

Informal cooperation among Competition Agencies

14th Intergovernmental Group of Experts on Competition Law and Policy

Round Table on: Informal Cooperation among Competition Agencies on Specific Cases

9th July 2014

Geneva

INSTITUTO NACIONAL
DE DEFENSA DE LA
COMPETENCIA Y DE LA
PROTECCIÓN DE LA
PROPIEDAD INTELECTUAL



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Cooperation

- The Competition Act, in order to promote economic efficiency and consumer welfare, prohibits anticompetitive conduct having effects on national territory, regardless of their geographic origin.
- However, when cartels occur abroad, it becomes difficult for the Competition Authority to investigate, prosecute and punish such conduct. The budgetary and legal constraints hamper successful enforcement actions.
- For these reasons, the Act of Indecopi and the Competition Act have included provisions that allow **formal and informal cooperation**.



Cooperation

Formal cooperation:

- Arises in the context of formal agreements signed between competition agencies or countries to which they belong.
- Exclusively governed by the rules established in these agreements and in accordance with the legal framework of the parties.
- It may involve conducting joint investigation activities and exchange of confidential information.



Cooperation

Informal cooperation:

- Arises outside the framework of specific agreements signed by the agencies or countries to which they belong.
- These exchanges between officials from competition agencies are subject to applicable legal restrictions.
- It is flexible and allows a direct approach among officials.
- Usually it does not involve performing joint enforcement activities on behalf of another agency or exchanging confidential information.



Formal cooperation

Formal cooperation

- The Indecopi Act establishes that the Chairman can sign inter – institutional cooperation agreements with national or foreign institutions.
- Meanwhile, the Competition Act states:
 - ✓ Within the framework of an international agreement the Commission may investigate anticompetitive conduct developed within the national boundaries but with effects in the territory of one or more signatory parts.
 - ✓ Also, the Commission may exchange information, including confidential information, with the relevant authorities of the countries that are part of such agreements.



Formal cooperation

- In recent years, Indecopi has substantially improved its relations with foreign competition authorities:
 - Inter-institutional cooperation agreements with competition authorities from Chile (2010), Colombia (2011) and Brazil (2012).
 - Memorandum of Understanding with COMPAL-UNCTAD (2009).
 - Part of the Inter-American Competition Alliance (2010) alongside other 20 jurisdictions.
 - Indecopi is the authority responsible for the coordination and cooperation with other competition agencies, in the context of Free Trade Agreements.
 - Also, we have provided technical assistance to new competition agencies like the Dominican Republic and Ecuador, participating actively in their events. We hope to extend our cooperation soon to Paraguay.



Formal cooperation

- The main rules established in these agreements revolve around three main topics:
 1. **Exchange of information:** including answering queries, sending documents as resolutions, decisions, reports, guidelines, directives, among others.
 2. **Joint enforcement activities:** including collaboration in carrying out enforcement activities and reporting on implementation activities that may affect interests of the other parties.
 3. **Technical Assistance:** including the possibility of meetings, conferences, seminars, courses, workshops, visits and officers exchanges, among others.



Formal cooperation

- While formal cooperation channels have been enhanced, effective cooperation in the context of these agreements is limited. There have been no joint enforcement actions or formal exchanges of confidential information.



Formal cooperation

- There are obstacles for the implementation of formal channels:
 - Asymmetric regulation among competition agencies in Latin America, which imposes barriers to investigations and information exchange.
 - Budget constraints common to public agencies prevent the widespread of technical assistance activities.
- It becomes essential to seek less rigid collaboration mechanisms, allowing an effective approach among competition authorities from different countries.



Informal cooperation

Informal cooperation

- ❑ As we have seen, currently the cooperation in the framework of formal agreements is limited. This causes to look for alternative mechanisms that enable competition authorities cooperate.
- ❑ To address this situation, INDECOPI called a meeting of Heads of Competition Agency of South America that was held in Lima on June 17, 2013, proposing the signing of a cooperation agreement, in principle informal. As a result of this work and the impulse of the UNCTAD, we achieved the signing of the **Declaration of Lima** between Colombia, Chile and Peru.



Informal cooperation

- ❑ The **Declaration of Lima** is an instrument of cooperation with very special characteristics, because despite this is a formal document, its goal is to create a forum for exchange of experiences, training, and others, **in the context of informal meetings.**



Informal cooperation

- In fact, the **Declaration of Lima** (2013) allows the competition agencies from Colombia, Chile and Peru to undertake informal cooperation activities:

DECLARATION OF LIMA

The Competition Agencies and Services (hereinafter Agencies) from Chile (Fiscalía Nacional Económica), Colombia (Superintendencia de Industria y Comercio) and Perú (...)

(...) HAVE AGREED THE FOLLOWING:

FIRST: *To establish a forum for exchange of experiences and training among the Agencies from Chile, Colombia and Peru, where they could exchange experiences in their respective enforcement activities, analyze and study topics of interest for all the Agencies, legal or economic, and discuss the steps to follow in order to improve the integration among them, through informal meetings that will take place periodically, taking advantage of international and regional forums.*

Informal cooperation

- This informal cooperation is mainly exerted by the **Technical Secretariat of the Commission**, exercising their investigation and evidence attributions, in order to provide the Commissions with judgement elements for voting the cases under their jurisdiction.
- In less than a year, the **Declaration of Lima** have allowed trilateral informal meetings in the framework of a common investigation and subsequent bilateral meetings.



Informal cooperation

- Informal cooperation has taken place basically by telephone contacts where officials have shared general information, specifically about the following:
 1. **Enforcement.-** Consultations on the interpretation of competition rules by each agency. These are performed on hypothetical situations or cases resolved (no confidential information is revealed)
 2. **Markets under investigation.-** Information that let the authorities to know which markets cause more concern to other agencies. Extremely useful for regional markets.
 3. **Possible conducts.-** In some cases, competition authorities can indicate the type of anticompetitive conduct they are investigating in a particular market.
 4. **Investigation strategies.-** Implies a certain level of exchange of information on the design and implementation of investigation strategies. It is not performed when there are legal, material or strategic concerns.

Informal cooperation

- Another instrument of informal cooperation are **waivers** that have enabled the Technical Secretariat to exchange relevant information for its investigation and instruction activities related to its enforcement activities, with permission from the owner of the information.



Informal cooperation

- Informal cooperation have two principal advantages:
 - Not being subject to the rigors of a formal agreement, it allows the officers responsible of cartel enforcement activities to obtain information or relevant ideas to maximize the effectiveness of their strategies.
 - It allows greater confidence between the agencies involved and their officers. This confidence later results in the conclusion or effective implementation of formal cooperation agreements (thus providing positive feedback).

Final remarks

Final remarks

- In the present context of globalization, it is extremely important that competition agencies around the world cooperate with each other, particularly in the fight against cross-border cartels that simultaneously restrict competition in various markets.
- In this scenario, the role of UNCTAD is leading, especially providing technical assistance in the framework of the Competition Policy to overcome information asymmetry and lack of human resources in the competition agencies, promoting an appropriate institutional and legal framework.
- Considering that formal cooperation agreements have limitations, INDECOPI with UNCTAD as a partner proposed the subscription of the **Declaration of Lima** that competition agencies in Latin America cooperate in the framework of informal meetings. In less than a year, this instrument has produced positive results.

Final remarks

- However, our goal goes beyond, so taking as its starting point the **Declaration of Lima** and the valuable support of the UNCTAD, we could start thinking about a global agreement of cooperation between competition agencies. Initially we could use informal mechanisms that energize and enable engagement between agencies, but then, in the short term, adopt formal cooperation mechanisms.
- Our starting point may be just this session of the Intergovernmental Group of Experts on Competition Law and Policy, that gives us the opportunity to approach and create linkages that foster cooperation between our agencies.
- In our hands is to address cross-border anti-competitive practices in coordination with competition agencies whose countries are affected by these practices. And thus contribute to the development of our countries, considering that competition helps to achieve adequate economic growth.

Thank you

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