

## BOOK REVIEW

### Competition Law in Latin America: A Practical Guide

*Julián Peña and Marcelo Calliari (Eds)*  
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Latin America has long presented an interesting opportunity for the study and application of competition law. While the majority of the Latin American countries share the same cultural Iberic background, the individual countries reflect large differences in terms of size of their economies, population and level of economic development.

Despite the fact that competition law provisions were first enshrined in the constitutions of some Latin American countries many decades ago,<sup>1</sup> over the years, subsequent governments of some countries have demonstrated scepticism about the importance of competition law. This, in turn, has impacted the full enforcement of the existing laws.<sup>2</sup> Some countries in the region have swung back and forth between a largely protectionist approach – mainly until the 1980s – to a more liberal (Washington Consensus) approach from the 1990s onwards, especially in response to the fiscal crisis that hit the continent in the 1980s.<sup>3</sup> In other countries,

- 1 The first Latin American competition law dates back to 1923, when Argentina enacted its first competition law. By comparison, the first federal antitrust statute in the US was the Sherman Act, adopted in 1890.
- 2 Indeed, effective enforcement of competition law took place several years after the introduction of competition legislation. To illustrate, the OECD reported that from 1933 to 1980 only four cases resulted in sanctions in Argentina under the competition law in force at the time, while Chile had only seven (minor) cases from 1963 to 1972 (the first competition law was enacted in 1959). See [www.oecd.org/daf/competition/Argentina-CompetitionLawPolicy.pdf](http://www.oecd.org/daf/competition/Argentina-CompetitionLawPolicy.pdf) and [www.oecd.org/chile/34823239.pdf](http://www.oecd.org/chile/34823239.pdf).
- 3 According to Luiz Carlos Bresser Pereira, the causes of the Latin American crisis in the 1980s were attributed to the economic populism and excessive state intervention. Policy reforms recommended by the International Monetary Fund (IMF) and World Bank, based on the work of John Williamson (the Washington Consensus), proposed a switch from state intervention to a market oriented approach, and the reforms were adopted by most Latin America countries (eg, these reforms were adopted in 1985 by Bolivia and 1989 by Venezuela – see: [www.fuac.edu.co/download/revista\\_economica/volumen\\_1n1/4-resultados.pdf](http://www.fuac.edu.co/download/revista_economica/volumen_1n1/4-resultados.pdf)).

a history of strong government intervention has meant that competition laws have had limited application.<sup>4</sup> In the late 1990s and early 2000s some Latin American countries started flirting again with an economic policy based on more government intervention. The region has seen a movement that some scholars have labelled as 'Neo-Bolivarianism', which is particularly visible in Bolivia, Venezuela, Ecuador and, to some extent, in Argentina and Brazil as well.<sup>5</sup>

Without delving too deeply into political, historic or anthropologic discussions, the Latin American region today can be said to be experiencing a trend of greater interventionism, reduced economic freedom and, in some countries, an effort to create, foster and strengthen large national champions. This has profound implications for competition law enforcement.

In Venezuela, for example, which once had a very active and well-regarded antitrust authority, the official antitrust apparatus has virtually collapsed along with the broader economy of that country. Argentina, another jurisdiction worth highlighting, given its strategic importance and the size of its economy, appears to be heading in the opposite direction. After a long period characterised by general lack of competition law enforcement, a new government was elected with a more liberal agenda. Initial steps at implementation already are apparent with the appointment in February 2016 of Esteban Manuel Greco, an economist with significant antitrust experience, who will head the Comisión Nacional de Defensa de la Competencia (CNDC), the Argentine antitrust enforcer.<sup>6</sup> This appointment was welcomed by members of the Argentine antitrust bar, who anticipate that the CNDC will strengthen its enforcement powers and legitimacy under Greco's leadership. However, despite the early positive and encouraging signs suggesting that competition law will start playing an important role in Argentina, it may be too soon to make any definitive assessments.

Against this complex and challenging background, *Competition Law in Latin America: A Practical Guide*, has been published. Edited by Julian Peña (Argentina) and Marcelo Calliari (Brazil), two of the most active and highly qualified antitrust lawyers in Latin America, the book is composed of 17 chapters, written by authors with vast experience in the field and practical knowledge about the region. It covers a wide variety of issues, and it is likely that it will become an essential resource for practitioners seeking to navigate the not-so-calm waters of Latin America competition law.

4 Chile, for example, underwent severe state intervention until the 1973 coup d'état, leaving little room for competition law enforcement – according to the OECD 'since Chile's government fixed the prices of many products and services throughout this period [1963-1972], it seems doubtful that the 1959 competition law was ever expected to play a major role in preventing enterprises from restricting output and charging monopoly prices.' See *Chile – Peer Review of Competition Law and Policy 2004* at: [www.oecd.org/chile/34823239.pdf](http://www.oecd.org/chile/34823239.pdf).

5 Notably with the elections of Hugo Chávez (Venezuela, 1999), Néstor Kirchner (Argentina, 2003), Luiz Inácio Lula da Silva (Brazil, 2003), Evo Morales (Bolivia, 2006) and Rafael Correa (Ecuador, 2007).

6 See 'Interview with Esteban Manuel Greco, President of the National Commission for the Defense of Competition, Argentina' (June 2016) *Antitrust Source*: [www.antitrustsource.com](http://www.antitrustsource.com).

The book is divided into two primary sections. The first, which covers the ten initial chapters, provides the reader with a broad legal and historic perspective of competition law in Latin America. This section includes articles authored by internationally recognised scholars of the caliber of William Kovacic, Daniel Sokol and Ignacio De Leon, to name a few. In chapter 5, for example, Eduardo Pérez Motta, writing with Mateo Diego Fernandez, draws on his experience as former head of the International Competition Network Steering Committee to discuss the role of international cooperation between competition agencies and how it affects competition law enforcement in Latin America.

The book offers chapters that will also attract the attention of both lawyers and economists. In chapter 4, Esteban Greco, Diego Petrecolla, Carlos Romero and Juan Martínez discuss the theory that a competitive market structure should have a positive effect on economic growth, and they use quantitative analysis of GDP per capita associated with other variables of the economic structure of Latin American countries, as well as competition policy indicators (eg, intensity of local competition and effectiveness of anti-monopoly policy), to show that such correlation may not apply to Latin America. The authors show that Latin American countries, despite their lax competition policies, have registered a GDP per capita increase. They describe particular characteristics of Latin American countries, such as the presence of restrictions on international trade, low productivity, high levels of poverty and income inequality, and infer whether these – allied to protectionist policies (subsidies, strong industrial policies, protection of national champions) – could have led to less competition oriented growth strategies. In chapter 7, Manuel A Abdala and Lucía Quesada opine on the use of economic analysis in Latin America competition matters. The authors have selected specific, high-profile cases from the region – including the merger of LAN Airlines (Chile) and TAM Airlines (Brazil), bid-rigging in the pharmaceutical industry in Mexico, and the merger of Cablevision and Multicanal in Argentina – to demonstrate how economic analyses were applied by the agencies involved. The resulting discussion and analysis offers the reader insights on when and how the economic tools are being used by the authorities in merger control analysis and during the investigation of antitrust conduct across different jurisdictions.

The last two chapters of the book's first section address issues related to competition law in regulated markets. In chapter 8, Gesner de Oliveira (Conselho Administrativo de Defesa Econômica (CADE) Chairman from 1996 to 2000) and Germán Orjuela assess the current status and flaws of the economic infrastructure in Latin America, the reasons for insufficient investments, and how competition law could play a pivotal role in improving the quantity and quality of infrastructure in the region. Chapter 9, authored by Professor Pablo Marquez, gives the reader

a full picture of the current status of the study and application of antitrust law in the information and communication technology (ICT) sector. This chapter reviews the most important ICT cases adjudicated by the region's antitrust authorities and tackles the challenges posed by the use of traditional competition analysis of static markets in the assessment of highly dynamic markets such as the ICT sector. Marquez advocates the need of new approaches to market definition and market power analysis, which should consider the peculiarities of competition in the ICT sector, the unique dynamic efficiencies generated, the importance of platforms and two-sided markets for the growth and differentiation of the players in the market, and the presence of network externalities. As the author emphasises, improving the competition analysis of ICT markets is essential for a society increasingly dependent on communication technologies.

The second section of the book presents a practical, updated and in-depth guide to the competition laws of the most important jurisdictions of the region. It includes detailed information on Argentina, Brazil, Chile, Colombia, Mexico, Peru and Uruguay, as well as Central America, written by experienced local competition law practitioners. Each chapter explores the institutional framework of competition enforcement in the specific country, including its merger control process and deadlines, antitrust conduct and fines, leniency systems (if applicable) and relevant case law, but the analysis is not limited to just an informative perspective, as the authors share their first-hand experiences to enrich the understanding of how competition law and policy is being enforced and implemented. For example, when reviewing the competition system of Central American countries in chapter 10, Edgar Odio pays close attention to the differences and similarities in the history and development of the individual countries and highlights the role of competition-related provisions on international trade agreements in the promotion of competition culture and the improvement of competition policy in Central American countries. In chapter 11, Julián Peña and Frederico Rossi describe the historical background and current structure of the Argentine competition law and authorities to show that competition enforcement in the country is politically driven, with cartel prosecutions used as an anti-inflation instrument by the Minister of Economy. In chapter 12, Marcelo Calliari, Joana Temudo Cianfarani and Marcel Mendon Santos unravel the intricate Brazilian laws and regulations and describe in detail one of the most active competition enforcement systems in Latin America. Juan Cristóbal Gumucio Schönthaler and Guillermo Frene Candia's assessment of the competition law in Chile, in chapter 13, is illustrated by extensive case law, depicting how the competition authority has interpreted that nation's competition law. The authors also explain how transactions are analysed in Chile, which according to them 'does not have a merger control system as such'. In chapter 14

we learn from Alfonso Miranda Londoño about certain conduct – in addition to cartels – that receives from the Colombian competition law a sort of per se rule of analysis, such as agreements that limit (or intend to limit) technical development.

A comparative analysis of the chapters of the second part of the book draws interesting conclusions. The region comprises competition systems at different stages of development, from countries that have not yet adopted leniency programmes such as Argentina, to those with more elaborate leniency systems such as Brazil, which, for example, offers leniency programmes covering criminal liability, ‘leniency plus’ and resolutions through settlement. The competencies of the competition authorities also differ according to the structure and policy of each country – for example, while unfair competition is not covered by Brazilian competition law, it can be handled by the competition authorities of Chile and Colombia depending on the circumstances. In Colombia, the authority handling competition would also deal with unfair competition, consumer protection and IP, among others.

In a nutshell, the book combines solid academic work on the competition systems and policies of Latin American countries, with useful and detailed practical guidance on the countries’ competition law and practice. As such, *Competition Law in Latin America: A Practical Guide* should be considered a ‘must have’ for anyone seeking to better understand the workings – along with all its peculiarities – of competition law in Latin America.

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