

Bringing Latin American Judges Up To Speed on Evolving Competition Law

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From March 10 to 12, 2014 the Third Seminar for Latin American Judges on Competition was held in Panama City. This event was financed by the United Kingdom Foreign and Commonwealth Office and the Inter-American Development Bank, and organized by the Regional Competition Center for Latin America (CRCAL for its acronym in Spanish) in association with the Mexican Center of Investigation for Development (CIDAC for its acronym in Spanish). During three days, twenty-four judges from 12 Latin American countries attended the seminar.

This event is the third of its kind after the success of the first seminar held in Mexico in March 2013 and the second, which took place on July 2013 in Washington, D.C. It is worth noting that with these three seminars more than 40 judges from 12 Latin American countries have been trained on how to use competition principles. Moreover, the funding provided by the UK for this event ratifies that jurisdictions that are more qualified in the enforcement of antitrust laws consider highly relevant to convey their knowledge to countries with a much younger experience in competition regulation.

Latin America has experienced a rapid evolution of its antitrust laws and institutions in charge of safeguarding competition in their economies. Countries in the region, which were once characterized by a high degree of protectionism, have become keener towards participating in the global markets, opening their economies and deregulating several of their main economic sectors. As part of these efforts, the vast majority of Latin American countries have enacted competition laws to protect consumer benefits, and guarantee and ensure a more balanced playing field for new firms and companies that wish to participate in their markets.

With an increasing number of cases and resolutions by competition authorities in the region that curb antitrust behavior, it is natural that those affected in their interests often request the intervention of the judiciary. Therefore, with the progressive involvement of members of the Latin American Judiciary in competition disputes, their needs for in-depth training and capacity building in competition have raised exponentially. This is the main reason why these meetings, organized by the CRC, have become a success, since they constitute a unique opportunity to exchange experience and knowledge among judges from different jurisdictions in competition themes. Moreover, given the importance and complexity of the cases under review by the judiciary in the region, some countries such as Mexico, Peru or Chile have decided to create specialized tribunals in competition.

In Panama, fellow judges lectured judges from Latin America on why competition is important, and which crucial factors should be taken into account while evaluating decisions taken by antitrust authorities.



On this occasion Tomas Menchaca, President of the Free Trade Defense Tribunal of Chile gave two outstanding lectures: one on principles of economic competition for lawyers, and a second one on rules and tests that are helpful to detect abuse of dominance and cartels.

Sir Peter Roth, President of the Competition Appeal Tribunal of the United Kingdom and Wales was in charge of explaining why competition matters from the European and UK perspective. Mr. Roth gave a thorough explanation of the three areas of European Law related to competition, which are anti-competitive agreements, rules on abuse of dominance and merger control. Mr. Roth also provided the attendees with a description of the Laws the United Kingdom specifically enacts to protect its market competitiveness. Judge Virginia Covington from the United States Court of Appeals explained the American perspective on why competition law matters. Judge Covington provided an extensive analysis of the rule of reason that is taken into account in American courts decisions in antitrust-cases. Furthermore, Judge Douglas Ginsburg from the United States Court of Appeals detailed the typical conducts behind abuse of dominance such as predatory pricing, tying, refusals to deal and exclusive dealing.

To test the understanding of the concepts explained during the seminar, and after listening to best European and American practices, the attendees had to solve three hypothetical cases written by Aitor Ortiz, a senior competition specialist from CIDAC. Participant Judges had a chance to put in practice the knowledge acquired through lecturers in the seminar and discuss possible solutions to the problems posed by the hypos. During the last day of activities a selected group of Latin American judges presented a case solved in their national courts and explained to the audience the challenges they faced.

It is worth mentioning that as part of the efforts by judges to continue with this type of seminars the Iberoamerican Association of Judges in Regulatory Law (AIJDR for its acronym in Spanish) was formed during the CRCAL's Second Competition Seminar in Washington, D.C. In Panama, 14 new judges decided to adhere to the AIJDR reaching 39 members.

The judges' members of the AIJDR created this special representation organization to face common challenges such as limited experience in solving competition cases (the oldest competition laws in the region have only 20 years) and limited resources to invest in strengthening their capacities. The central purpose for building the AIJDR is to carry out various activities that facilitate the creation and diffusion of knowledge in competition topics among its members.

Among the future activities by AIJDR are the commission of studies to compare the structure of local legal systems related to competition laws; elaborate an e-Book with paradigmatic decisions from each country; write scholarly articles and organize workshops and seminars on competition, regulation and analog branches (telecommunications, intellectual property, broadcasting energy, transportation, environment, etc.). The association will also seek to develop a database of judicial resolutions in competition matters.

The AIJDR constitutes one of the first effort by the Latin American Judiciary to create an organization that represent its interests in competition topics. This new organization comes after the administrative competition authorities of Latin America created the Regional Competition Center three years ago. This demonstrates that Latin America is moving towards a greater trend of associationism in which administrative and judicial authorities are embracing multilateral organizations and cooperation as one of the best ways to enforce competition.

The Event's Agenda, Power Point Presentations, Videos and Photos of the event can be consulted at <http://www.crcal.org/eventos-talleres/eventos/eventos-anteriores/item/167-tercer-seminario-de-competencia-para-jueces-latinoamericanos-ciudad-de-panama-panama>