

Social Control as a Means of Preventing Anticompetitive Regulations



By Ismael Beltrán Prado¹

It is impossible not to feel amazed when economic agents exercise such a powerful influence on some regulators in order to lead them to issue anticompetitive regulations, which at the end of the day exclusively benefit their private interests at the mercy of the free functioning of the market and of the public good.

Because this form of anticompetitive behavior is not notorious in comparison to other more evident anticompetitive conducts such as bid rigging in public procurement, it might be difficult to deal with and public opinion might not even be sufficiently aware of it.

Why Difficulties in Measuring Competition Advocacy Tools Effectiveness might be Risky for Competition

Because competition advocacy mechanisms are non-binding in nature, it is challenging for Competition Authorities to show convincing evidence of their important impact in protecting competitive markets. Therefore, this is why competition advocacy success is sometimes undervalued.

In nations where there is not a strong economic competition culture, it is only when Competition Authorities uncover anticompetitive cartels that society remembers market failures and the negative impacts that anticompetitive conducts have in the economy.

Nevertheless, competition advocacy victories are numerous yet quiet, and in consequence this makes it easier for companies to use subtle ways to capture regulators for their particular benefit and to affect economic competition.

Regulatory Production and Competition Advocacy Legal Opinions

The number of regulations in some countries is overwhelming. Governments of many countries are developing and improving their regulatory reform strategies to prevent regulations of becoming a hindrance of market economy, economic growth and economic development.

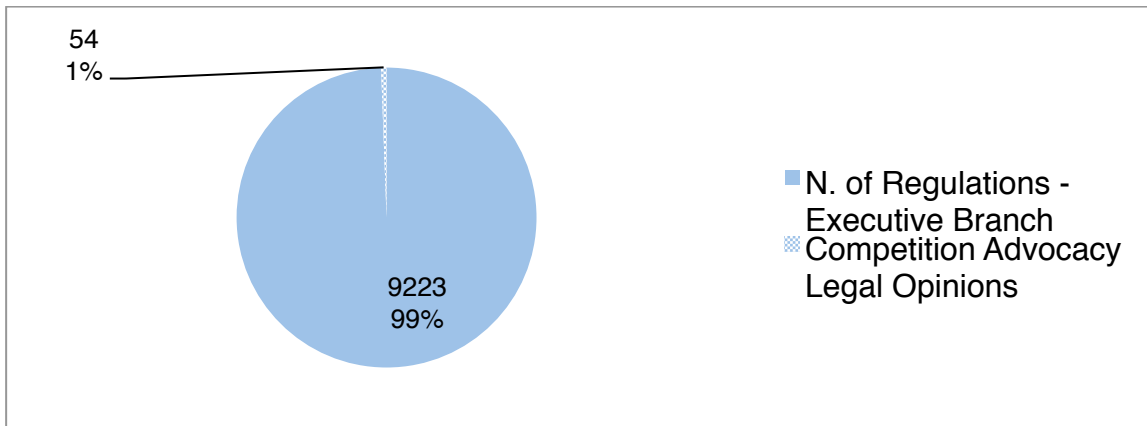
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Colombia, for example, a country that is getting closer to full OECD membership, has intensified its efforts to improve its regulatory reform. With that purpose in mind, the Colombian National Planning Department (DNP) published a regulatory inventory of the Executive Branch at the national level. Based on those statistics, I present in the following chart a comparison between the number of regulations issued by the Executive Branch and the number of advocacy legal opinions of the Colombian Competition Authority during year 2016:



*Source: National Planning Department and Colombian Competition Authority (SIC). The author created the chart.

Based on this information, from an antitrust perspective, the number of potentially anticompetitive regulations that Regulators are not notifying to the National Competition Authority, as mandated by the Colombian Competition Law, is disturbing. As can be observed, the Colombian Competition Authority only analyzed 1% of the regulations in the form of competition advocacy legal opinions.

The Power of Social Control

There are various possible causes for the situation described above. In the Colombian case, just to mention one cause, there are legal reforms that are required to extend competition advocacy powers in order to allow the Colombian Competition Authority to review a larger number of potentially anticompetitive regulations.

Nonetheless, the National Colombian Competition Authority is making additional efforts to make society aware of the importance on contributing to counteract the effect of private manipulation of regulations for their exclusive benefit. Therefore, competition policies such as the one developed by Mexican Competition Authority (COFECE) in order to encourage citizens to inform the most absurd regulatory anticompetitive obstacle will be hopefully soon imitated in Colombia and should be also adopted by other Latin American countries.

Social control tools like this one might be very effective mechanisms to help Competition Authorities to identify anticompetitive regulations, to prevent private maneuvers to capture Regulators and to stop in timely manner other kinds of subtle strategies that can seriously affect competition.

