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Competition Policy in Latin America

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Abstract

This paper reports on recent developments in Latin American competition (antitrust) policy from the perspective of the role competition policy in supporting market reform.

Competition policy is an instance of the use of law to influence economic behavior. More than eighty nations have enacted antitrust laws in the last twenty years, mostly based on U.S. and E.U. models. A review of the antitrust activity in Latin America shows that all the larger countries have active competition agencies using modern economic theories and procedures that rely chiefly on administrative agencies rather than the courts. The issues mirror those in the developed world, especially competition problems in the infrastructure sectors. Formal laws and regulations also tend to mirror those in the developed world, perhaps inappropriately so in light of the differing economic scales and cultural traditions of Latin American countries. In many Latin American countries increased openness to international trade probably is more important to consumer welfare than increased local competition in tradable goods and services, but receives less attention.

Some of the active agencies seem to have been quite successful, with Chile probably the leading example in sectoral reform and Mexico in price fixing and merger enforcement. In both cases there is a substantial national commitment to market reforms. In countries where the political and social commitment to market reforms is more ambivalent, or where other priorities prevail, competition

agencies appear to have been less successful. Argentina and Brazil fall into this category.

Coordination and regional integration of competition policy, both generally and within the context of the various customs unions (MEROSUR, Andes Pact, Caricom, FTAA, and WTO) remains an unachieved objective. This is a problem because relevant geographic markets in merger and monopoly cases are not, in general, contained in national boundaries and also because benign international mergers are penalized and delayed by the necessity to undergo review in multiple jurisdictions.

No Latin American country appears to focus explicitly on the potential for helpful positive and negative incentive effects on economic behavior, and none appears to be engaged in systematic evaluation and measurement of the effects of its policies. Throughout the region, antitrust and other government policies are undercut by the inability of governments and courts to make credible commitments to consistent, transparent decision-making. Still, many Latin American countries are moving in sensible directions by emphasizing well-publicized actions against price fixers, by undertaking competition advocacy programs, and by targeting public sector restraints on competition.

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Competition Policy in Latin America

Bruce M. Owen[1]

Introduction

Antitrust came to Latin America in the 1990s. This paper surveys recent regional policy issues in antitrust, assesses progress, and suggests directions for future policy research. The focus is on the use of antitrust to support sectoral reform—in other words, the promotion of competitive markets as a substitute for state-owned or private monopolies, with the objective of improving the economic welfare of the people. I use the terms "antitrust" and "competition policy" synonymously. By "Latin America," I mean everything south of the Rio Grande.

The current state of competition policy in the region can be summarized as follows: Nearly every country has an antitrust law and an enforcement agency (sometimes several). Judging by their written opinions, these agencies are staffed by highly-trained professionals who are well-acquainted with the current fashions in antitrust economics in the U.S. and Europe. The agencies focus on four goals: (1) promoting competition in sectors where privatization has left regulated monopolies with the incentive and ability to hinder competition in their base and related markets (De León 2001, Correa 2001, Beato and Laffont 2002); (2) encouraging import competition by resisting anti-dumping actions and promoting regional customs unions; (3) fighting local cartels; and (4) protecting consumers from unfair competitive tactics, such as false advertising claims. Different countries place different weights on these goals. Smaller countries, Panama and Jamaica for example, tend to place emphasis on consumer protection. In some countries, such as Chile, the relative success of competition policy appears to be tied

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[1] I am grateful to Maria Dakolias, Roger Noll and Peter Owen for helpful comments on earlier drafts.

closely to a general climate of opinion favoring market reforms. In others, such as Argentina, antitrust has been adopted somewhat grudgingly by successive governments whose main economic concerns lie in other directions.

There are common obstacles to effective competition policy in the region. First, both Latin American courts and Latin American governments have difficulty making credible commitments upon which firms and markets can base a stable set of expectations. While this is a problem whose effects are felt throughout the economy, not just in antitrust, it greatly hinders the use of the deterrence mechanism to guide economic behavior, particularly with regard to price fixing. Second, the region has a political, cultural, and economic history that is resistant to the ideas that support competition policy (de Leon 2000). Third, particularly for the smaller countries, the scale of local markets and the geographical extent of antitrust markets often are incongruent with the legal jurisdiction of the agency. For example, local monopolies may well be more efficient than local competition (or no supply at all) in small-scale markets; it is as important to encourage consolidation in such markets as it is to encourage competition in markets where scale economies on the firm level are no longer important. (Yeyati and Micco 2003 discuss this issue in the context of Latin American banking markets.) Similarly, merger enforcement by numerous agencies within the scope of a regional or world wide geographic market served by the parties to the merger is inefficient, unduly deterring efficiency-enhancing mergers with no adverse competitive impacts. Efforts to create effective trans-national antitrust enforcement mechanisms have not been successful.

Antitrust policy also encompasses direct extra-market policy interventions to achieve or to support basic structural changes. The most dramatic examples of this are in the United States where occasional dissolutions of firms such as AT&T (1981-84), motion picture studios (1948), and the oil and tobacco trusts (1911) take place. Latin America has no agency that has exercised such powers, although several, including Argentina, have enabling legislation. Where dramatic restructuring of infrastructure industries has taken place, it has been brought about by legislation.

Competition Policy: Fairness vs. Efficiency

Competition policy is not new. Since ancient times governments have frowned on efforts to restrict competition, except their own. The Old Testament (2 Samuel 12:1-6) has a parable that may be about what we now call “raising rivals’ costs.” The earliest record of something resembling a price fixing prosecution dates from ancient Greece. The offending Athenian grain merchants were executed (Kotsiris 1988).

But from the earliest times until very recently, competition policy has been chiefly a response to calls for fairness in economic relationships, not a vehicle for promoting economic efficiency. Governments have never hesitated to grant monopoly rights to private individuals, to restrict price and non-price competition, and even to do economic injury to their own citizens in order to protect local sellers from import competition. Indeed, the idea that competition policy should be judged chiefly by its effectiveness in promoting economic efficiency remains even today a controversial proposition. (Baker 2003)

Fairness implies a willingness to tolerate injury to consumers, in the form of higher prices or lower quality, in order to avoid injury to firms competing with a supplier of superior efficiency. As recently as 1966, the U.S. Supreme Court quoted with approval Judge Learned Hand’s famous dictum that, “Throughout the history of [the antitrust laws], it has been constantly assumed that one of their purposes was to perpetuate and preserve, *for its own sake and in spite of possible cost, an organization of industry of small units* which can effectively compete with each other.” (*U.S. v. Von’s Grocery Co.*, 384 U.S. 270 at n. 7, quoting *U.S. v. Alcoa,* 148 F.7.d. 416, 429, (1945), italics supplied) While this is no longer “good law” in the U.S., it remains a potentially important popular sentiment.[2]

In spite of the persistence of the idea that marketplace interactions among competitors should be subject to standards of fairness, the academic and policy consensus today is that competition policy

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[2] As illustrated most recently in the visceral popular reaction to the proposed relaxation of the FCC’s media ownership rules.

must be judged by its effects on economic efficiency. "[T]he basic objective of competition policy is to protect competition as the most appropriate means of ensuring the efficient allocation of resources—and thus efficient market outcomes—in free market economies." (Organization for Economic Cooperation and Development 1996) Lawrence Summers announced in a 1991 article on antitrust in the "new economy" that "...it needs to be remembered that the goal is efficiency, not competition. The ultimate goal is that there be efficiency"

Deregulation and Privatization

The reforms that led to widespread privatization of public enterprise in Latin America and elsewhere, beginning in the 1980s, and the somewhat earlier deregulation movement in the United States, were accompanied by calls for active enforcement of competition policy in the newly privatized and deregulated sectors. In the U.S., established antitrust law was introduced to sectors from which it had been excepted by statute or judicial deference to agency expertise. In Latin America, competition law was established where none had existed previously and, in some countries, even made applicable to sectors where competition had previously been forbidden.

The deregulation movement in the U.S. and the world-wide marketization movement in the last quarter of the 20th century were not coincidental. Both grew out of an evolution in the climate of opinion: neoliberalism gaining ground while socialism lost it. Among the many threads that combined to motivate and rationalize these changes was the law and economics movement, or the microeconomic aspect of what used to be called Chicago School economics.

The Chicago School preference for market solutions was based very largely on pragmatic arguments. Decentralized agents responding to economic incentives were seen to outperform bureaucrats or regulators struggling to collect and process costly and often misleading information. Bureaucrats lack an economic interest in the outcomes they are expected to produce, are rewarded for other values, and are subject to corruption, especially when underpaid. Market "imperfections" often are imperfections, not of markets, but of legal institutions, especially failures to define property rights. For example, opportunistic behavior by sellers may be un-

derstood best not as a market imperfection calling for consumer protection regulation but as a failure of the legal system to offer suitable private contract remedies. Regulation may be a manifestation of the same political pathology (politicians supplying antisocial benefits to narrow interest groups) that produces trade barriers and tax loopholes.

Chicago economics undeniably has a libertarian ideological component that economic conservatives find attractive. But Benthamite ideology is not the essence of the recent market reforms, and especially as it bears on economic development, Max Weber is a more important inspiration than Hayek. (Trubek 1972) Still, the ideological baggage of the Chicago School attracted the attention of those whose political agendas found support in it, from Barry Goldwater and Ronald Reagan in America to Hernando deSoto and even Augusto Pinochet in Latin America. As these political views became increasingly mainstream in the last quarter of the last century, the law and economics perspective gained legitimacy, a trend greatly reinforced by the collapse of communism in Russia and its satellites, and the recession of communist economic policy in China.

By the mid-1970s in the U.S. even (modern) liberal politicians, such as Senator Edward Kennedy, had begun to embrace the teachings of Chicago School economics, at least in the area of regulatory policy. Kennedy sponsored airline deregulation. And in spite of its antipathy for regulation, the Chicago school saw a legitimate role for competition policy, especially the laws against collusion among competitors. Ironically, even as the rest of the world has moved to embrace the evolved Chicago perspective, U.S. policy makers have retreated from it at home. (Noll 1999).

In this historical context, it is not surprising to find both donor institutions such as the World Bank and reformers in developing nations attracted to market-oriented economic solutions, especially privatization. Governments, strapped for cash, naturally preferred to sell off the potential monopoly rents as well as the physical assets of state-owned enterprises. If questions were raised about the structure of the markets in which privatized enterprises would in the future operate, the response simply was, not to worry, competition or antitrust policy will be an integral part of economic reform.

Antitrust in Developing Nations

Accordingly, in the 1990s antitrust lawyers and economists from the U.S., and to a lesser extent the E.U.,[3] traveled the globe in support of efforts to install antitrust machinery in virtually every nation. In some cases this installation was voluntary, but sometimes it was a condition of donor funding for other reforms (de Leon 2000). In Argentina, for example, World Bank financial support for the privatization of the steel industry was conditioned on the enactment of a modern antitrust law. Where there was local demand for competition policy, the demand was motivated in part by fear of the consequences of monopoly in local markets, and especially of foreign-owned monopolies. In some cases, competition policy was seen simply as a desirable accessory of modern market mechanisms. According to Gal 2003, p. 9, roughly 80 nations adopted antitrust laws between 1980 and 2000.

Whether in Argentina, Bulgaria, Jamaica, Latvia, Mongolia, Panama, Russia or Uzbekistan, countries adopting competition policy institutions were supplied with U.S. experts because the United States had and still has by far the largest and most active antitrust establishment of any country on earth. It was assumed that the institutions and techniques developed in the U.S. in the century since the enactment of the Sherman Antitrust law (1890) would be useful for transplantation to other nations newly focused on market solutions.

Antitrust law was not unique in this respect. Especially in the former soviet bloc countries, Western experts in corporate, contract, property, bankruptcy, and other substantive legal fields flooded in to fill the void left by the collapse of capitalism's most serious rival. Antitrust was however perhaps more prominent in the former third world, simply because most third-world countries already had inherited colonial legal systems that at least recognized private property, contract, and other market-related legal institutions. Also, in most third world countries issues of judicial reform (appointment, training, and independence of judges, reductions in corruption) dominated the need for changes in substantive law.

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[3] Although there is a tendency to emphasize the differences, the European Union has adopted much of the substance of U.S. antitrust law and procedure.

Is Antitrust Relevant?

In spite of its widespread popularity as an ornament of market reforms, there is ample reason to doubt the potential usefulness of U.S.-style antitrust policy in other economies, whether "transitional" (from communism to capitalism) or developing. First, U.S. antitrust policy is informed by the extent of the U.S. market, which for most goods and services is much larger than that of other economies. Tradeoffs between competition and economies of scale are less likely to be an issue in the U.S. than elsewhere. In developing economies especially, the insufficiency of demand to support even a single local producer of certain goods, and the role of trade barriers in constraining welfare, are more likely to be important than deadweight monopoly losses. The smaller the country, the more important this point becomes. In Latin America, there are antitrust regimes in six countries with populations under five million! (Table 1)

Second, U.S. antitrust policy is reliant on a common law system in which exceptionally vague statutes are interpreted by a professional antitrust bar and a judiciary that is relatively sophisticated and rarely corrupt.[4] In the hands of untrained prosecutors and inexperienced judges, antitrust can readily be hijacked by those seeking the opposite of competition, as it often has been in the United States. For example, competitors rather than consumers may seek "unfair competition" rules and enforcement, competitors may demand the right to use property created by other sellers, discouraging investment incentives, and prosecutors may seek political gains for themselves rather than economic gains for consumers.

Third, antitrust in the U.S. is embedded in a system of commercial law not found either in transitional or developing economies. Many practices that would in the U.S. be interpreted as anticompetitive may in other legal contexts simply be necessary for commercial survival, or substitutes for effective contractual ar-

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[4] The reference here to common law is not intended to evoke the wider issue of civil law versus common law, but merely to indicate that, to the extent U.S. antitrust law gives rise to specific prescriptions of what courts will do, those predictions must be based on what previous judges have said rather than by examining the statutes.

rangements. For example, if long term contracts are difficult to use because of uncertainty as to their enforceability, producers may vertically integrate, with the incidental effect of harming competitors.

Fourth, sound centralized antitrust enforcement requires a body of well-trained experts in law and economics. Even a single case may consume resources that are large compared to the relevant human capital of a small developing country. When we see countries the size of Costa Rica, Panama, Jamaica or Barbados undertaking to enforce U.S.-style antitrust laws, we have to ask whether these countries' human resources are being allocated rationally. For example, the most effective way to introduce the benefits of competition in a small country may be to lower trade barriers rather than to promote competition among local suppliers.

Finally, the U.S. common law of antitrust is deeply informed by the private right of action which exists under the Sherman Act for those injured by antitrust violations. The treble-damage remedy and the class action lawsuit provide the basis for a large private antitrust bar and extensive private litigation, which is probably no less important in determining substantive common law than federal prosecutorial policies. Of course, it is the substantive common law and the threat of private damage payments that determines deterrence and other economic incentives. None of this has any counterpart in the legal systems of Latin America. Law, according to Oliver Wendell Holmes, is the prediction of "what courts will do." The problem faced by businesses in many developing countries is that there is no basis to predict what courts will do, and therefore, in this sense, no law.

The U.S. reliance on common law and private actions for continuous modernization of antitrust policy has significance for two reasons. First, much of the revolution in antitrust thinking in the last half-century (from fairness to efficiency) was the result of private lawsuits that presented opportunities for judges to change the common law. Developing nations must rely instead on legislators and prosecutors for progress of this kind. Second, the deterrence leverage that can be exerted by prosecutors with staffs typical in size of those in most developing nations is unlikely to be great, especially when combined with what are usually small potential penalties.

The U.S. does not rely solely on common law in antitrust enforcement. It also relies on administrative law, chiefly at the Federal Trade Commission, and on prosecutorial discretion (enforcement policy), particularly in the merger area. Because courts are unreliable, nearly all antitrust enforcement in Latin America is done at the administrative level, subject to review either by courts or by the executive authority. Administrative enforcement lacks the diffused onus of responsibility found in a common law system, and encourages reliance on political considerations or outright political intervention. This in turn makes it difficult for the agencies to make policy commitments upon which business planners can rely.

Objectives

In light of the foregoing discussion, how do we approach legal and judicial reform of competition policy in developing nations? Based on the literature (Gal 2003, Swaine 2003, Singh 2002) and the experience of developing countries to date, four points come through:

> (1) Competition or antitrust policy should be evaluated as a potential means of increasing (or increasing the rate of increase) of economic well being, rather than as an abstract institution (as in "institutions matter") without firm microeconomic connection to real world economic decisions. Competition policy, like most legal reform, should maximize the leverage effect of incentives created by law and law enforcement.
>
> (2) Competition policy should be undertaken, if at all, on a geographic scale that makes sense from an economic perspective, and not necessarily on a national level.
>
> (3) Competition policy should not be confined in an "antitrust agency," but rather should be an integral part of the broader microeconomic policy apparatus typically centered in ministries of finance. In this way, antitrust "thinking" can better infect the many other policy areas to which it is no less applicable and use-

> ful. In particular, competition policy should encourage regulators and other government agencies to rely on competition where possible, and to resist efforts by regulated firms to foreclose competition in non-monopoly markets.

The first principle says that competition law, like any other law deserving of outside assistance as a way to promote development, should have explicit anticipated effects on economic incentives which, acted upon, would tend to enhance the welfare of consumers, especially the poor. This means, for example, that competition law whose purpose is to ensure that competition is fair to competitors is undeserving of assistance, while law whose purpose and effect is to enhance competition by (say) reducing artificial barriers to entry or price fixing is potentially deserving of assistance. Also, antitrust policy should concentrate on behavior that drives wedges between costs and prices, or that raises costs, for products and services consumed disproportionably by poor people.

The fourth principle, the leverage effect of competition enforcement policy, may well be the most significant in terms of competition policy having a real impact on economic well being, but it is a two-edged sword. It is crucial that the combination of law, enforcement policy, and penalties (as well as information programs) maximize both the positive and negative incentive effects of law. But it is even more crucial that the law and its enforcement set the *right* incentives, with due account taken of unintended effects. From this perspective it is perhaps fortunate that most developing nations have avoided the U.S. example of private remedies and treble damages. These features are almost entirely absent from Latin American competition policy. Also absent, however, are serious financial penalties associated with government prosecutions. As a result, deterrence plays little role in Latin American antitrust policy.

The second principle simply asks that competition policy make sense in terms of the geographic area to which it applies. For example, it makes little sense for a small developing economy to concern itself with monopoly. Many of its markets will be too small to support even a single competitor. (To put the matter affirmatively: Such economies should be focusing on ways to increase effective demand so as to support markets in product and geographic areas where none yet exist, or to consolidate ineffi-

ciently small suppliers.) With respect to tradable goods and services, open borders are likely to be a far more effective remedy than antitrust for the exercise of market power by a local firm, or cartel. Further, a vigorous antimonopoly program is as likely to cause harm, by discouraging initiative, as it is to create net welfare gains by lowering prices. Only cartels in nontradable goods and services seem clearly appropriate for local enforcement jurisdictions.

Merger policy also probably is best centered in a jurisdiction that encompasses the entire relevant geographic market or markets for a particular transaction, rather than in each of several smaller jurisdictions within that market. This implies that merger policy should be enforced in such a way that the smallest geographic jurisdiction containing the whole (and all) relevant geographic markets should review any given proposed merger or acquisition transaction. ("The smallest" because of the tendency of larger jurisdictions to pay less attention to local matters.) This implies that local political jurisdictions should have the ability (if not the sole responsibility) to review mergers whose geographic scope is local, perhaps facilitated by staff assistance from the national agency.

International antitrust cooperation or coordination has been a hot topic in recent years. As antitrust regimes and merger notification provisions have proliferated there has been a growing chorus of complaints from lawyers and executives of multinational firms about the cost and delay involved in undertaking merger transactions. (Rowley 2003, Rowley and Campbell 2003) One problem is that increased transactions costs, delay and uncertainty deter mergers whose effects are beneficial to consumers. Another problem is that no single national agency is likely to take into account, much less give equal weight to, the welfare effects of a merger on noncitizens.

The remedy for these problems appears to lie in a supranational coordination mechanism or an international competition authority. This fits into the concern, often expressed in world trade negotiations, that local practices may act to exclude foreign suppliers and that such practices should be discouraged by competition policy agencies. Consequently, there has been great debate about international antitrust policy, especially in the context of the suc-

cessive rounds of trade talks.[5] Singh 2002 provides a well-argued case for international antitrust enforcement, as did Scherer 1994. Others are skeptical (McGinnis 2003). The Doha round made no serious progress on an trans-national system of antitrust policy, and apparently there is little prospect for any in the future (Swaine 2003; Stephan 2003). The question then is whether the absence of an appropriate trans-national forum justifies an inappropriate national forum.

The various actual and proposed regional customs unions for Latin America (MERCOSUR, the Andean Pact, CARICOM and FTAA) each have plans, provisions or agreements for the eventual coordination of competition policy. None of these has yet been fully implemented. In the case of MERCOSUR, for example, Paraguay has not yet adopted the national competition policy regime adopted as part of the Fortaleza Protocol of December 1996 (Araujo 2001). by the pact and Uruguay clearly has struggled to understand what is appropriate. (Caffera 2002) The MERCOSUR agreement itself calls for certain investigations and decisions to be made on the international level, but leaves all enforcement to the member nations, an arrangement that seems unlikely to be workable. The Andean Pact nations (Peru, Colombia, Venezuela, Bolivia and Ecuador) agreed in 2001 to work toward a standardized approach to antitrust matters, with expert assistance from the E.U. (Jatar and Tineo 1998) However, the only result so far as been a single training seminar on monopolization issues.

There are two operational models for trans-national antitrust policy: the U.S. and the E.U. These strike different balances between state and federal interests. On the issue of geographic jurisdiction, the European Union system of merger review is more sensitive than the U.S. system to incentives. The U.S. system gives the attorneys general of the fifty states the same authority to investigate and take action under federal law against a given national

[5] See ABA 1999, 2000, Carnevale 2002, James 2002, Jenny 2002, Kovasic 2002a, 2002b, Mancero-Bucheli 2001, McDavid and Marshall 2001, McDavid et al. 2001, Moguel 2002, Monti 2001, Rill 2001, Rowley and Wakil 2001, Rowley and Campbell 1999, Stern 2000, Stewart 2001, Tavares 1999, 2001a, 2001b, and von Finckenstein 2001 for some of the more recent papers and studies on this topic.

merger as it does to the two federal agencies. In a recent interview, the chair of the U.S. National Association of State Attorneys General Antitrust Task Force asserted that, "Setting national antitrust policy [in the U.S.] is not within the exclusive realm of the federal enforcement agencies. That is not how our system of concurrent enforcement works. Under our system, any plaintiff in any antitrust matter may affect national policy through the development of case law., whether the plaintiff is a federal enforcement agency, a private plaintiff, or a state attorney general." (theantitrustsource 2002, p. 4)

Not only do individual state attorneys general have the power to enforce federal law, and not merely in their own states, they also usually have state antitrust laws that may differ in some respects from federal law. This duplicative jurisdiction can produce mischief; the state attorneys general can and do hold up merger transactions, for example, in order to obtain parochial concessions unrelated to competition policy. They also sometimes bring antitrust actions under economic theories and legal interpretations that are in disfavor at the national or the academic level. Indeed, experience in the U.S. hardly supports the suggestion above that local jurisdictions should have principal responsibility for prosecution of antitrust offenses whose effects are local. In the E.U., by contrast, Brussels can preempt the member states, and some member states (notably Germany and Great Britain) take local enforcement very seriously. In general, U.S. states are less restrained than federal prosecutors by fear of setting adverse precedents or offending proponents of economic efficiency. This appears less true in Europe.

Finally, there is the competition advocacy role, as it is sometimes called, played by an antitrust agency. In the broadest sense this involves educating all sectors of the society about the benefits of competition and publicizing the legal remedies available to those injured by anticompetitive behavior. More specifically, it means intervening in the business of other government agencies (federal, provincial, or local) to promote the use of competition to discourage government regulations that impair or preclude competition. In the U.S., for example, the Department of Justice's Antitrust Division began in the 1960s to participate formally in rulemaking proceedings at agencies regulating telephone and media companies, railroads, airlines and securities exchanges, urging greater reliance on competition and open entry. Eventually, sup-

ported by a change in the climate of opinion that favored regulatory reform, these views prevailed.

Today, in countries like Chile and Mexico, antitrust agencies are engaged in similar advocacy work with other agencies. Competition has been suggested as an organizing principle for all economic and regulatory policymaking (Cramton 2003). INDECOPI in Peru actually internalizes the advocacy process by including some regulatory functions and anti-dumping policy under the competition agency's umbrella. Some smaller countries like Jamaica seem to focus particularly on consumer education. Because competition advocacy and education is a long term process, it probably is too soon to judge the effectiveness of these efforts.

Competition advocacy and interaction between regulatory and antitrust agencies, although certain different in its details and effectiveness in different countries, deals with virtually identical substantive issues. Descriptions of the competition problems that arise in regulated or formerly nationalized sectors are virtually identical from one country to another. For example, both in telecommunication and in energy transportation, market reforms have introduced competition but left elements of monopoly. The monopoly elements have the incentive and opportunity to distort or restrict competition. Both competition policy agencies and regulators struggle to balance the need to prevent the monopolists from excluding or raising the costs of efficient entrants and the need to avoid sending signals that encourage inefficient entry.

It is striking how similar the descriptions of these problems are, whether in France (Souty 2001), Chile (Diaz and Soto 1999), Argentina (Urbiztondo, Auguste and Basañes 1999), Peru (Cannock and Escaffi 2001), Mexico (OECD 1999,) Brazil (OECD 1999, Considera and Albuquerque 2001), or the U.S. One reason these problem are seen similarly around the world is that they are in fact, economically, the same problems, and they are defined by economic learning and policy experience in the U.S.[6] There is however a tendency to neglect the non-economic factors—chiefly

[6] The U.S. literature is voluminous. For regional treatments of competition in infrastructure industries in Latin America, see von der Fehr and Millán 2001, Fuente 2001, Beato and Fuente 2001.

political and cultural—that may make the solutions differ from one country to another. (See Rufín (2002) and, more generally, "McNollgast" (1989)).

For those who lived through California's electricity crisis, apparently attributable to a combination of botched deregulation, private conspiracies, and inept political responses, the following description of events in Latin American power markets will have a familiar ring:

> [S]ustainability of reform [in markets for electric power] has been questioned in some countries because of problems experienced with the functioning of their reformed electricity markets. Thus, in El Salvador, the exercise of market power by generators, together with an ill-conceived procedure for passing wholesale prices on to consumers with a lag of at least four months, led to high consumer prices and forced the government to hastily intervene …. [T]he pioneering Chilean electricity market experienced blackouts during late 1998 and early 1999 … traced to incompatible incentives experienced by market participants. This episode, together with the failure to transfer efficiency gains to consumers, ignited a political crisis …. Competition in the Peruvian and Bolivian markets, almost perfect clones of the Chilean model, has not fared any better. [T]he Colombian Pool… also experienced numerous difficulties originating in the failure to control market power and in transplanting system design …. There is widespread concern that Pool prices will not provide the long-term signals required by investors to maintain security of supply. In Guatemala, the high cost of PPAs signed prior to reform have become a tremendous financial burden on the sector forcing the government to use their remaining assets to buffer the impact on tariffs. This and other similar problems have produced second thoughts … about the soundness of reform. Finally, a general feature has been that regulators, governments and legislators frequently clash about jurisdiction. (von der Fehr and Millán 2001, p. 3)

Cell Phone Penetration as a Measure of Relative National Success in Sectoral Reform

Telecommunications is one of the most interesting and challenging of sectors. Only within the last generation has the industry

come to be regarded as potentially competitive, and epic political struggles have taken place in many countries as reformers have sought to transform the industry from a regulated or state-owned monopoly to one in which competitive markets hold sway. Because vestiges of monopoly remain even in the most reformed countries, there is an ongoing tension between the efforts of the monopolists to retain their rents and the efforts of entrants to avoid the barriers created by the monopolists. The new entrants themselves are not above using the political/regulatory system to seek protections that go beyond what is necessary to ensure that efficient suppliers are not excluded from the market. (For a survey of telecommunications sector reform, see Noll 2000.)

Competition authorities and regulatory authorities have often been at odds and have sometimes worked together in seeking telecommunications sector reform, but everywhere antitrust support has boosted the success of the reforms. To the extent that the success of telecommunications reform is representative of overall success of competition policy in supporting sectoral reforms, a measure of the success of telecommunication reforms is therefore a rough gauge of the ability of competition policy, in a particular country, to support sectoral reform. But how to measure the success of telecommunications reform?

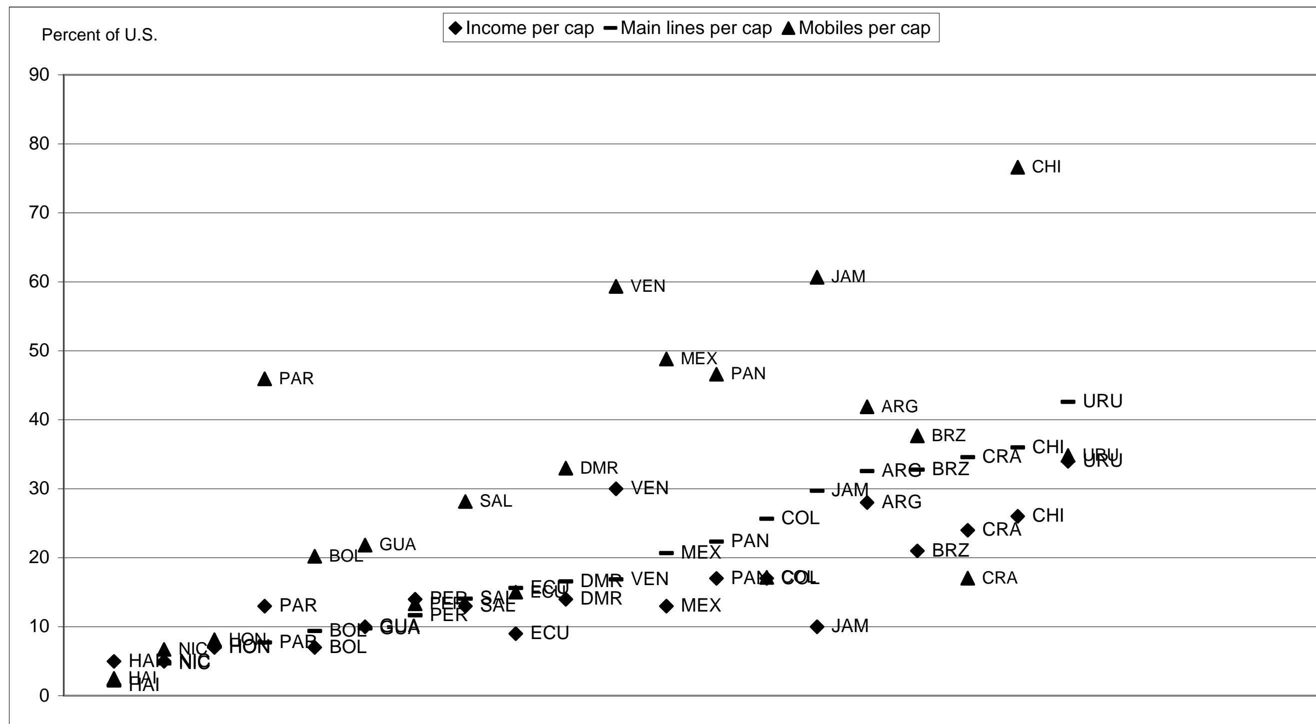
One approach is to look at mobile telephone penetration of local markets. The demand for mobile telephone service is a function of price, income, and the quality and price of landline telephone service. Other things equal, the demand for mobile telephone service will be higher where pricing and quality of landline service is less efficient. Supply of mobile telephone service is dependent on regulatory reforms that permit entry and competitive pricing, overcoming the efforts of incumbent landline monopolists to extend their monopolies to mobile service and to engross their landline profits with inefficiently high interconnection fees. Regulatory reform produces greater mobile penetration levels through an increase in supply and a reduction in price, holding the other demand factors constant. Mobile telephones have only been available in Latin America since the early 1990s; rapid deployment in a short time is evidence of considerable regulatory flexibility. (Lapuerta et al. 2003 provide insights on competition and regulatory reform in mobile telephony in Latin America.)

If we look at Latin American countries with populations over one million, we find considerable variation in telephone penetration, both landline and mobile (Table 2). The first column of Table 2 shows per capita income (purchasing power parity basis) expressed as a percent of U.S. per capita income. The next two columns show ITU data on per capita telephone lines, "main" and "mobile" respectively, again normalized to the U.S. experience in order to account for various factors not considered explicitly. The countries are sorted according to per capita income and the data are displayed in Figure 1.

Figure 1 suggests several tendencies. First, the performance of the traditional landline monopolies does not show much variation from country to country after controlling for income. Ordinary telephone service has been terrible throughout Latin America, though somewhat less terrible in the richer countries than in the poorer ones. The variation in mobile phone penetration is much greater, after controlling both for income and for landline quality. A few countries stand out as having enjoyed especially rapid mobile telephone penetration, presumably reflecting a favorable combination of regulatory reform and competition policy support: Chile, Jamaica, Venezuela, Mexico and Panama. These countries are all ones that have made a point of vigorous antitrust enforcement regimes, and their enforcement agencies have been highly visible on the international scene. No country that lacks a competition authority has done well by this measure, except Paraguay. However, some countries with well-publicized competition activities have failed, by this measure, to achieve relative success: Columbia, Brazil, Peru, Costa Rica.

No one should take very seriously this highly incomplete evidence of the relative national success of competition policy. It however suggests an interesting line of research in which a range of sectors with similar indicia of successful reform are added to the picture.

Figure 1: Telephone Penetration and Income, Per Capita, as Percent of U.S.



Sources: See text and Table 1.

Countries, Agencies and Cases

Several countries in Latin America have had antitrust laws for a century, but until recently none appears to have been enforced regularly, and it is doubtful that their purpose was understood in the modern sense as laws intended to enhance economic efficiency. New laws have recently been enacted in all the larger and many smaller Latin American countries (Table 1). Fuente (2001, Annex) supplies thoughtful summaries of antitrust law and enforcement in each of the major countries.[7]

This section attempts to characterize the nature of the antitrust regime in each of the countries that have one, and to capture the flavor of enforcement in each country based on selected case summaries. The descriptions of the antitrust laws and regimes are based on Organization of American States 2001, 2002, and 2003 as well agency web sites, and, where available, commentary offered by local lawyers.

The Organization of American States (OAS), publishes annual compendia of hemispheric antitrust laws and recent developments. The 2003 report covers events in 2000 and 2001 for most of the agencies. The laws themselves appear in OAS 2001, and a useful summary appears in Fuente (2001). In addition to the OAS compendia and the materials cited above, a number of Latin American antitrust agencies now have extensive web sites. Table 1 offers links to such sites. For countries lacking OAS reports or websites helpful for present purposes, I have used other information, chiefly from the *Global Competition Review,* a publication serving inter-

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[7] Along with Fuente 2001, recent commentary on antitrust enforcement in Latin American can be found in Alfonso and Zuloaga 2001, Beato and Laffont 2002, Boza 1998 DeLeon 2001, Jatar and Tineo 1998, Mancero-Bucheli 2001, Moguel 2000, Serra 1995, Tulchin 1999, and Wise 1999.

national firms, whose content is largely the product of private lawyers seeking retention.

Several Latin American countries, beset by economic and political crises, have neglected antitrust in the last several years. The descriptions of these countries' antitrust regimes (especially Argentina and Venezuela, but also Brazil) may turn out to be of chiefly historical interest.

OAS 2003 is an official English translation of the original reports. Three issues should be noted with respect to these translations of case summaries. First, the term officially translated as "a concentration" probably should be translated instead as "a merger, acquisition or joint venture." Second, the Spanish terms *"monopolistica absoluta"* and *"monopolistica relativa,"* which are translated officially by the OAS as "absolute (or relative) monopolistic acts" correspond roughly to the U.S. antitrust terms "per se" and "rule of reason." Third, the term "operation" is generally used where a more apt translation would be "transaction."

Overview

Almost all antitrust agencies in Latin America have responsibility for enforcement of other laws, notably consumer protection (chiefly false and misleading advertising). As a rule, the smaller countries (e.g., Jamaica) tend to emphasize consumer protection while the larger countries offer full-blown antitrust regimes on the scope of the U.S. model, if not its scale. All the agencies have some role in competition advocacy within the government, and several (e.g., Mexico) can overrule decisions by other agencies. A majority of major antitrust disputes appear to arise in the regulated (or recently deregulated) sectors, especially telecommunications and energy. A second major category involves local municipal actions with allegedly exclusionary or other anticompetitive effects, probably often reflecting the use of political power for economic gain.

Another general rule in Latin America, as noted above, is that in antitrust matters there is no private right of action (much less

class actions) for antitrust injury and usually no provision for the award of damages to those injured by antitrust violations. In all cases, however, the agencies consider competitor and customer complaints. Almost all of the major agencies have programs of education and information seeking to publicize the importance of competition and the role of the agency. As in the U.S., none of the antitrust regimes appears to have a system or mandate for evaluation of the effectiveness of its policies.

Overall, as one reads the case summaries, the impression is that the analytical techniques employed at the larger national agencies reflect the heavy influence of training programs established by the U.S. Department of Justice Antitrust Division and the U.S. Federal Trade Commission. Thus, especially in the merger area, the cases reflect the somewhat esoteric economic theories that were popular in the 1990s. There is however evidence in Latin America of greater sympathy for vertical restraints theories. Mexico, for example, has moved vigorously against exclusive distribution arrangements.

Very little of the unique character, law or history of economic and other conditions in each country is visible in the case summaries. Perhaps none of these differences is relevant. In any case, the result appears to be roughly what one might expect if the U.S. antitrust agencies had simply assumed jurisdiction of such matters throughout the hemisphere. William Kovacic (2001, 2000, 1997, 1995) has emphasized the great importance of institutional competence, credibility and independence to the effectiveness of competition policy in Latin America. While these characteristics are undeniably important that are not sufficient for success. The example of Chile suggests that a general social acceptance of free markets is equally important.

The brief summaries of the individual cases in OAS 2003 are insufficient basis to comment on the economic quality of the decisions for most countries. In addition to their brevity, they represent only one side of the various controversies. Still, for what it is worth, few if any of the reported cases, even in the smaller countries, suggest on their faces that the enforcment agencies'

staffs lack analytical competence comparable to the U.S. federal agencies.

What the Latin American antitrust laws do *not* do, at least explicitly, is to establish an overall policy goal of promoting economic efficiency in the larger sense of establishing appropriate incentives among those enterprises not actually before the agency on a complaint. Economic well-being, to the extent it can be enhanced through competition policy, is maximized when all sellers and buyers in the economy are led to behave optimally regarding potential violations. “Optimal” in this context means that actions (such as price fixing) with no redeeming social benefits are deterred because colluding parties conclude that the expected costs exceed the expected benefits. It also means that activities with no social costs, such as an efficient firm’s expanding its capacity and production, are not inadvertently deterred by fear of erroneous prosecution on complaints from competitors. Since these two outcomes are joint products of every enforcement decision, considerable care is required in making such decisions. Accomplishing this in an enforcement agency requires a sophisticated approach to prosecutorial discretion and effective use of information media. Not one country in OAS 2003 explains its enforcement choices in these terms or examines case outcomes from this perspective.

Argentina

Argentina has a new antitrust law, Law No. 25.156, enacted in 1999 and not yet fully implemented, that closely follows many of the recommendations of an earlier advisory group (Owen, et al. 1992). Some steps to implement the new legislation further were taken in June 2003 (GCR 13 June 2003). It is fairly typical of recent antitrust laws in the larger Latin American countries. The law provides for an “independent” [of the executive authority] administrative tribunal with both adjudicative and investigative powers, and a separate organization in the Ministry of the Economy with prosecutorial powers. The judicial system is not involved, except that appeals may be taken to the national economic court, which

because it deals with tax matters is relatively sophisticated. The point is to avoid making antitrust enforcement reliant on an inadequate judicial system.

The law includes a pre-merger notification process. The prosecutorial arm of the competition agency is responsible for competition advocacy and participates in trade policy, including liaison with MERCOSUR and FTAA. The regulated utility sector is explicitly *not* exempted from the competition law, and utility regulators have only an advisory role in matters under the jurisdiction of the competition authority. This appears to be unique in Latin America, although in practice the arrangements in Chile appear to be more effective.

Substantively, the law bans abuse of dominant positions, price fixing, and the creation of barriers to entry, as well as mergers or acquisitions "whose purpose or effect is or could be to reduce, restrict, or distort competition in a way that could harm the general economic interest" (Article 7, Law 25,156).

The serious economic crisis in Argentina has disrupted competition policy enforcement and postponed the completion of the administrative steps required to implement the new law. However, from the entry into force of the new law in September 1999 to April 2001, 232 mergers and acquisition notices were filed. Of these, one transaction was enjoined and six were authorized with conditions. The remainder were approved. In non-merger enforcement, the agency issued rulings in about 15 cases per year in 1999 and 2000, mostly involving complaints about artificial barriers to entry.

On its face, Argentina's antitrust law makes excellent sense. It relies on administrative rather than judicial enforcement, but makes the enforcement agency independent of political influence to an unprecedented degree in Argentina. It does not make the error of ceding jurisdiction to regulators in the utility sector. Its substantive provisions are consistent with the promotion of economic efficiency in its actual decisions.

Based on the sketchy details in Argentina's report to OAS, it is very difficult to comment on the analytical quality of the decisions that have been made. Full text of the decisions are however available on the enforcement agency's website, in Spanish.

The tools available for optimizing competition policy's contribution to economic welfare in Argentina appear adequate: there is prosecutorial discretion, fairness in competition is not an explicit feature of the law, and substantial penalties (including possible dissolution of monopolies) are permitted. The only tool clearly missing is a program designed to promote the spread of information about the law and its enforcement. Nevertheless, it is worrisome that, at least in its report to the OAS, Argentina gives no evidence of awareness of the most powerful of the tools at its disposal in the cartel area: the deterrent effect of enforcement, and the informational role of prosecutorial discretion.

Brazil

Brazil's antitrust structure has been repeatedly revised, and remains quite controversial. Enforcement currently requires interaction among three agencies, (SEAE) representing the Ministry of Finance, (SDE) representing the Ministry of Justice, and a tribunal (CADE) "linked" to the Ministry of Justice. Private parties have complained about Brazil's cumbersome and lengthy process for making enforcement decisions, especially with regard to mergers. Clark 2001, Considera and Albuquerque 2002, Belliboni and Zarzur 2003, Lima and Sampaio 2003. According to the *Global Competition Review* (9 May 2003), a bill recently was sent to Congress seeking to combine the agencies and to streamline the merger review process.

In the 2003 *Global Competition Review Report on Antitrust in the Americas*, Brazilian lawyers Flávio Lemos Belliboni and Cristianne Saccab Zarzur make the following concluding comment:

> The Brazilian competition system still has a long way to go. The difficulties that lie ahead are neither few nor simple.

> But the system is still relatively new, and the Brazilian authorities, attorneys and the business community are all learning and trying to make a contribution to reforms and amendments that will translate into maximum efficiency and, above all, greater credibility.
>
> Compared to other countries and jurisdictions, such as the United States with its over one hundred years of experience in competition matters, or the European Commission, whose Treaty of Rome dates back to 1957, Brazilian antitrust is still in its infancy, and is facing all the difficulties inherent in initial efforts of this kind and to a new legislative system. It is worth noting, for example, that the US Department of Justice and the Federal Trade Commission together have a staff of more than 1,400 persons and a total budget of over US$250 million. The European Commission, for its part, has a staff of some 230 persons and a budget of approximately e74 million; in Germany, the competition authorities can call on a staff of more than 120 persons and a budget of some e17 million; while the United Kingdom has more than 500 hundred personnel and a budget of £50 million at its disposal. Against this global background, Brazil is struggling to develop with a paltry staff of 50 and a modest budget of US$5.6 million. Therefore, despite all the criticisms, it is necessary to adopt a realistic approach and make the most of the resources currently available to the Brazilian antitrust authorities in order to keep moving forward towards a fully-fledged competition environment.

In 1999 the two enforcement agencies issued common merger guidelines modeled closely on the U.S. *FTC/DOJ Merger Guidelines*. There do not appear to have been any actions to stop particular mergers, but several investigations have ended with published approvals based on market definition and concentration data.

Of the reported cases, only one, involving an international merger of agriculture and construction equipment, is troublesome. The merger was approved in Brazil (but not in the U.S. until divestitures had been made). Approval in Brazil was on the ground that

"In the market for harvesters, aside from the rivalry of the other competitors, the low entry barriers would also prevent the new firm from increasing prices. In the relevant markets for other construction equipment, … the merger would not increase market power due to potential competition from non-committed entrants that owned multi-purpose plants in Brazil." But evidence in the same summary suggests that entry barriers are considerable, and it is unclear what "multi-purpose plants" could readily begin to produce construction machinery. Still, in the merger area Brazil's enforcement problems appear to be procedural rather than substantive.

There has also been a recent emphasis in Brazil on anti-price fixing campaigns, especially by the three regional offices of one of the prosecutorial staffs. A well-publicized "dawn raid" designed to turn up price fixing evidence in the gravel industry took place on July 18, 2003. Such raids have been a popular enforcement tool in England and Europe generally. They generate media attention and presumably serve an important information and education function, potentially changing the subjective expected costs of price fixing activity.

Price fixing cases have been brought against producers of primary aluminum, alcohol, four large newspapers in Rio de Janeiro, local fuel distributors, and airlines. None had been resolved as of the date of the Brazilian report to the OAS. Following are redacted case summaries from OAS 2003:

Predatory Pricing

According to a competitor complaint, Merck S.A. and its subsidiary in Brazil, MB Bioquímica, were selling vacuum tubes to collect blood below cost and, therefore, making it difficult for the competitor, Labnew, to remain in business. Labnew also submitted a representation to the Department of Commerce (DECOM) of the Ministry of Science and Technology, requesting an investigation of dumping on imports of the same tubes from the United States. DECOM concluded there was in fact dumping and imposed antidumping duties.

CADE defined the relevant product market as vacuum blood tubes and the geographic market as national. Imports were not considered a viable option, despite its significant presence in the market. According to the analysis provided by SEAE, direct importation does not provide the guarantee of a reliable stock, which is indispensable for laboratories and clinics to be able to operate properly, for reasons such as the 6 months expiration date of the tubes and customs complications. There are only four firms in the market. The entry barriers are high and no potential competition was identified. Nevertheless, the market was considered relatively contestable, due to the possibility of uncommitted entry, with no sunk costs, through expansion of imports through the existing distribution system.

CADE concluded that Merck did not have a dominant position in the market, which would allow it to recoup predatory losses. Merck was only an entrant that imported and resold another firm's tubes. Nonetheless, this fact alone was not enough to dismiss the predatory pricing claim and it was, therefore, necessary to compare costs and selling prices.

The comparison between the variable cost of these products and the prices charged by Merck and MB indicated that those products had, in general, positive gross margins. Therefore, those prices could not be considered predatory.

The preceding case is an example of the logical contradiction between competition policy and antidumping policy, and of competitors' willingness to try to use antitrust to impose costs on more efficient rivals. One wonders what might have happened to this case in Peru, where antirust and antidumping are combined in a single agency, or in Venezuela, where the antidumping authority asks the advice of The case summary contains an apparent logical contradiction in its characterization of the role of imports, but one is reluctant to criticize this without the full text of the decision.

Primary Aluminum *Five firms, the only domestic producers, were accused of fixing prices of primary aluminum. In July 1991 when government price controls were in effect the producers*

agreed to a formula that all of them would adopt to fix prices. Price controls were abolished 90 days later, but the price fixing continued. Geographically the market was limited to Brazil, since for the great majority of the consumers imports were not an economic viable option. The producers belonged to the Brazilian Association of Aluminum, a trade association, which facilitated the collusion.

The firms responded that the parallel behavior was a natural response to the features of the market, pointing out that the London Metal Exchange (LME) functioned as a reference for the pricing of industrial metal all around the world. Selling below that price would not make sense, since they could instead be selling the product outside Brazil, charging the international price. However, this theory did not take into account transport and other costs of selling Brazilian aluminum abroad. Moreover, the evidence showed that the domestic prices charged by the firms were considerably above the prices at which they could sell abroad. It is unlikely that the higher price equilibrium could have been sustained without collusion.

SEAE submitted a Technical Note to SDE with the analysis above, requesting that an administrative procedure be initiated. The case is being instructed at SDE and will return to SEAE for a new report in the administrative procedure to be prepared.

This case illustrates a conventional problem in price fixing cases, which is the use of circumstantial evidence to infer an illegal conspiracy. Here, the SEAE economists were sorting through alternative theories of the pricing behavior of the aluminum producers. The analysis of the aluminum cartel concludes that collusion is the most likely explanation of domestic prices exceeding world market prices for a sustained period, but also mentions that imports of aluminum do not take place. An alternative explanation of high domestic prices is high domestic costs protected by tariff barriers. It is not clear whether this possibility was considered.

The aluminum case illustrates another problem in many Latin American countries, namely the wrenching change from a system

in which central governments for decades controlled entry, imports, and prices (often on the basis of advice from trade associations) to one in which every producer is supposed to behave independently and competitively. If antitrust policy is to be an effective deterrent for anticompetitive behavior, a real change in public understanding is required.

Finally, the aluminum case illustrates the cumbersome administrative procedures, in which sometimes multiple formal transfers of a given case take place between the economists at SEAE and the lawyers at SDE before the competition tribunal (CADE) can consider and decide the case.

All of these points are further illustrated in the alcohol and retail gasoline price fixing cases, below.

The Alcohol Cartel Case: *In May 1999, 181 producers of alcohol established an association, the Brazilian Alcohol Exchange ("BBA"), that would sell exclusivity all the output of its members for three years. These firms produced 85% of all the alcohol in the south, southeast and central-west regions of Brazil, though individually each had under 3% of the relevant market. The BBA worked with another association, Brazilian Alcohol ("Brasil Álcool"), created to store the members' excess production which amounted to approximately 15% of their total output. The alleged motivation for the creation of these associations was the deregulation of the sector, a move that drove prices below the average cost of production. This supposedly temporary crisis due to excess capacity would be corrected in two or three years time with the expansion of demand for alcohol.*

These associations were reported to the SBDC under the Brazilian merger provision (Art. 54 of the Law No. 8.884/94), but were analyzed differently in each of the three agencies. SEAE evaluated the transactions separately, classified the parties' conduct as collusion and recommended that the associations be blocked. SDE did not consider that the parties were engaged in cartel formation and analyzed the operations separately under the merger provision. SDE, however, also recommended that the operation should be

blocked and that the Public Attorney should be asked to investigate the case. Finally, CADE did not even evaluate the parties' conduct and assessed the operations jointly under the merger provision. The tribunal decided to block the associations but did not find it necessary to notify the Public Attorney to investigate the case.

SEAE concluded that the parties were in fact forming a cartel. The relevant product market was defined as alcohol and the geographic definition of the relevant market was the whole of Brazil, since the central-south production was sold all around the country. SEAE's report indicated that the creation of BBA kept prices artificially high. The first increases in the prices for alcohol had only happened in May, when BBA began operating and since then, were raised by 216.5% for producers and 73.1% for the final consumer. SEAE also concluded that the existence of BBA and of Brasil Álcool facilitated coordination among the firms, restricting competition and ultimately harming consumers.

Fuel Retailers Cartel Cases: *SEAE and SDE have jointly conducted several investigations of fuel retailers in different regions of Brazil. One of them was closed at SEAE in February of 2002 and was sent to SDE, were the preparation of the administrative procedure is being finalized. From there, it will be sent with SEAE's and SDE's recommendations to CADE for a decision. The other two cases have already been submitted to CADE and should be decided in the near future.*

Florianópolis: *Since the beginning of 2000, consumers in Florianópolis systematically complained about the high prices of gasoline. After several articles in the press comparing the prices charged in other cities of the country and increased dissatisfaction expressed by the people of the city, the House of Representatives of the State of Santa Catarina began conducting public hearings on the matter.*

During one of these hearings, members of the Consumer Protection Agency and of the State Public Attorney's office where were also present. It was suggested to the retailers that their profit margin should be 15.5% above variable costs. After the public

hearing, the retailers' trade association held a meeting to decide on the suggested profit margin. Although not many associates were present at the meeting, the majority approved the 15.5% margin.

During the same period, the office of the Public Attorney of the State of Santa Catarina was already investigating the strong evidence that the retailers' conduct was a cartel. These findings led the office to request the wiretapping of the telephone of the president of the trade association. The recordings showed that the official had been an intermediary in the negotiations for the price increases and had threatened some retailers that were hesitant to raise prices. The Public Attorney's office brought a criminal case in the state court and submitted a formal complaint to SDE, where an administrative procedure was initiated.

At the request of SDE, SEAE performed an economic analysis of the case and submitted a report concluding that the fuel retailers of Florianópolis had entered an agreement that resulted in a uniform price increase after 21st June 2000. SDE finished the preparation of the case and presented it to CADE, where it should be decided during the first semester of 2002.

One of the gasoline retailer cases had an interesting twist. The local retailers' association lobbied for legislation to keep out competitors, which was in fact enacted. Under U.S. antitrust law such activity would not be illegal, because of constitutional protection of the right to petition the legislature. In Brazil, apparently, there is no such protection. The same case demonstrates the use of a cartel agreement to evade the effects of an inefficient regulatory constraint on pricing.

Sinpetro-DF*: In February 2002, SEAE submitted its analysis of Sinpetro-DF, the trade association of the fuel retailers of the Federal District. The investigation concerned two elements: the obstruction of the entry of a competitor in the fuel retail market of the Federal District; and the refusal to sell a refined diesel oil in the Federal District.*

Sinpetro-DF influenced the drafting of legislation in the Federal District that blocked the granting of permits to build fuel sta-

tions in certain areas, such as the parking lots of supermarkets, hyper-markets and shopping centers. Sinpetro-DF held meetings to discuss the need to pass a law with that specific purpose. As the analysis of the reports of the meetings indicates, the members were explicitly attempting to block the entry of a large group of hyper-markets into the fuel retail market in the Federal District. The draft of the bill proposed by Sinpetro-DF became law in January of 2000, and since then, supermarkets and hyper-markets have been banned from opening fuel stations in their lots.

The sale of diesel oil in Brazil is regulated by the National Department of Fuel (DNC). According to a determination issued by DNC, the sale of refined diesel oil at the same price as regular one was compulsory, whenever the regular diesel was unavailable at the fuel station. Reports of meetings at Sinpetro-DF indicated that the retailers had agreed not to sell the refined diesel oil, in order not to evade this regulation.

SEAE made following recommendations to CADE: the imposition of fines; that CADE should inform the Municipal Legislative Power of the Federal District about the anticompetitive effects of the law that blocked the entry of supermarkets and hyper-markets in the fuel retail market; the creation of an educational program aiming at the prevention of similar practices in the future. SEAE's report was presented to SDE, where the case will be finalized to be sent to CADE.

The final Brazilian case summary below illustrates vividly the duplication of effort that occurs when a pattern of anticompetitive behavior, repeated on a global scale, must be investigated and prosecuted separately in each of dozens of jurisdictions. The same occurs, of course, in international merger cases.

The Airline Cartel Case *In August 1999, the presidents of the four major airlines in Brazil met privately in a luxury hotel in São Paulo. Just five days after the meeting, the prices of the flights between central airports of Rio de Janeiro and São Paulo went up, by exactly 10%, for the four airlines whose presidents had met. The price increase, in the same day and by the same amount, af-*

fected the lucrative route between São Paulo and Rio de Janeiro, which connects the two major cities in the country and serves thousands of business travelers every day. The four airlines had 100% of the market on that route.

The airlines were asked to explain the motivation and timing of the price increase. The airlines were initially unresponsive. Having discarded alternative explanations for the price increase, SEAE saw this case as a price-parallelism with a plus factor, and decided to ask to SDE to open an administrative investigation.

After the investigation was initiated, the airlines changed their defense and argued that the price increase was a result of normal practice in the airline industry, where the leader firm imposes the price increase and the others simply match it. They attributed the uniform increase to the computerized system of the Airline Tariff Publishing Company (ATPCO). This system is a data base of the tariffs charged by the 700 largest airlines around the world. The companies allege that by monitoring it daily, they became aware on August 6th 1999, of a price increase published by the leading airline, which would become effective three days later.

SEAE concluded during its preliminary investigations that, although possible, it was highly unlikely that the uniform price increase had been motivated by the airlines' simply observing the ATPCO system, without previously exchanging information. The supposed leader posted its price and less than one hour later a second airline also informed its 10% increase. According to the airlines themselves, it takes at least 35 minutes to feed the system and in practice, this usually takes much longer.

SEAE identified other anticompetitive tools used to exchange information through the ATPCO system, such as the "first ticket date". This command allowed an airline to disseminate information about a new price to the other companies, but to withhold this information from the computer reservation systems until three days later. As a result, during those three days, only the competing airlines knew that one of them was planning to increase its prices, but not the customers or the travel agents. In the event that the price

increase was not matched by competitors, the first airline could simply cancel the price change and no one else would have had any knowledge of these events.

Aside from the immediate prohibition of the "first ticket date" command, SEAE also recommended that SDE should initiate investigation about the services offered by ATPCO, to evaluate what other communication tools it made available to facilitate coordination among competitors in the airline industry in Brazil.

SEAE's condemnation of the ATPCO system coincides with international jurisprudence in this area, specifically with the understanding of the U.S. Department of Justice during the investigations carried on from 1988 to 1990. As a result of it, ATPCO signed a consent decree in which they agreed to change their system in a way that competing airlines in the United States would not be able to see future price increases of their rivals before they were available for sale. However, the system was only adapted to comply to U.S. law, so the service to the rest of the world, other than the United States and Canada, continues to be the same as it was before.

The administrative procedure returned to SDE, where the instruction of the case will be finalized soon. Subsequently, the case will be sent to CADE for a decision, which will probably establish an important legal precedent regarding information exchange tools.

The Brazilian emphasis on fighting price fixing certainly appears to be consistent with an attempt to capitalize on the leverage effects of law enforcement, but the absence (to the date of the report) of any final resolutions of these cases, and of significant, well-publicized penalties, may undercut such efforts.

Chile

There is a good description of Chile's well-established and powerful antitrust enforcement regime in the OAS compendia, and

a brief outside summary in Bitrán 2002. Chile was, of course, one of the earliest Latin countries to undertake market reforms, under the guidance of the "Chicago Boys" during the dictatorship of Augusto Pinochet.

An amendment to Chile's competition law took effect in 2001, specifying that "acts or conventions that pose obstacles to the production of information, to transporting, distributing, circulating, advertising, and marketing news media will be considered restrictive of free competition." The law also requires that any change in ownership or control of the news media be reported to antitrust authorities, a potentially alarming development. (See Islam 2002 for commentary on the role of the media in economic development.)

In the course of 2001, the Antitrust Court (the functions of which are exercised by the Commission) issued 47 rulings. For example: the Court classified services related to the supply of electricity and telecommunications "not delivered by licensees under competitive conditions, which therefore should be subject to price control." This parallels almost exactly the policy issues faced in the U.S. by regulators struggling with the transition from regulated monopoly to competition and deregulation. Another large fraction of Chile's "antitrust" cases involve intellectual property. In Chile and almost everywhere else in the world, antitrust enforcers have a difficult time treating intellectual property symmetrically with physical property. Both the regulatory cases and the intellectual property cases in Chile are treated in a way that reflects developments in the economic literature.

I have included here a few of the very brief summaries of the Chilean Antitrust Court's 2001 opinions, to illustrate their flavor. On the whole, Chilean antitrust jurisprudence displays a degree of sophistication and self-confidence often missing from the decided cases in other Latin American jurisdictions.

Sanitary fill sites: *Several petitions filed by Mr. Rodrigo Díaz Albónico on behalf of Maestranza Chena S.A., and by Mr. Eulogio Altamirano Ortúzar, regarding the bidding of location sites for sanitary fills or sites for final disposal of domestic solid*

wastes in the Metropolitan Region, called by the Metropolitan Regional Government, and contracts between Greater Santiago municipalities and K.D.M., S.A. and its affiliates, Starco S.A. and Demarco S.A., for disposal of domestic solid wastes from their communities, failing to comply with opinion No. 995 (23.Dec.1996) of the Commission, leading to K.D.M.'s dominant position in the market: The Commission concluded that the tender documents for the offering of sanitary fill sites were modified to make them more transparent and non-discriminatory, and it was impossible to construe that K.D.M. and/or its affiliates had abused their dominant position. The Commission entrusts the National Economic Prosecutor's Office with the task of reminding municipalities to comply with the abovementioned opinion No. 995, and to be especially vigilant in monitoring the pick-up, transport, and final disposal of waste in the Metropolitan Region.

Jurisdiction*: Complaint filed by Mr. Floridor Galarce Romero against Valle Central S.A.C., a public transport company, for restraining his freedom to work by forcing the owner of the minibus driven by the complainant, which was assigned to the defendant company, to terminate the complainant's employment contract, which had been in force since July 2000. The Commission deemed that actions which are intended to restrain freedom of employment, but which are not construed as anticompetitive, must be ruled by jurisdictional entities other than the Commission. Consequently, the Commission dismissed the complaint.*

Price regulation: *Complaint filed by Representative Julio Dittborn et alia against Metro S.A., a passenger transportation company, for abuse of dominant position upon applying an excessive fare raise as of 1 February 2001. The Commission, in its statement of reasons, deemed that Metro S.A. has not committed an abuse of dominant position in the passenger transportation market of Greater Santiago and that its fare increase was not intended to eliminate, restrict, or restrain free competition within the meaning of Article 6,... Consequently, the complaint was dismissed.*

Exclusivity*: Inquiry made by INDALUM S.A. about marketing its products through the specialized distribution channels indicated. After analyzing the Exclusive Sale Contract that would be signed between INDALUM and the distributors that meet certain technical requirements, the Commission approved it with some objections that must be corrected by the inquiring party.*

Resale price maintenance: *Complaint filed by Mrs. Marisa Navarrete Novoa, owner of the Patitas Negras Full-Service Pet Center of Concepción, against Sociedad Pet Market Ltda. and IAMS Eukanuba Dog Food Ltda., for suggesting prices and refusing to sell if those prices are not accepted. The Commission admitted the complaint, admonishing the defendants to immediately terminate their policy of recommending prices and to cease refusing to sell. If they persist in their behavior, an injunction against them would be filed with the Resolutory Commission. This Opinion has been challenged with the Resolutory Commission. See ruling No. 626 of 10/10/2001.*

Licensing*: Complaint filed by Mrs. Loreto Julio Arratia against the Municipalities of Santiago and Vitacura for having granted exclusive rights to national public property, to sell compulsory automobile insurance. The Commission, considering that this service's awarding process is irreproachable in light of Executive Order 211 of 1973, dismissed the complaint with a warning addressed to the country's municipalities.*

Jurisdiction*: Complaint filed by the Municipality of Macul against KDM S.A. for not signing the contract for final disposal of solid wastes awarded to that firm by means of mayoral decree No. 1.287 on 5 December 2000. After studying the background information, the Commission ruled that the disagreement between the parties stems from an issue related to the fulfillment of a contract in regard to its full performance, which is a matter to be heard and ruled by other jurisdictional entities, and as it is unrelated to free competition. and, consequently, the complaint is dismissed.*

Intellectual property: *Complaint filed by Mr. Rafael Abuadba against the Sociedad Chilena del Derecho de Autor*

[Chilean Copyright Society] for the latter's attempt to collect royalties from him for music that he plays at his record shop. The defendant Society argued that the collection of royalties is for music that the complainant plays over the outdoor loudspeakers that are audible to the public, a situation that is different from the exception envisaged in Article 42 of the Law on Intellectual Property. This matter is now subject to the consideration of the Courts of Justice, the complaint having been upheld in the court of first instance. Consequently, the Commission rejected the complaint for lack of jurisdiction.

Radio license transfer: *Inquiry made by the Undersecretariat of Telecommunications (SubTel), requesting the Commission's opinion, in accordance with paragraph two of Article 38 of Law No. 19.733, as to whether transferring the license for frequency-modulated radio broadcasting for the city of Santiago, CB-100, held by Radio Publicidad S.A., would have a significant impact on the market. After studying the background information provided by SubTel and the National Economic Prosecutor's Office, the Commission concluded that the transfer would not have a negative impact on free competition.*

School uniforms: *Ex-officio investigation conducted by the National Economic Prosecutor's Office following several complaints and filings it had received regarding the abuse some educational establishments were reportedly committing by demanding that school uniforms be purchased from certain specific suppliers with whom they have signed an exclusivity agreement for the manufacture and distribution thereof, without a prior call for bids and without consulting with teachers, parents and guardians, and mid-level education student centers. The Commission issued clear and precise rules on the use of school uniforms, that protect competition and transparency in this market, ordering that the operative part of the opinion be published in a newspaper with ample national distribution.*

In sectoral reform, Chile seems to have had contrasting experiences in telecom and electric power supply. In both cases, the

competition authority and the regulatory agency are designed to work together, interactively, to promote competition where possible and otherwise to use regulation to contain monopoly pricing and practices. In telecommunications this has worked well, with one agency occasionally prodding the other to make progressive reforms (Diaz and Soto, 1999). In electricity, with the same agencies playing the same roles, reform has been much slower. Part of this has been due to missteps in the process of privatizing the former state-owned utilities. (Id.) Chile's comparative success in market reforms and competition appears to be due in significant part to a policy consensus within the government that has left regulators, competition officials, and prosecutors thinking along the same lines. Thus, in contrast to some other countries, Chile's competition authorities are not at odds with its regulatory regimes. Of course, this reflects the success, widely-appreciated in Chilean society, of the market reform programs.

Columbia

Although it is not apparent from the OAS 2003 report, different agencies in Columbia are responsible for antitrust enforcement, depending on the industry, and the civil courts are also involved. The following summary describing Columbia's antitrust agencies and laws is based on the article by Columbian lawyers Samper and Jaramillo 2003 and Cantillo and Campuzano 2001.

The Superintendency of Industry and Trade (SIT) is the body in charge of ensuring compliance with the restrictive trade practices, other than those that occur in specific regulated industries.

If SIT decides to conduct a formal investigation, the *Superintendency for the Promotion of Competition* prepares a report of the investigation, including conclusions of law. The report is submitted to SIT for its final decision. Remedies include: an order to rectify or cease any conduct contrary to the provisions on the promotion of competition and fines of up to 2,000 minimum legal monthly wages on companies involved and up to 500 minimum legal monthly wages on the persons. Private complaints regarding unfair

competition may be filed either before the Colombian courts or before the SIT. Both the SIT and the courts are empowered to award damages. Apparently, both consumers and competitors have standing to request damages.

The Colombian authority in charge of investigating alleged anti-competitive conduct by companies that supply domestic public services (i.e. water, and electricity and residential wireline telephony) is the Superintendency of Domestic Public Services. The law establishes that public utilities must avoid unjustified discrimination, and must not undertake any practice that may constitute unfair competition or be restrictive of free trade. Specifically, the law forbids charging reduced rates that do not cover the operational costs of the services; market distribution or price fixing agreements; agreements having the purpose of manipulating bidding processes; unfair competition; and abuse of a dominant position. Curiously, however, SIT investigates restrictive trade practices in non-residential telecom services, including for example cellular services, trunking, paging, PCS and valued added services. Antitrust issues in the banking and insurance industries are handled by the banking regulator.

All the cases reported by Columbia in OAS 2003 apparently originated in SIT. The following summaries are illustrative.

Comcel S.A.: *ETB, Orbitel and Telecom filed a complaint against Comcel for unfair competition in providing long distance services. Within a period of 14 months an investigation was carried out and a ruling issued determining that actions cited in the complaint were illegal. It was felt that the justifications submitted by the investigated party were not legally substantiated and therefore the conduct complained against by ETB, Orbitel and Telecom could not be dismissed or excused. Consequently, the penalty provided for [by law], in the amount of 2,000 statutory minimum wages, was applied.*

SATENA: *The Air Transport Association (ATAC) filed a complaint against SATENA for competing unfairly in providing commercial air transportation because of advantages they enjoy*

that private airlines do not. These advantages include operating unauthorized routes, landing at the Olaya Herra Airport of Medellín and not paying some taxes and contributions. The opinion of the Office of the Superintendent was that although Satena was operating 2 routes in contravention of its bylaws, the investigation was not able to prove that such operations gave it a significant advantage in the market vis-à-vis the complaining companies. In the same vein, landings at Olaya Herrera airport were considered an advantage, but such landings were legally authorized.

Scallions*: Manuel Antonio Mesa Torres filed a complaint against Corporación de Abastos de Bogotá S.A., et al for the alleged dividing-up of markets and for agreements that affect the production of goods and services. The Office of the Superintendent carried out an investigation to determine whether Corabastos and other investigated parties agreed to divide the scallion (known as junca in Colombia) market among themselves. Similarly, the Office of the Superintendent sought to determine whether the objective or effect of the agreement was to stop production or limit the levels of production of scallions. The Office of the Superintendent fined Corabastos and the other investigated parties.*

Ice Cream Cones: *A competitor filed a complaint against Induga S.A. for abuse of dominant position. In the course of the investigation, it was determined that Induga S.A. has a dominant position in the ice-cream cone market insofar as: Its share of the national market is approximately 56.63%; the market for molded sugarless ice-cream cones is oligopolistic and concentrated in the industry leader, Induga S.A., which means that Induga has more leverage for independent action, especially since its competitors do not have the technology needed to increase production volume without increasing their costs; unlike its competitors, Induga has it own leading-edge technology and economies of scale which allows it to increase its production at a lower cost; and its installed capacity would enable it to satisfy domestic demand for the product. It was also determined that Induga sells ice-cream cones in the city of Baranquilla at a price approximately 50% lower than in*

Medellín. Therefore, the intention, or potential, to eliminate or decrease competition in Barranquilla could be assumed. Similarly, an economic analysis showed that the profit margin for the ice-cream cones sold in Baranquilla is approximately 70% less than that of Medellin. This generates cross subsidization between the margins in the cities covered in the investigation. The Office of the Superintendent penalized Induga S.A. for abuse of dominant position.

Avianca – Aces: *Aerovias Nacionales de Colombia S.A. (Avianca), Sociedad Aeronáutica de Medellín Consolidada S.A. (Sam) and Aerolíneas Centrales de Colombia S.A. (Aces) informed the Office of the Superintendent of the intention to merge the two airlines with the largest shares of the domestic market. After studying the case, the Office of the Superintendent objected to the merger because it believed it could result in undue restriction of free competition. However, this file was transferred to the Office of the Superintendent of Companies, based on the Office's interpretation of the scope of its jurisdiction in the case. The file was, in turn, transferred from the Office of the Superintendent of Companies to that of the Civil Aviation Agency, which decided to deny the merger.*

Costa Rica

Costa Rica's Law on Promotion of Competition and Effective Defense of Consumers (Law No. 7472) came into force at the beginning of 1995. (Carnevale 2002) It is an ambitious law for a country with a population under four million. The following excerpt from OAS 2003 provides a sense of the effort, which in many ways resembles Jamaica's approach:

> The Commission for Promotion of Competition during the first seven years of its mandate has focused on both preventive action and the imposition of penalties. The Commission has been working since its inception to promote a com-

petitive attitude in Costa Rica. Meanwhile, penalties have been imposed where necessary to provide protection for the process of free and open competition. Since beginning operations in August 1995, Costa Rica's competition authority has heard over 450 cases launched either at its own initiative or in response to complaints from economic stakeholders.

It is worth noting that the corrective measures and penalties imposed on economic agents as a result of these investigations have increased in number, and in the severity of the sanctions. In other words, the Commission has taken a much more repressive (sic) stance in order to discourage businesses from adopting monopolistic practices. This does not mean, however, that it has or ought to drop its efforts to promote a culture of competition, but simply that it is attempting to guide the groups directly affected through strict enforcement of the law.

Containerized trucking: *Several businesses in the transport sector took out a paid advertisement in the information media for the purpose of announcing set prices for trucking services to haul containers for the import-export trade, in order to raise the price for such overland transport services.*

The final decision of the Commission for Promotion of Competition found these businesses in violation of the law. After weighing the criteria for fines ranging from 0 to 680 times the minimum salary rates, fines of between 16 and 140 times minimum salary were levied against the 13 businesses held to be in violation.

Market for the purchase of hide*s: Presented with evidence of an alleged agreement among various tannery companies to set the maximum price for the purchase of type C hides, the Commission opened an ordinary administrative proceeding against the companies and their representatives on charges of engaging in practices contrary to law. The Commission found against all of the accused parties, and imposing fines ranging from 55 times the minimum salary to 2 times the minimum salary.*

Jamaica

Jamaica is a small jurisdiction (population 2.5 million) with an antitrust law fit for a much larger country. The personnel assigned to enforce the Fair Competition Act (1993) in the Fair Trading Commission (FTC) were formerly employed by a predecessor agency in enforcing Jamaica's maximum price controls. Apparently the Fair Competition Act will have to be overhauled on account of the effect of the Court of Appeal ruling in the *Jamaica Stock Exchange v Fair Trading Commission* case. At present, however, judging by the FTC's website, the 1993 Act remains in effect. (See Lee 2002 for a description of the FTC's resource constraints.)

Brief excerpts from the FTC's report to the OAS appear below, but the announcement opposite, which appeared as a popup on the FTC's website on August 22, 2003, may give a more accurate sense of how the Commission sees its mission: It clearly places great emphasis on consumer education.

Over the year ended March 31, 2002 a total of 826 cases were investigated by the Commission with 273 being completed. Cases of alleged misleading advertising accounted for almost 70% of all cases. Cases dismissed as outside the FTC's juris-

diction accounting for ap-

proximately 17%, "other offences against competition" represented 3%, "abuse of dominant position" approximately 2%, and "sale above advertised price" approximately 1%.

Investigations are being conducted into the Beer, Lottery, Telecommunications and Health Insurance sectors. The FTC completed its investigations into the Coconut Industry Board (CIB) and the Cocoa Industry Board. The investigation into the Coconut Industry Board revealed that although the Board has exclusive rights to the copra market, there is no resulting anti-competitive effect. The investigation into the Cocoa Industry Board found no evidence of abuse of dominance in relation to prices paid by the CIB to growers; neither did it find evidence of any other forms of abuse of dominance, such as the creation of barriers to entry for potential entrants to the market or the leveraging of dominance in one market to gain an advantage in another market.

The Commission also concluded three investigations into alleged predatory pricing involving (a) Telstar Cable Limited, (b) Tank Weld Metals Limited and (c) Super Plus Food Store. (a) It was found that the special offer extended by Telstar was not a case of predation but of healthy competition which forces its competitors to come up with better deals which ultimately benefit the consumer and such behavior should therefore be encouraged, not prohibited. (b) In the allegation against Tank Weld Metals Limited, it was found that although Tank Weld was dominant in the wholesale nail market in Jamaica, there was no evidence of predatory behavior. (c) A study of the promotions carried out by Super Plus Food Store indicated that it did not meet the criteria of predatory pricing as it was neither in place for a prolonged period nor did it cover a sufficiently wide range of the product lines relevant to the market. The staff of the FTC therefore did not consider that it had the potential to inflict real damage to the competitive process.

Mexico

Mexico has what is probably the largest and most sophisticated of Latin America's antitrust agencies, and the case summaries in its report suggest a vigorous enforcement mentality. The Federal Economic Competition Law *(Ley Federal de Competencia Económica,* (LFCE, 1993) and its Regulations (RLFCE, 1998), established the *México Comision Federal de Competencia* (CFC). As in Chile, the CFC's opinions are forcefully drafted, and like Chile, the agency does not hesitate to attack restraints of trade arising in the public sector.

According to the CFC's OAS report, "The imposition of restrictions on interstate trade by local government authorities is an impediment to the socioeconomic integration of the country and to the optimal use of its resources. These barriers to trade are created, for the most part, with the participation of regional producer organizations that secure local support for practices that divide markets along geographical lines and facilitate the manipulation of prices and supply within a particular area."

In 2001 the courts overturned constitutional challenges to the CFE's actions, originated chiefly by Telmex, the former telephone monopoly. "The courts confirmed that the CFC has technical and operational autonomy, which protects open and free competition by preventing and eliminating monopolies, monopolistic practices, and other behaviors that hamper the efficient functioning of markets. The Court also found that all economic agents are subject to the provisions of the CFC, be they natural or legal persons, sections or departments of the Federal, state or municipal public administration, associations, professional groups, trusts, or other forms of economic activity."

Pasteurized milk *Following a newspaper advertisement published in October of 2000 announcing an increase of 50 centavos per liter in the price of pasteurized milk nationwide, the CFC suspected the possible existence of collusion in the processed milk market. One defendant agreed to cooperate, and the others subse-*

quently did so as well. All agreed to notify the CFC over the next three years of the prices of its pasteurized milk in its different forms, including the percentages of any increases and the dates on which they take effect, and also undertook not to make any contract, arrangement or combination with its competitors the object or effect of which could be to create, an absolute [per se] monopolistic practice in violation of the law.

Tortillas in Mexico City *In January of 2000 the CFC became aware of the fact that Camato, a trade association made up of producers, mill operators, and producers of fresh corn tortillas, had suggested that its affiliated producers and mill operators establish a selling price for corn tortillas in Mexico City of four pesos per kilogram. The tortilla makers who are associated with Camato are not a single economic agent and they compete with each other. According to the defendants, the suggestion of a price did no harm to consumers, because they were not unreasonable. Under the provisions of the LFCE, however, it is a monopolistic practice to fix, increase, agree on, or manipulate prices, regardless of whether these prices rise or fall. In light of these facts the CFC determined that Camato had committed an absolute [per se] monopolistic practice. It was ordered to cease the practice and to pay a fine.*

Tortillas in Yucatan *The CFC found that the relevant market was made up of the production, distribution, and sale of cornmeal and dough. To reduce distribution costs, companies manufacturing meal operated regional plants from which the product was distributed to consumers within the region. Thus the market in question was a regional one. Harinera de Yucatán held substantial power within the relevant market and that, in establishing a system of exclusive distribution of goods and services by geographical location, it had committed a relative[rule of reason] monopolistic practice. Harinera de Yucatán was fined.*

Beer *In February of 1999 the CFC initiated an ex officio investigation of the markets for beer distribution and sale throughout the country, in order to determine the existence of any monopolis-*

tic practices in the form of contracts with state, municipal, and ejido authorities, among others, for the exclusive right to distribute beer. Where exclusivity agreements are made for the sale of particular goods or services with any party, even a public authority, consumers are deprived of possible alternatives. Both companies ultimately agreed to abandon exclusive distribution practices.

The following case raises what in the U.S. would be called dangers of "vertical market foreclosure" arising from a joint venture by competitors to enter a vertical market. However, the reaction of the CFC was much harsher, and undertaken much earlier in the process of the unfolding of the effects of the venture, than might be expected.

Coupons *Prestaciones Mexicanas filed a complaint against Prestaciones Universales alleging monopolistic practices in the marketing and distribution of vouchers and other convertible documents for all types of goods and services in supermarkets, department stores, and restaurants. The alleged monopolistic practices consisted in a prohibited joint venture by means of which Prestaciones Universales was organized, and Prestaciones Universales' decision not to charge commissions on the sales of vouchers, a policy that the complaining party considered anticompetitive.*

Prestaciones Universales was organized by companies that operated supermarkets and convenience stores and restaurants in order to issue and distribute vouchers and payment documents. Most of the grocery vouchers issued in Mexico are used for purchases at such stores and supermarkets.

The voucher companies earned income from three sources: commissions collected from companies that use the vouchers; commissions collected from affiliated establishments when exchanging the vouchers for cash; and the interest from the money used in the transactions. Commissions earned on the issue of vouchers are but one of three sources of income; hence, the decision not to charge commissions does is not necessarily translate into lost income nor constitute an anticompetitive practice.

Concerning the alleged illegal joint venture, the CFC found that even though Prestaciones Universales did not have a significant share of the voucher market, it did have the real possibility of influencing competition. The venture in question would have brought together those commercial chains that received the vouchers for purchases—that is, the economic agents that had become one of the indispensable links for the operation of the vouchers market.

The CFC felt that there was a real possibility that Prestaciones Universales would pressure its suppliers into accepting its vouchers and refusing those issued by its competitors. In so doing, Prestaciones Universales would have been able to force its competitors out of the market and, as a consequence, to unilaterally fix prices or significantly reduce supply in the vouchers market. Prestaciones Universales was therefore ordered to be sold off, and its shareholders were fined for having created an illegal concentration.

In recent years, the use of cellular telephony has increased significantly in Mexico. This is the result of the introduction of the caller pays collection method; reduced rates; technological innovations that have made it possible to offer additional services; and the introduction of mobile personal communication service (PCS).

Teléfonos de Mexico, SA de CV (Telmex) *This is a complaint against Telmex, [the former state monopoly] in respect of the nationwide markets for interurban telecom transport or resale traffic, and the interconnection or access for the provision of long distance service, in both cases domestically. These are intermediate services that long-distance carriers obtain from Telmex in order to complete long-distance connections. Telmex is the only carrier providing the nationwide intermediate services, needed for other carriers to provide long-distance services, a market in which Telmex also competes. The Commission ordered Telmex to immediately cease its discrimination against competitors and imposed a fine.*

Mergers In 2001 the CFC received 243 "notifications" of mergers and 57 "warnings" of mergers. The latter applies to corporate restructurings involving companies within a single group, which in the U.S. are called "bathtub mergers," generally lacking antitrust significance. The CFC's analysis of mergers, as illustrated in the case summaries below, suggests a strict enforcement attitude, but also considerable flexibility.

Processed beans *The CFC investigated a merger involving La Costeña and La Sierra, companies that own the two leading brands of processed beans. This study focuses on the relevant market for canned beans, of which there are 18 competing brands. The high degree of market concentration, combined with the type of marketing and distribution, introduced the possibility of one company unilaterally fixing the prices of processed beans. To avoid such an outcome, the CFC decided to authorize the merger, contingent on one of the brands being sold off, along with its associated assets.*

The parties then filed a motion for reconsideration and submitted additional information on the terms of the arrangement. They emphasized that the purpose of this concentration was not to eliminate a competitor from the market but to prevent one of the parties from going bankrupt. The companies demonstrated that even after the concentration were carried out, the market would have a significant variety of brands, owned by both foreign and domestic producers, and that the consumer would, therefore, continue to benefit from a wide range of choices. Consequently, the CFC modified its original ruling and authorized the concentration unconditionally.

Door hardware *The proposed merger would affect the relevant market for locks, padlocks, door openers, hinges, bolts and accessories throughout the country. This market is highly concentrated, with brand recognition playing a significant role. If the proposal submitted by Assa had been approved, purchase options would have been limited to three companies, one of which would have owned four of the six leading brands. The resulting concen-*

tration would have allowed one economic agent to raise prices or restrict supply, unhindered by its competitors. The CFC objected to the proposed concentration. Nevertheless, the companies submitted a motion for reconsideration proposing that the Scovill and Dixon brands be unbundled, thereby eliminating the negative effects of the transaction. The CFC then decided to authorize the transaction, contingent on the sale proposed by the parties.

Panama

Panama, with a population of 2.9 million, created the Free Competition and Consumer Affairs Commission (CLICAC), an agency of the Panamanian government that promotes competition and protects consumer rights, on February 1, 1996. As in Jamaica, CLICAC plays a leading role in protecting consumers from false and misleading advertising and related practices as well as consumer safety. Antitrust enforcement is not CLICAC's primary concern. Nevertheless, the agency has dealt with several traditional antitrust matters, most of which appear to remain unresolved, as indicated in the case summaries below.

Perhaps CLICAC's most spectacular success was its decision to block the acquisition by one of Panama's two brewers of the other. (Bavaria had proposed to acquire Baru-Panama.) The decision was upheld on appeal (GCR 12 July 2002). Panama appears to be the only antitrust authority to have successfully resisted the trend toward consolidation in brewing (and soft drink bottling) in Latin America. Whether or not the decision made economic sense from the perspective of Panamanian beer drinkers is unclear, as it depends on Panama's openness to, and taste for, imported beers.

***Wheat flour**: In 1997, CLICAC filed its first suit for alleged absolute monopolistic practices against various millers, alleging an agreement among the defendants to fix prices, exchange information for that purpose, limit production, and divide up the market among themselves. Over the course of the process, and following a*

series of proceedings by the court and motions by the parties, on 4 October 2000, a preliminary hearing was held, with the appearance of the companies against which the original complaint had been filed, as well as the legal representative of the Association of Flour Mills and of the purported accountant of the defendant companies who was entrusted with ensuring that the parties abide by the monopoly agreement. During the hearing it was decided that a hearing to determine the merits of the case would be held on 15 January 2001. (This case was still pending as of the date of Panama's report to the OAS.)

***Code sharing agreement**: In September 2000, the First Judicial Circuit of Panama agreed to hear a suit filed by CLICAC accusing Compañía Panameña de Aviación, S.A. (COPA), Sociedad Aeronáutica de Medellín Consolidada (SAM), and Aerovías Nacionales de Colombia (AVIANCA) of engaging in relative monopolistic practices. The grounds for the suit is a Code Sharing Agreement, which has since been abandoned. (This case was still pending as of the date of Panama's report to the OAS.)*

***Penonomé carnival board**: In March 2000, CLICAC filed an administrative law action for nullification of a ruling that was issued by the Carnival Board of the Municipality of Penonomé and by the municipal council itself. That ruling had set forth that, "after Cervercería Nacional and Cervercería del Barú competed for the concession to sell beer for the duration of carnival, Cervercería Nacional's proposal proved the better of the two." Therefore, the "temporary stands and tents that are set up for the duration of Carnival shall sell only Cervercería Nacional's products." This decision undermines the ability of other sellers to freely and openly compete, and is detrimental to consumers, who for the four days of Carnival will not have the opportunity to choose among alternative products, brands, quality, and prices. (This case was still pending as of the date of Panama's report to the OAS.)*

***COPA – Continental Airlines**: In February 1999, CLICAC requested information from Continental Airlines Inc. and Compañía Panameña de Aviación, S.A. (COPA) regarding their*

merger. By the end of 2000, information had been compiled on the evolution of the number of passengers, as well as the amount of mail and cargo moved per month on all routes from January 1998 to May 2000 by both airlines, and authenticated copies of both companies' operating licenses.

Nestlé-Borden*: In July 2000, CLICAC authorized an economic concentration between Nestlé Panamá, S.A., and Compañía Chiricana de Leche, S.A.; Helados Borden, S.A.; Pastas Alimenticias La Imperial, S.A.; Compañía Internacional de Ventas, S.A.; Naxos, S.A.; Fábrica de Productos Borden, S.A.; and Alimentos Nutritivos, S.A. The agency found no increase in concentration in any of the relevant markets, chiefly infant milk formulas. CLICAC considered that a new product had successfully entered the market, showing the contestability of this market, and it determined that there are no barriers to the potential entry of new products. This led the Commission to the conclusion that the degree of effective competition would remain after concentration had occurred.*

Peru

Peru's competition law was enacted in 1991, with amendments in 1995 following an advisory report (Owen 1995). Peru is unique in combining within a single agency (INDECOPI) responsibility for intellectual property licensing and enforcement, antitrust, and anti-dumping authority. Under its initial leader, Sra. Beatrice Boza, INDECOPI was a very visible presence in Peru and in international competition policy circles. However, INDECOPI did not report to the OAS and its web site does not contain the text or summaries of competition cases. The apparent absence of reported case law or other such guidance is more than an academic inconvenience: it suggests the absence of attention to the information flows that are a necessary ingredient of effective deterrence. This interpretation is reinforced by the recent action of INDECOPI's competition court, which abolished the *per se* rule for price fixing offenses.

GCR 19 September 2003.A brief description of Peru's current statutes appears in Fernández-Dávila (2003).

Uruguay

Uruguay (population 3.3 million) is struggling with a new competition law, (Articles 13 to 15 of Act 17.243 of 2000 amended in 2001 by Articles 157 and 158 of Act 17.296) which the government apparently is attempting to implement chiefly because the MERCOSUR agreement requires it of each signatory. The following summary of the provisions of the new law is based on This section is based on Caffera (2203) and the website of the law firm Estudio Bergstein (2003).

Prohibited practices: Article 14 of Act 17.243 prohibits: "…agreements and practices among economic agents, decisions of company associations and abuse of a dominant position of one or more economic agents that obstruct, restrain or distort competition and free access to the market of production, processing, distribution and commercialization of goods and service... " The final paragraph of Article 14 sets forth, as an additional requisite for practices to be considered illegal, that these cause a *"relevant prejudice to the general interest."* This apparently refers to the fact that antitrust laws are designed to protect competition as a system, not individual competitors.

The Act attempts to clarify these general prohibitions with five examples of unlawful practices:

Example A: "to permanently impose in an abusive way, whether directly or indirectly, purchase or sale prices or other transaction conditions on the consumer"

Example B: "to restrict, in an unjustified way, the technical production, distribution and development to the prejudice of companies or consumers"

Example C "to unjustifiably apply unequal conditions to third parties in agreements of equivalent considerations, therefore placing them at a serious disadvantage when facing competition"

Example D: "to subordinate an agreement to the acceptance of complementary or supplementary obligations that due to their own nature or commercial uses do not have any relation with the object of those agreements, to the disadvantage of consumers"

Example E: "to systematically sell property or render services at a price lower than the cost, without reasons based on commercial uses, not complying with fiscal or commercial obligations"

Enforcement Authority By Decree of the Executive Power Nº 86/01 dated February 28, 2001 enforcement authority was assigned to the General Bureau of Commerce of the Ministry of Economy and Finance. This agency has the power to conduct investigations, open arbitration centers, and to impose civil penalties, including damages to competitors and consumers. There is no criminal prosecution and no pre-merger notification process. There is an appeal process to the administrative courts.

In addition, the law makes contracts in restraint of trade unenforceable in the courts. Competitors and customers may sue for damages incurred as a result of violation of Article 14. There appear to have been no cases in which the new antitrust law has been applied.

Venezuela

Venezuelan antitrust enforcement has been among the most vigorous in Latin America, as the OAS 2003 summary suggests. Unfortunately, the 1999 Constitution called for a revised antitrust law and agency (Ciuffetelli 2001), with a deadline that passed without action in 2001. *Pro-Competencia,* the existing agency, has since submitted various proposals for a new law. One such proposal is summarized in Alfonzo 2003.

The following case summaries from OAS 2003 predate the current uncertainty about the future of Venezuela's antitrust regime.

***Soft drink bottlers**: Pro-Competencia determined that soft drink bottlers had colluded to directly determine the terms of sale. Pro-Competencia ordered the immediate suspension of joint and simultaneous identical discounts on carbonated drinks, and the holding of new, independent negotiations on the percentage of the discounts given to supermarkets, hypermarkets or other special customers who are part of the affected relevant market. Panamco de Venezuela and Sopresa were fined 288,764,687.17 and 163,643,724.08 bolivars, respectively.* [This decision was overturned on appeal. GCR 21 March 2003.]

***Internet service**: In 2000, Pro-Competencia found that Compañía Anónima Nacional Teléfonos de Venezuela (CANTV) had engaged in anticompetitive abuse of a dominant position. CANTV was the subject of an ex-officio investigation for imposing discriminatory conditions on Internet service providers, having refused to give these providers network numbering options which enable network connections from anywhere in the country for the cost of a local call. The antitrust agency decided to impose a fine of 1,875,904,272.00 bolivars, the equivalent of 1.3% of the company's budget item named "other income" in 1999. In addition, it issued a series of orders requiring that CANTV offer providers terms of purchase similar to those it gives CANTV Servicios.*

***American Airlines**: American Airlines abused its dominant position in the markets in which it sold and distributed airplane tickets for the Caracas-Miami and Caracas-Dallas routes. The Venezuelan Association of Travel and Tourist Agencies (Avavit) filed a complaint that the airline had begun to limit the distribution of airplane tickets, to the detriment of some Avavit members. The airline withdrew the 001 ticket imprinters and blocked access to its computer reservation and ticketing systems. After examining these practices, Pro-Competencia determined that they unjustifiably limited points of sale on routes on which American Airlines had a dominant position, and imposed a fine of 319,843,957.00 bolivars.*

***Tugboat service**: A complaint was filed by Terminales Maracaibo, C.A., Pro-Competencia that Tepuy Marina, C.A., and*

Marítima Ordaz, C.A., had engaged in market allocation along the Orinoco River. The antitrust agency fined Tepuy Marina, C.A., and Marítima Ordaz, C.A., 36,393,034.00 and 29,864,628.00 bolivars, respectively. Pro-Competencia determined there was no economic, technical, or operational justification for a territorial division between the two companies.

Jockeys*: A jockey, accused the Sindicato Único de Jinetes de Caballos Pura Sangre de Carreras (Union of Jockeys of Thoroughbred Racehorses) of engaging in practices that restricted free competition. The union set a maximum of twelve races per week at the La Rinconada racetrack for union jockeys. An order to desist from the practice, which was ruled anticompetitive, and the publication of the ruling in two horseracing magazines with nationwide circulation, were the final outcome.*

Subway advertising*: A complaint was filed against Sygnos y Gráficos Nomencladores Sygno, C.A., and C.A. Metro de Caracas, for allegedly engaging in anticompetitive practices, by imposing conditions for selling the advertising spaces in the cars of the Caracas subway system, which became permanent barriers to entry in the relevant market (advertising in modular units in the cars of the subway system.) Pro-Competencia ordered the termination of the practice. It also ordered that a public bid, public offer, or other mechanism be used for the future awarding of the advertising space in the cars of the Caracas subway system.*

In the subway case the result seems correct, but the relevant market may be unduly narrow.

Exclusive dealing*: Pro-Competencia ruled on a request from Alimentos Kellogg's for authorization to enter into simultaneous exclusive purchasing and distribution contracts. The company intended to use these contracts to create its own marketing channel for three new products targeting the biscuits and cereals markets. Though the contracts contained clauses directly and indirectly determining prices or contract conditions and establishing excessively long exclusivity periods, Pro-Competencia's analysis determined that they could be authorized, since they created their*

own product distribution network, and without such contracts it would be more difficult and costly to bring the new products to the end consumer.

In the Kellog case it is interesting that a potential defendant sought and received an advisory opinion before undertaking its planned expansion. A similar exclusive dealing pre-authorization issue arose in the indoor tanning case, below. In the U.S., exclusive dealing arrangements are generally regarded as benign, but they are suspect in a number of Latin American countries.

Indoor tanning*: In August 2000, Circuitrón Equipos Electrónicos requested authorization to enter into an exclusive contract to use the trademark Solar Express, which provides "controlled indoor tanning" services. After examining the requirements set forth in the Law regarding the authorization of contracts and considering factors such as the incipient nature of the market for controlled indoor tanning, the variety of trademarks, the commercial establishments with substitute services, and the fact that there were few barriers to entry, Pro-Competencia deemed that the contract would not restrict free competition.*

Pharmaceutical merger*: Aventis Pharma, S.A., and Rhone Poulenc Rorer de Venezuela, S.A., requested an opinion on whether the a merger of the operations of the two companies would be restrictive. Nine relevant markets were determined to exist—all within Venezuelan territory—for various types of drugs, such as antihistamines. Pro-Competencia concluded that, given the large number of players (laboratories and substitute products), the merger would neither create nor reinforce a dominant position in any of the relevant markets in question.*

Agricultural chemicals merger*: In April 2000, AgrEvo de Venezuela, S.A., requested an opinion on the potential restrictive effects of an acquisition of Rhone Poulenc's line of agrochemical products. Pro-Compbetencia's analysis determined that there were thirteen distinct relevant markets within which the proposed operation would not cause a significant increase in market concentration. Moreover, the dynamics of the competition in those markets,*

where there are companies that are larger and have a wider variety of products than the merged entity, led the agency to conclude that such an acquisition would not cause or reinforce a dominant position in any of the markets in question.

Glass containers*: In August 2000, the parties requested that Pro-Competencia examine the economic concentration that would result from Owens/Illinois' acquisition of Produvisa. Both firms manufacture and market, within Venezuela, primary glass containers used to package food, drinks, and pharmaceutical products. It was determined that the relevant market for this operation is divided into five sub-markets: the manufacture and marketing of primary glass and aluminum containers for beer, food, soft drinks, pharmaceutical products, and liquors. Although the analysis concluded that the operation would introduce a high level of concentration in the relevant market, it also determined that there existed substitute products for glass as the raw material of primary containers. Additionally, there are efficiencies stemming from the reduction of costs through adjustments in product lines in response to lower demand in recent years. For these reasons, the merger was approved.*

Telecom merger*: In September 2000 Conatel [the telecom regulator] requested Pro-Competencia's opinion regarding Inversiones Veserteca, C.A.'s proposed concession to Sociedad Mercantil Comunicaciones Móviles EDC, C.A., which was owned by Electricidad de Caracas. These companies hold a license to operate a link hub, or trunking system for communications between work teams. Pro-Competencia's analysis determined that the relevant market is defined as link hub services, or trunking, in north central Venezuela. Because the of two companies' low market share and the unlikelihood that they would engage in collusive practices, the agency concluded that the transaction did not represent a risk to the market for these services and recommended that Conatel grant the authorization. Additionally, it recommended that the regulating agency schedule further 400 MHz band auctions, so as to expand the services offered by existing companies and allow the entry of new carriers.*

***Venture of Americatel and Electromaxon**: In October 2000 Pro-Competencia issued an opinion to Conatel on a proposal Americatel, Electromaxon, Team Telecomunicaciones, Tronknet, Radio Enlaces Digitales, and Venetel, to digitalize the hub link, or trunking, system, serving the central, north central, western, and eastern regions of the country. Pro-Competencia recommended that Conatel approve the venture, although it also recommended that the companies first request Pro-Competencia's go-ahead to acquire new frequencies in the 400 MHz and 800 MHz bands of the radio spectrum.*

***Sidor Safeguards**: In April, the Antidumping and Subsidies Commission requested Pro-Competencia's opinion on the prevailing competition conditions in the market for hot- and cold-rolled steel products, so as to consider applying possible safeguard measures. These measures were requested by Sidor, the domestic steel producer, based on the damage that imports were causing. Pro-Competencia concluded that the application of safeguard measures might consolidate Sidor's already dominant position in the domestic market, aggravating the problems of the production chain and threatening the ability of companies downstream to compete, which would also need government protection to survive.*

***Tires**: The Antidumping and Subsidies Commission requested Pro-Competencia's opinion on competition conditions prevailing in the tire and radial-tire market, and on the possible consequences of an imposition of safeguard measures on such products, which were requested by domestic manufacturers. Although this investigation found high barriers to the entry of a new manufacturer, the entry of imported products caused a dispersion of the supply of tires, with a consequent increase in purchasers' and distributors' negotiation power. Consequently, individual manufacturers lacked market power and competition between distributors benefited from the larger number of participants in the marketing chain. A possible application of safeguard measures would seriously hamper competition, either at the manufacturer or the distributor level.*

***Coated paper**: In February 2000, the Ministry of Production and Commerce requested the opening of an investigation on the coated paper sector. The purpose was to explore the viability of a tariff reduction for this type of paper, as requested by the Association of Graphics Arts of Venezuela, due to insufficient output, successive and unjustified price increases by Venepal, the country's sole producer of coated paper. Because Venepal does not enjoy a dominant position in this market, there are no indications that anticompetitive practices are being engaged in or that consumers lack alternative suppliers. A tariff reduction would thus no longer be justified as a means to encourage competition in the market in question, where the current situation in terms of domestic and external prices should act as a disciplining factor. Moreover, Pro-Competencia concluded that in the event of a shortage of foreign currency, it is highly important that there be a domestic supplier for the entire graphic arts industry.*

Table 1: Competition Authorities and Laws

Country	Antitrust Agency	Antitrust Law
Anguilla	No information	
Antigua and Barbuda **Population: 69,000** **Income per capita: 28% of US**	None.	None.
Argentina **Population: 38 million** **Income per capita: 28% of US**	Comision Nacional de Defensa de la Competencia (CNDC)	Ley No. 25156: Defensa De La Competencia 1999.
Aruba	No information	
Bahamas **Population: 287,000** **Income per capita: 45% of US**	None.	None.
Barbados **Population: 173,000** **Income per capita: 44% of US**	Fair Trading Commission of Barbados	Fair Trading Act 2003
Belize **Population: 253,000** **Income per capita: 15% of US**	No information	No information
Bolivia **Population: 8.7 million** **Income per capita: 7% of US**	No information	Political Constitution. Articles 134, 142 and 233
Brazil **Population: 174 million** **Income per capita: 21% of US**	Conselho Administrativo de Defesa Economica (CADE textbook in English), Departamento de Proteção e Defesa Econômica (DPDE) *(Portuguese),* Secretariat for Economic Monitoring (SEAE)	Law No. 8,884 of June 11, 1994 (Enacted originally in 1962 and amended in 1990 and revised in 1994).
Caymans	No information	

Country	Antitrust Agency	Antitrust Law
Chile **Population: 16 million** **Income per capita: 26% of US**	Fiscalía Nacional Económica	Decree No. 511 of September 17, 1980, which contains the recast, coordinated, and systematic text of Decree Law No. 211 of 1973
Columbia **Population: 44 million** **Income per capita: 17% of US**	Industria y Comercio Superindendencia Delegada para la Promoción de la Competencia	Artículos 10 y 11, decreto 2153 de 1992, Artículos 143, 144, 147 y 148, ley 446 de 1998
Costa Rica **Population: 3.9 million** **Income per capita: 24% of US**	Comisión para la Promoción de la Competencia.	Ley No. 7472 Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor 1994
Cuba	No information	No information
Dominica **Population: 72,000** **Income per capita: 14% of US**	No information	No information
Dominican Republic **Population: 8.6 million** **Income per capita: 17% of US**	Consumer Bureau	Constitution of August 14, 1994. Article 8.12 on free enterprise; Criminal Code. Articles 419 and 420; Law No. 770 of October 26, 1934.; Law No. 13 of 1963. Articles 12 and 13.
Ecuador **Population: 13 million** **Income per capita: 9% of US**	None	None
El Salvador **Population: 6.5 million** **Income per capita: 13% of US**	El Salvador is in process of adopting a competition law.	No information
Grenada **Population: 102,000** **Income per capita: 18% of US (PPP)**	No information	No information

Country	Antitrust Agency	Antitrust Law
Guatemala **Population: 1.2 million** **Income per capita: 10% of US**	Ministerio de Economia	Political Constitution Articles 39, 43, 118, 119(h), 130. Commercial Code, Decree 2-70, Articles 361, 363, 364, 365, 366, and 367. Criminal Code, Decree 17-73, Articles 340, 341 and 353. Consumer Protection Law, Decree-Law 1-85.
Guyana **Population: 772,000** **Income per capita: 11% of US**	None	None
Haiti **Population: 8.3 million** **Income per capita: 5% of US**	No information	No information
Honduras **Population: 6.8 million** **Income per capita: 7% of US**	Superintendency for Performance, Operation, Surveillance and Control of Concessions	Decree No. 283-98 1998
Jamaica **Population: 2.5 million** **Income per capita: 10% of US**	Fair Trading Commission	1993
México **Population: 101 million** **Income per capita: 13% of US**	Comision Federal de Competencia	1993
Montserrat	No information	No information
Netherlands Antilles	No information	No information
Nicaragua **Population: 5.3 million** **Income per capita: 5% of US**	Competencia y Transparencia de Los Mercados MIFIC	Law No. 125 (1991), banking; Law No 200 (1995) telecom and postal services; Law No. 277 (1998) oil distribution; Law No. 272 (1998) electricity; Law No. 271, (1998) energy

Country	Antitrust Agency	Antitrust Law
Panama **Population: 2.9 million** **Income per capita: 17% of US**	Comison de la Libre Competencia y Asuntos del Con-sumidor	Law 29 of February 1, 1996
Paraguay **Population: 5.5 million** **Income per capita: 13% of US**	No information	No information
Peru **Population: 27 million** **Income per capita: 14% of US**	Instituto Nacional de Defensa de la Competencia y de la Proteccion de la Propiedad Intelectual (INDECOPI)	Decreto Legislativo 701, 1991, Decreto Legislativo 807, 1996
Saint Kitts and Nevis	No information	No information
Saint Lucia **Population: 159,000** **Income per capita: 14% of US**	No information	No information
Saint Vincent and the Grena-dines **Population: 117,000** **Income per capita: 15% of US**	No information	No information
St. Kitts and Nevis **Population: 46,000** **Income per capita: 28% of US**	No information	No information
Suriname **Population: 397,000** **Income per capita: n.a.**	No information	No information
Trinidad and Tobago **Population: 1.3 million** **Income per capita: 25% of US**	Trinidad are in the process of instituting Competition Agencies and is seeking technical assistance from the Jamaica Fair Trading Commission.	No information
Turks and Caicos Islands	No information	No information

Country	Antitrust Agency	Antitrust Law
Uruguay **Population: 3.3 million** **Income per capita: 34% of US**	General Bureau of Commerce (Dirección General de Comercio) of the Ministry of Economy and Finance	Arts. 13-15 of Ley Nº 17.243 (2000); Arts. 157 and 158 of Law No. 17,296 (2001); Decreto No. 86/2001 (2001).
Venezuela **Population: 25 million** **Income per capita: 30% of US**	Superintendencia para la Promocion y Proteccion de la Libre Competencia (Pro-Competencia)	Pending.

Sources: Global Competition Review 2003, OAS, country websites; Population and per capita income data (NI per capita, PPP basis): World Bank, World Development Indicators online database July 2003.

A purportedly complete and up-to-date listing of the full texts of all antitrust laws in the world is available at www.globalcompetitionforum.org sponsored by the International Bar Association.

Table 2: Telephone Penetration and Income, Per Capita, as Percent of U.S.

Country	Income per cap (PPP)	Main lines per cap	Mobiles per cap
Haiti (HAI)	5.0	1.5	2.5
Nicaragua (NIC)	5.0	4.7	6.7
Honduras (HON)	7.0	7.1	8.1
Paraguay (PAR)	13.0	7.7	45.9
Bolivia (BOL)	7.0	9.4	20.2
Guatemala (GUA)	10.0	9.7	21.8
Peru (PER)	14.0	11.7	13.3
El Salvador (SAL)	13.0	14.1	28.1
Ecuador (ECU)	9.0	15.6	15.0
Dominican Rep. (DMR)	14.0	16.6	33.0
Venezuela (VEN)	30.0	16.9	59.3
Mexico (MEX)	13.0	20.6	48.8
Panama (PAN)	17.0	22.3	46.6
Columbia (COL)	17.0	25.7	17.2
Jamaica (JAM)	10.0	29.7	60.6
Argentina (ARG)	28.0	32.6	41.9
Brazil (BRZ)	21.0	32.8	37.7
Costa Rica (CRA)	24.0	34.6	17.0
Chile (CHI)	26.0	36.0	76.6
Chile (CHI)	26.0	36.0	76.6
Venezuela (VEN)	34.0	42.6	34.8

Sources: For income, World Bank, World Development Indicators online database July 2003; fpr lines, International Telecommunications Union (ITU) http://www.itu.int/ITU-D/CDS/Countries_List.asp?Region=AMS

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