Round Table on Cross-Border Anti-Competitive Practices: The challenges for developing countries and economies in transition

Cross-border anticompetitive practices: the Brazilian experience and challenges

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I) Cross-border Cartels

II) Cross-border Mergers

III) International Enforcement and Cooperation
Fight against Cartels: a few numbers

- **UNCTAD:**
  - "Setting up leniency program and increasing enforcement efforts into domestic cartels in the 1st place".

- **Brazilian experience:**
  - Fight against Cartels
    - 2003: 1st search warrant
    - 2003-2006 (4 years): 30 search warrants
    - 2007-2010 (4 years): 343 search warrants
  - Leniency Program
    - 2003-2006 (4 years): 7 leniency letters
    - 2007-2010 (4 years): 15 leniency letters
    - 2011-2012: several leniency letters are being negotiated

Prior challenges for developing countries (and new competition authorities)
Challenge #1: Cartels go “Pro”

- In 2003, evidences were ‘evident’...
Challenge #1: Cartels go “Pro”

- Even ‘PowerPoint’ presentations...

Visão, Missão e Valores

- Visão: construção de um setor equilibrado, com base no trabalho em GRUPO
- Missão: gerenciamento do mercado, com o aumento do Market Share do GRUPO, maximizando o resultado
- Valores: integridade, confiança, respeito e Harmonia
Challenge #1: Cartels go “Pro”

- Sophisticated strategies
  - Informal meetings at the beach, private clubs, overseas...

- Difficulties to collect evidence
Challenge #2: territorial dimension

Joint Investigations with Parquet & Federal Police

- Fuel Sector, with MT Parquet
- Fuel Sector, with PB Parquet and Federal Police
- LP Gas Sector, with PB Parquet and Federal Police
- LP Gas Sector, with DF Parquet
- Fuel Sector, with MG Parquet
- Medical bidding Sector, with MG Parquet
- Plastic bags Sector, with SP Parquet
- Vigilantes case, with RS Parquet
- Bidding on car maintenance, with RJ Parquet
- Fuel Sector, with PC/PR
- Bidding garbage cleaning, with RS Parquet
- Cement Sector, with RS Parquet

- 47% of South America
- Territory comparable to Europe
- 26 Federal States + Capital
- Population of 190 million
- Limited Antitrust Staff
Challenge #3: international cartels

- Competition enforcement is national, while business is global

- Refrigeration compressors
  - 2008/2009: leniency letter signed in several jurisdictions
  - Soft cooperation with DoJ and DG-Comp: information exchanges (i.e. names and addresses of investigated companies), common requests and cartel’s *modus operandi*
  - Feb 2009: simultaneous dawn raid in Brazil, US and Europe

- Other cases
  - Lysine
  - Vitamins
  - Marine hoses

*International cooperation, “surprise effect” and effectiveness to collect evidence*
Cross-border mergers

- Law 12,529 from 2011:
  - Adoption of a pre merger control system
  - Pre vs. post merger control system

- Similar procedures and calendars
  - Exchange of information
  - Coordination of remedies
  - More efficient cooperation with foreign agencies

- Latam example (2011):
### International Enforcement and Cooperation

#### Techniques to foster international enforcement and cooperation

- Leniency, public announcements, direct investigations
- Bilateral notifications
- “Clipping” of international mergers and cartels

### Clipping - International Cartels

<table>
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<tr>
<th>Description</th>
<th>Jurisdiction</th>
<th>Companies</th>
<th>Source</th>
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Conclusion

- Brazilian experience
  - Domestic enforcement, then international enforcement
  - Significant cross-border anticompetitive practices enforcement experience

- Challenges
  - Day-to-day challenges: confidentiality issues, different timing and regimes.
  - Identifying the best type and instruments of cooperation
  - Fostering trust relationships

International cooperation as instrument to promote deterrence and effective enforcement
Thank you!

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