

Cartel's Little Helpers: A Comparative Study of the Case Law Regarding the Facilitators of Collusion in Latin America Competition Law and Policy

Authors : Andres Calderon

Abstract : In order to avoid detection and punishment, cartels have recruited the help of third parties to organize, execute and disguise the anticompetitive practices cartel members have agreed upon. These third parties may take the form of consultancy firms, guilds or professional advisors that do not perform an economic activity in the market where the collusion takes place. This paper takes a look into how national competition authorities and national legislators have dealt with the emergence of the cartels' facilitators in Latin America. Following the practice of other jurisdictions such as United States (Toys R' Us, Apple), European Union (AC Treuhand), United Kingdom (Replica Kits, Hasbro) and Spain (Urban, Snap-On), some countries (e.g. Argentina, Chile) in Latin America have started to conduct investigations and find antitrust liability in cartels' facilitators for helping others to violate their national competition laws. Some countries (e.g. Peru and Colombia) have also amended their legislation to amplify the subjective scope of application in order to include cartels' facilitators. The Latin American case is one of special relevance because public officials are often prone to promote or indulge agreements between competitors in sectors of political interest. A broad definition of cartels' facilitator, consequently, could lead to the prosecution of punishment of public officials that may hinder the competitive process.

Keywords : anticompetitive practices, cartel, collusion, competition, facilitator, hub and spoke

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