



The Charter of Paris: Renewing Latin American Authorities' Commitment to Leniency Programs

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Following a long delay, the most developed competition authorities in our región have reacted to the great scandals that have emerged all around the región regarding the use of immunity or leniency programs.

As we have [previously said](#), there has recently been some controversy regarding leniency programs, particularly in the Andean region, following repeated violations of the basic principles of such programs by certain [national and regional authorities](#).

In reaction to this controversy, and anticipating the snowball effect that can often follow these actions, the competition authorities in Argentina, Brazil, Chile, Mexico and Peru signed the Charter of Paris on November 28, reaffirming their commitment to the basic principles of these programs, to their improvement, and to working to solve the issues arising from the unfortunate case of Ecuador's handling of the Kimberly Clark case, affecting other international companies as well.

The charter explicitly recognizes the importance of leniency programs for the purpose of carrying out the agencies' investigation and correction duties. They thereby commit to adopt and ensure the application of best practices on the subject. Specifically, it recognizes the importance of recommendations and the work done by the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD) in this regard.

These 5 countries have included leniency programs in their legislation, and all five owe much of their success in the field of cartel detection to these mechanisms. While the absence of Colombia, which also runs a successful leniency program, is somewhat surprising, the evidence shows that the country shares in the goals and objectives of the charter, going off their competition authority's performance and handling of the above-mentioned 'Tissue paper' case.

According to the most recent data, leniency applications have dropped globally over the last year, but especially so in Latin America. Some critics have put forward that this is due to the lack of security and predictability shown by programs throughout the world, but especially in developing countries, due to the lack of experience among their public officials and the authorities' impulse to take part in major international investigations without taking the proper care.

The most recent International Competition Network Cartel Working Group meeting, held in Tel Aviv, took notice of the major challenge being faced by competition authorities in trying to detect cartels through means other than through the leniency programs given the slowdown in applications and the inexperience shown by several countries in detecting collusion through any other means.

The Charter of Paris recognizes the value of leniency programs as a tool for detection, deterrence and sanctioning misconduct, having even been identified as "the main legal tool" for the detection and dismantling of cartels. In that sense, the document recognizes the best practices developed and shared by these countries, such as: full immunity from sanctions for the first applicant; confidentiality regarding the applicant's identity, and the need for greater transparency and predictability in public servants' actions.

Competition authorities in these three countries have long sought to strengthen the ties between them and improve cooperation among themselves. In 2017, during the American Bar Association's Spring meeting, officials from these 5 jurisdictions all expressed their commitment to forming an alliance to tackle, primarily, antitrust investigations.

The agreement also helps reinforce the 5 countries' interests in aligning with the OECD's principles. While Mexico has now been a member for many years, the other countries have taken this as an opportunity for greater presence and participation. In the author's view, it's hardly a coincidence that this letter was signed concurrently during the OECD's annual meeting, nor that the document specifically commits to following the work performed by the OECD in terms of best practices for research and the sanctioning of cartels..

The document also shows how the región's competition authorities have started to become more balanced in terms of their leadership and international presence. The prime positions held by Brazil and Mexico are now complemented by an increasingly prominent National Economic Prosecutor (FNE) in Chile, as well as greater presence by the rapidly-evolving authorities in Colombia, Perú and Argentina.

The region is hardly free from major challenges in its near future. With major political changes taking shape in Brazil, Mexico and Colombia that will necessarily shift priorities and balances in their attempts to enforce antitrust laws, along with recent changes to the leadership of these agencies in Chile, Colombia and (soon) in Argentina, the document embodies the hope that they will all continue walking along the right path.