

**Intergovernmental Group of Experts on Competition Law and
Policy, Fifteenth Session**

Geneva, 19-21 October 2016

Round Table on:

***"Enhancing legal certainty in the relationship between
competition authorities and judiciaries "***

Contribution

by

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The views expressed are those of the author(s) and do not necessarily reflect the views of
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Policy**

15th Session, 19 to 21 October 2016, Geneva, Switzerland

**Round Table on “Enhancing legal certainty in
the relationship between competition
authorities and judiciaries”**

Presentation of the Background note TD/B/C.I/CLP/37

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Key messages

- Competition law and economic evidence need not be intimidating.
- Ruling on competition law issues is not any more problematic than any other form of complex litigation, (environmental, medical or complex tax matters)
- The role of the courts is not to become subservient to economists but to listen to what the economists have to say before making their findings in law.
- The only accepted principle for the courts, therefore, is to settle disputes according to the law and, in particular, due process. The rest is details



Key messages (cont´)

- A shift from a formalistic to a more contextualized, dynamic form of economic assessments based on evidence and data
- Certain practices (treated as anti-competitive and therefore illegal) are now regarded as legitimate or at least, not worthy of State intervention.
- Conversely, thanks to sophisticated economic tools, anticompetitive practices which, under the old system, might have gone undetected or otherwise escaped scrutiny, are now considered illegal.

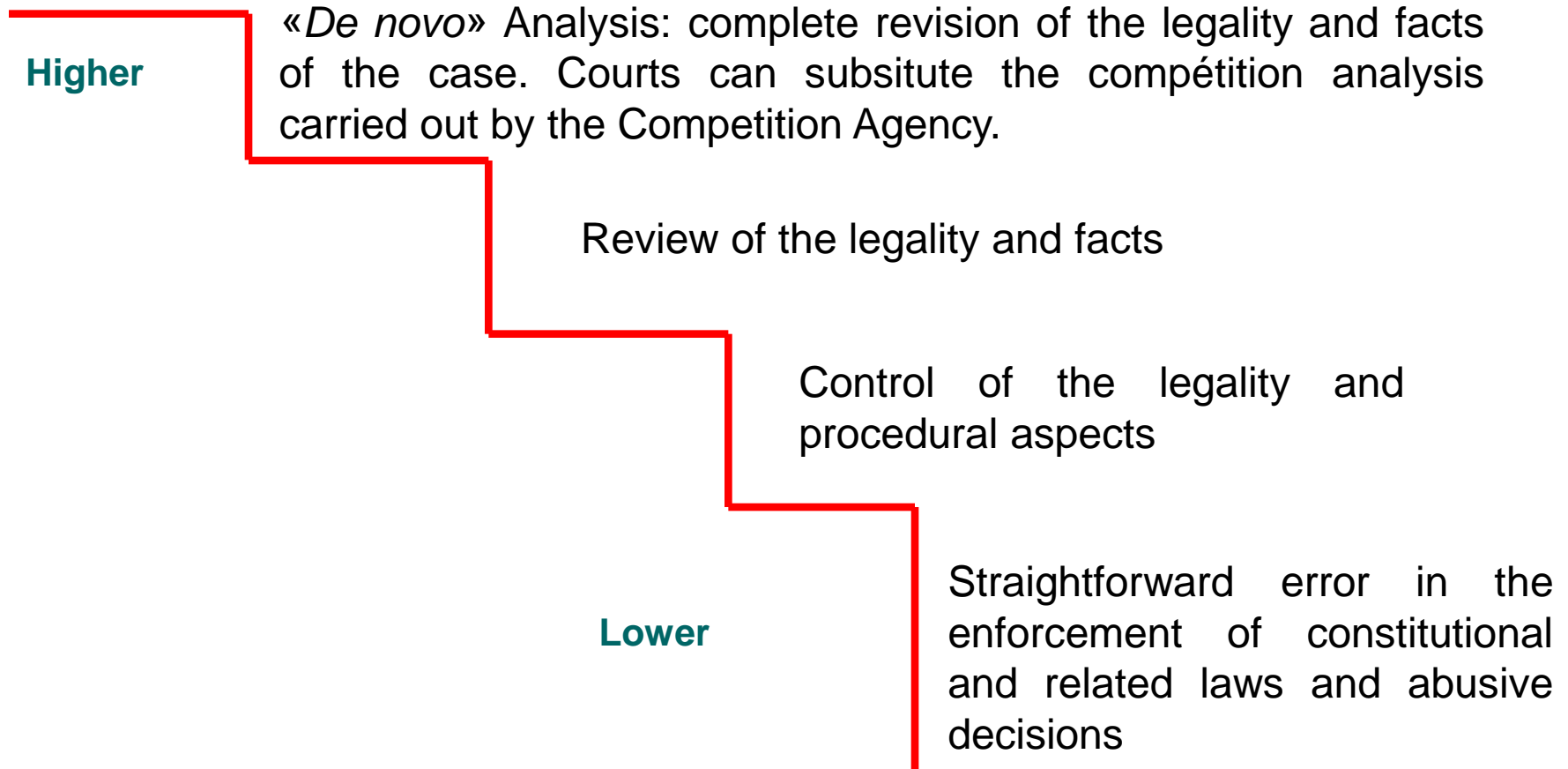


Key messages (cont´)

- But reconciling competition law with sound economic is only part of the story.
- There are other interests in conflicts. Competition law cannot be reduced to a casuistic exercise : the law must be predictable and transparent, so that it is understood and applied efficiently, especially by the courts.
- Cartels are now treated as a form of quasi-criminal conspiracy subject to heavy penalties (criminal offences in some countries)
- Given the repressive nature of cartel law, litigation in this field generally revolves around procedural or due process issues, but seldom around economic ones.
- The role of the courts is not just to focus on sound economics, but also to apply the law in such manner that the system remains robust, efficient, predictable and fair.



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