Fifth, there are several topics directly related to competition which need to be tackled

simultaneously, such as consumer rights and competition, intellectual property rights and competition, and class actions and competition.

The lessons learned during this seminar will be applied to a larger CRCAL workshop for Latin American judges to be held in Washington D.C in July. In this workshop judges will have training sessions in economic principles, resolution of cases in different jurisdictions of Latin America, and with three hypothetical cases. The Washington D.C. workshop will be at the forefront of the effort of CRCAL to build bridges of understanding between the judiciary and the economic agencies.

ⁱ Alain De Remes is Inter American Development Bank Consultant for CRCAL and Rodrigo Ríos is World Bank consultant for CRCAL.