

Book Review

Filling a Void in Latin American Antitrust Literature

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Competition Law and Policy in Latin America 2009

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Reviewed by Ricardo Jungmann

Lawyers and academics who want to learn about competition law in Latin America will be disappointed to find that, with few exceptions, the literature does not adequately discuss each country's current regime. *Competition Law and Policy in Latin America* helps fill this void. The book consists of articles written by experts in their respective countries that describe substantive and procedural antitrust issues in each author's country. The editors have integrated the contributions well.

While most of the articles refer to Argentina, Brazil, and Chile, there are also interesting discussions of Mexico, Colombia, Panama, Ecuador, and Bolivia, as well as multiple comparisons to the United States. It would have been interesting to include an analysis of other Latin American countries, such as El Salvador, Uruguay, and Peru, but the articles were selected after an open call for papers, and the call did not suggest subjects to the authors.

The book offers important insights about antitrust in Latin America. First, it emphasizes the positive evolution of antitrust institutions in Latin American countries. At the same time, it suggests greater investment in the training of antitrust authorities and the possibility of hiring specialized professionals to assist these authorities in complex antitrust matters.

Second, several authors highlight an important Latin American reality: the existence of highly oligopolistic markets. This condition complicates the detection of tacit collusion and increases the risk of condemning legal practices or exonerating anticompetitive practices.

Third, the countries of this region have a similar approach to determining which practices should be condemned. However, there are important differences in the standards of proof and procedures they apply. Some countries' higher tribunals have simply confirmed the decisions of antitrust authorities, while others have overturned decisions for lack of evidence. Examples of the former have occurred in such countries as Colombia and Panama, and the latter, in countries like Chile.

Fourth, several authors suggest the need to strengthen leniency programs and increase the budgets of antitrust enforcement agencies to improve the gathering of hard evidence of cartels. The book shows that most of the cartels uncovered in Latin America are local or national in scope rather than international. This result tends to confirm the need for improved detection because the same multinational companies that have been sanctioned for antitrust violations in the United States or the European Union (in such industries as pharmaceuticals, chemicals, telecommunications, computers, fuel, food and beverages, to name a few) are present in most Latin American countries.

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The analyses of individual countries raise important issues. The discussion of Argentina shows that it is evolving away from American antitrust law toward European law. Under Argentine law, anticompetitive practices, including mergers, may be held illegal only if they affect the “general economic interest,” which has been interpreted loosely as total welfare. The book criticizes Argentinean antitrust authorities for imposing low penalties for monopolization and vertical restrictions, and for failing to block or impose conditions on conglomerate mergers.

Chilean competition policy developed during an early liberalization and privatization process and was understood as a means to promote this process. However, the book argues that antitrust authorities should not always seek to achieve liberalization, but should also consider other goals like efficiency. The book also argues that the Chilean Supreme Court should defer to the antitrust tribunal because that is a specialized authority with the necessary expertise to deal with antitrust issues. The authors support Chile’s recent adoption of a leniency program and the conferral of new powers on the “Fiscalia Nacional Economica,” under which governmental agents, with prior judicial authorization, may enter public and private institutions, register, and seize objects and documents, and intercept communications.

Brazil’s antitrust analysis is more advanced than the rest of the jurisdictions discussed in the book. For example, while authorities in most Latin American countries are still discussing whether to implement a leniency program, Brazil has not only done so, but has studied the program’s effects and how it can be improved. Additionally, in Brazil, there is an interesting discussion about the problem of information exchange between companies that may be disguised as an attempt to merge. Other papers emphasize the high efficiency in standards enforcement that Brazil has obtained and its successful experience with leniency programs.

The book also analyzes other countries, although not to the extent of the ones mentioned above. It highlights Mexico’s institutional evolution and the questions raised by its merger review process, Antitrust issues in Colombia’s agricultural sector are explored, and Ecuador and Bolivia are shown as countries where institutional development remains a challenge.

Overall, this book shows that there has been significant progress in the development of antitrust in Latin America. Future authors may consider why countries that belong to the same continent exhibit significant differences in their antitrust systems, particularly in the organization of antitrust institutions, the independence of antitrust authorities, standards of proof of anticompetitive conduct, the quality and quantity of available instruments to prosecute cartels, and sanctions. They also might consider whether the same standards and concentration indexes should be applied for merger review and for dominant position cases in small and large economies. Finally, they might consider whether it would be useful to create a Latin American association to promote antitrust research and competition culture.

Competition Law and Policy in Latin America is an excellent contribution to a field with scarce available literature. This book is a useful resource for libraries, law firms, and academic private collections interested in antitrust matters. ●

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