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 of points of contact, whenever possible
Policy considerations on cooperation

• First generation agreements where not used in any of the investigations launched in these cases

• Different statues 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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