

Improving coordination in regional cartel investigations in Latin America

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Cases of liquid oxygen

- Multinational and local firms involved in 7 jurisdictions during the last decade
- Public procurement and private markets affected
- Market allocation and bid rigging practices
- Long standing patterns of behavior
- The 7 Competition agencies did not cooperate despite the existence of coop. agreements

Firms act “glocally”?

- Firms apparently adjust their self-corporate governance rules to domestic competition but act differently when it comes to cross-border business patterns
- What are the incentives for a race to the top policy?

Obstacles to cooperation between agencies

- Low levels of cooperation between agencies in all phases of the investigation
- Prohibition to exchange information in open cartel investigations
- Modest developments in implementing leniency programmes in 5 out of 7 jurisdictions
- Proper recognition of the evidence gathered abroad

Improving the level of cooperation/coordination

- Pre-investigatory phase :
 - 1) Sharing of public information (of public domain)
 - 2) *Regional studies* for joint analysis
 - * Importance of assessment of other experiences before allocating resources

Improving the level of cooperation/coordination

- Investigative phase: Increase the level of “agency information”

*But, how are “best efforts” rules for protection of confidentiality being applied?

Improving the level of cooperation/coordination

- Post-investigative phase:
 - 1) Virtual platform of decisions and description of cases: network database
 - 2) Report decisions to open an investigation by means off points of contact, whenever possible

Policy considerations on cooperation

- First generation agreements were not used in any of the investigations launched in these cases
- Different statutes and different strategies determine the level of cooperation (from 0...) but also the “important interests” behind the decisions
- Confidentiality of the investigation: Is “unilateral” exchange of information an “enforcement activity” when enforcers are legally bound to maintain secrecy?

Policy level recommendations

- Greater convergence in investigative powers & comparable sanctions
- Improving leniency programs
- Converging the definition of confidential information
- Cooperation in evidence gathering and its legal recognition as valid evidence
- Recognition of rulings in other jurisdictions

Thanks for your attention

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