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## The Consolidation of Competition Law in Latin America

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## I. INTRODUCTION

The enactment of the long-awaited reform of the Brazilian competition law can be seen as part of a new stage in competition law in Latin America, which also involves other countries in the region. Regardless of the broad extent of the area covered by the concept of Latin America, and the sweeping diversity of political, economic, social and cultural realities it comprises, there are some common patterns that can be identified in the process through which competition law has evolved in the region, particularly in the enactment process of such laws. There are signs that some Latin American countries have now reached a new stage of development that represents the start of the consolidation and conformity of competition law in the region.

The development of competition law in Latin America can be divided into three stages:

1. A preliminary stage, when a few countries in the region had some basic and vague legislation with poor enforcement (Argentina 1923, 1946, and 1980; Brazil 1962; Chile 1959 and 1973; Colombia 1959; and Mexico 1934);
2. A second stage, when most Latin American countries either modernized the existing competition laws (Argentina 1999; Brazil 1991 and 1994; Chile 1999; Colombia 1992; and Mexico 1992) or introduced modern ones with the guidance of international organizations (Andean Community 1991 and 2005; Costa Rica 1994; Ecuador 2011; El Salvador 2005; Honduras 2006; Mercosur 1996; Nicaragua 2006; Panama 1995 and 2006; Peru 1991; Uruguay 2000 and 2007; and Venezuela 1991); and
3. A stage of consolidation of the existing regimes (Chile 2004 and 2009; Colombia 2009; Mexico 2006 and 2011; Panama 2006; and Brazil 2011), with the introduction of substantial amendments to their laws based on their own experience and on the ideas taken from the best practices agreed at the international fora, with significant debates and strong political support from their governments.

The new competition laws and the way they were enacted show a level of maturity and consolidation of the competition regimes in certain parts of the region that is likely to be followed in the near future by the other Latin American countries, though each at its own pace and in its own fashion. Some countries, for instance, are newcomers to having an antitrust law (e.g. Ecuador 2011), while others are still debating whether to have such kind of laws (e.g. Paraguay). Many of the Latin American countries had previously made some amendments to their laws at different levels (procedural, substantial, and/or institutional). However, the latest series of competition laws evidence a change in both how the society perceives competition laws and its awareness of the importance of the changes that have been introduced, thus raising the level of the debate and relevance of the new laws enacted.

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## II. FIRST STAGE

The first Latin American competition laws were enacted within a context of strong state interventionism and protectionism, which were mostly repressive, vague, and with highly punishing goals. Only a few countries (Argentina, Brazil, Chile, Colombia, and Mexico) had these kinds of laws although they had been adopted across a very broad time frame (from 1923 to 1980). Over time there was an evolution in the scope of the laws, showing a modernization of the concepts and a less repressive approach in the latest laws (e.g. Chile 1973 and Argentina 1980).

These first laws had in common that the political and economic contexts in which they were enacted were not favorable to competition law enforcement. Also, some of them were enacted with either very poor debates (e.g. Argentina 1923 and 1946), or no debate at all, as they were enacted by *de facto* governments (e.g. Chile 1973 and Argentina 1980).

As a result of the repressive approach towards monopolies, the vagueness of the concepts, and the lack of a competition culture and of political support, most of these laws experienced very limited enforcement. Perhaps Chile 1973's law is the only exception to this rule.

## III. SECOND STAGE

The beginning of a second development stage is contemporary with the implementation of the Washington consensus policies throughout the region. These policies, which reflected recommendations made by Washington-based international organizations to highly-indebted Latin American countries in order to obtain financial relief, represented a pendulum shift in the paradigm of state intervention in the markets from traditional interventionism to a state mostly absent in the markets.

Within this context, there was a proliferation of competition laws in the region, where many Latin American countries either modernized existing competition laws or enacted new ones. The new laws, instead of just combating monopolies, were focused on supporting a broader market-oriented system. As a result, most of the laws enacted in this period adopted both economic efficiency and consumer protection as their main goals.

However, this second stage has continued past the Washington consensus decade as different Latin American countries have either enacted reforms or introduced new laws long after these policies lost political support from their societies and governments.

This second stage of development of competition law in the region can be characterized as being strongly motivated by international cooperation agencies such as the World Bank, UNCTAD, OECD, the Organization of American States, and the Inter American Development Bank, as well as by some agencies such as the Federal Trade Commission, the U.S. Department of Justice, the European Commission, and Spain's former *Tribunal de Defensa de la Competencia*, among others, which played crucial roles in the drafting and implementation of the competition laws enacted in the region during this period.

## IV. THIRD STAGE

A third stage in the development of competition law in Latin America can be characterized by the consolidation of the different regimes based not as much on technical assistance from international organizations but rather on the different agencies' own experiences. Although in the first decade of the new century, the Washington consensus policies lost political support throughout the region, different governments started to review their existing competition

laws and to send draft competition law bills to their respective congresses. Such was the case, for instance, of the governments of Argentina, Brazil, Chile, Colombia, México, Panama, and Peru. Some of these laws have already been approved (Brazil, Chile, Colombia, Mexico, and Panama) while others have not yet obtained legislative approval.

The new laws enacted in this stage have in common the explicit support of the governments at the highest political levels with high political repercussions. Civil society was also very present during the process with input from the media, professional organizations (a special mention goes to Brazil's IBRAC, a pioneer institution in this field in Latin America), and academia, all contributing to the final outcome as well as to getting to know the reach of the new laws.

Although the new laws also were influenced by foreign examples, this was a result of learning from other agencies' experience rather than from transplanting laws from abroad. This is the result of a maturity process that has taken place during years in which new international fora have played a crucial role. In the past decade, new initiatives such as the "International Competition Network" created in 2001, the "Ibero-American Competition Forum" (*Foro Iberoamericano de la Competencia*) launched in Spain in 2002, the "Latin American Competition Forum" created by the Inter-American Development Bank and the OECD in 2003, and, more recently, the "Inter-American Competition Alliance" created in 2010, have greatly helped the different agencies exchange experiences on a wide variety of competition-related issues.

## V. CONCLUSIONS

The enactment of the new Brazilian competition law, along with other recent laws enacted in other countries of the region, reflects the consolidation and growing conformity of competition law in Latin America. Given the diversity of countries included in the concept of Latin America, it is difficult to reach a general conclusion applicable to the whole region. There have been, however, some common patterns at the different development stages of competition law in the region, and these new developments show a stage of consolidation that is reflected in the way some countries are changing their competition laws.

The new laws enacted during the consolidation process in the region have had growing support from the civil societies of each country, including the media, professional organizations, and academia, as well as representing new ways of cooperation among the enforcing agencies through a variety of new international fora. It can be expected that the different countries in the region will continue this pattern of consolidation of their competition laws in the upcoming years, although each country at its own pace and manner.