

THE ROLE OF COMPETITION AUTHORITIES IN COMPETITION LAW REFORMS

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RESUMO: A promoção da concorrência no mercado é objetivo de cada autoridade antitruste. Defender as reformas do direito da concorrência que visam remover obstáculos e ainda estimular a concorrência também é fundamental para alcançar esse objetivo. Da mesma forma, a promoção da cultura de compliance entre os agentes econômicos aumenta a consciência das questões concorrenciais.

PALAVRAS-CHAVE: Promoção da concorrência – Compliance – Advocacia da concorrência – Reformas de lei de concorrência.

ABSTRACT: The promotion of competition within the market place is at the core of every antitrust agency. Successfully advocating competition law reforms aimed at removing barriers and further stimulate competition is also fundamental to accomplish this goal. Likewise, the promotion of compliance culture among the different stakeholders increases awareness of competition matters.

KEYWORDS: Promotion of competition – Compliance – Advocacy – Competition law reforms.

INTRODUCTION

The promotion¹ of competition within the market place is at the core of every antitrust agency. This goal is pursued through a number of means despite the

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1. Views and opinions included in this article are strictly those of the authors. The authors are NGAs of ICN. The authors would like to thank Paolo Palmigiano (General Counsel and Chief Compliance Officer Emea for Sumitomo Electric Industries) and Cristina Mariani (Senior Consultant at Interel in Brussels and *collaboratrice scientifique* at the Institute of European Studies (IEE) (ULB), for their suggestions, support and valuable assistance.

enforcement activity seems still to be considered as the most effective tool to foster a pro-competitive environment, by the majority of agencies world-wide at least and especially the older ones.

Successfully advocating competition law reforms aimed at removing barriers and further stimulate competition is also fundamental to accomplish this goal. However, it implies the ability to reach consensus and willingness at political level.

Likewise, key is the promotion of compliance culture among the different stakeholders, thereby increasing awareness of competition matters. When the benefits arising out of a competitive market are explained and understood by the public, reforms are more likely to succeed and compliant behavior to increase.

The role of competition authorities in competition law reforms has dramatically changed over the last ten years due to three main reasons.

First of all, since 2008, economies globally have strived to cope with the effects of the financial crisis. In a number of jurisdictions exceptional temporary regimes have been implemented or the application of the legal framework in force substantially relaxed, to help players overcome the effects of the economic downturn.² In parallel, antitrust fines have been applied and appropriately calibrated according to the applicable rules taking into due consideration companies' ability to pay in this specific economic context.

Secondly, since the creation of the International Competition Network (ICN) in 2001, competition advocacy has been significantly encouraged and is considered today as a "driver for change"³ to foster pro-competitive reforms, complementing the agencies' enforcement activity. The ICN approach towards advocacy has

2. See in particular the state aid temporary rules established in response to the economic and financial crisis, available at: [http://ec.europa.eu/competition/state_aid/legislation/temporary.html], accessed: 12.10.2014. See also the "Communication on State aid modernization" of 08.05.2012 (COM/2012/0209 final, at: [<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0209>], accessed: 12.10.2014), where the European Commission sets out a State aid reform programme aimed at fostering growth, while increasing legal certainty, predictability and transparency of the decision making process for the granting of state aids (heavily criticized for its alleged opacity during the crisis).

3. See the ICN Workshop "Advocacy: a driver for change" that took place in Rome on 12 and 13.12.2013, organized by the Italian Competition Authority (at: [www.agcm.it/component/content/article/6634.html], accessed: 12.10.2014). "(...) The title chosen for this workshop – 'Advocacy: a driver for change' – underlines the fact that competition advocacy is now seen as a core part of a competition agency's work, alongside enforcement. By changing the competitive environment and by promoting pro-competitive reforms, competition agencies can play an important role in meeting the challenges of the current economic climate and in fostering growth. (...)", see "Some Thoughts on 'Advocacy: A Driver For Change' – ICN Workshop, December 12-13, 2013, Rome", Alessandra Tonazzi and Michele Pacillo (Italian Competition Authority), 23.01.2014, Competition Policy

been followed – beside the agencies that belong to the network – by a number of organizations operating at international level, in particular the Organization for Economic Co-operation and Development (OECD) and the World Bank.

Last but not least, the substantial investments of companies in compliance, including antitrust compliance, and the increased dialogue and exchange with competition authorities on the matter (directly or through association and think tanks), has led a number of agencies to reform the applicable legal framework to discipline and encourage the adoption of antitrust compliance initiatives, such as compliance programs. Despite these positive developments are the results of the advocacy efforts put forth by both agencies and companies with one another through an interactive process, they should be considered separately given the growing importance taken on by compliance programs world-wide.

This article intends to analyse the changing role of competition authorities in competition law reforms. The first part will focus on the advocacy function of antitrust authorities, in particular looking at the initiatives recently undertaken by the ICN, the OECD and the World Bank. The second part will consider more specifically the developments at European Union level, as well as in a number of jurisdictions that may be considered representative for South America, Southern and Eastern Europe. The positive evaluation and promotion of compliance programs by competition authorities as a form of advocacy will be also explored.

The article concludes with an assessment of the role played nowadays by competition authorities in advocating pro-competitive reforms and the possible future trends.

ADVOCACY: DEVELOPMENTS AT INTERNATIONAL LEVEL

a. The International Competition Network

The International Competition Network (ICN) has proven to be the engine, at global level, of the debate on advocacy, contributing in shaping the new role embodied by competition agencies nowadays. Figures talk: the network has grown from 16 to 104 members (from 92 jurisdictions) in 7 years (from 2001 to 2009),⁴ increased to 209 in the last five years. The whole global competition community is represented: beside Europe, North and South America, Asia, Africa and Australia.

The ICN has been set up with the main purpose of advocating the adoption of high standards and procedures in competition policy globally. To that extent the

International (CPI) ICN Column, at: [www.competitionpolicyinternational.com/assets/Uploads/ICNJanuary14.pdf], accessed: 12.10.2014.

4. See the ICN Fact Sheet and Key Messages (April 2009) at: [www.internationalcompetitionnetwork.org/uploads/library/doc608.pdf], accessed: 12.10.2014.

network puts forward proposals for procedural and substantive convergence with a view to facilitate effective international cooperation to the benefit of member agencies, consumers and economies worldwide. It is an open and democratic platform for discussion that includes also Non-Governmental Advisers (NGAs) to national and multinational competition authorities.

Members meet annually in conferences and workshops to discuss specific projects and their implications for enforcement. The last ICN Annual Conference has been successfully held in Marrakech (Morocco) in April 2014, with a key active role played by African agencies that are progressing at a very quick pace in developing their respective competition regulatory framework and increasing the knowledge by the judiciary on competition matters. The forthcoming one will be organized in Sydney (Australia) in April-May 2015.⁵

Most importantly, the ICN is far from being a rule-maker. Rather, it is a platform aimed at sharing consensus on best practices and recommendation that may then be implemented by two or more antitrust agencies through agreements. Despite its apparent flexibility and non-binding decision making process, it is becoming more and more influential and has proven to be able to achieve concrete results in the short term. It also enables the discussion between agencies of jurisdictions with well established antitrust principles and agencies from developing countries where antitrust tends to be of less importance.

The main products are the result of projects finalized by a number of working groups set up according to the network's priorities. At the moment, five main working groups deal respectively with advocacy, agency effectiveness, cartels, mergers, unilateral conduct. In particular, the Advocacy Working Group (AWG)⁶ advocates the dissemination of competition principles and promotes the development of a competition culture within society. It goes without saying that within the ICN it is the main driver in the debate on how pro-competitive reforms may be successfully carried out to the benefit of all the involved stakeholders. Furthermore, the importance for the network of the work on advocacy is witnessed by the inclusion among the ICN's priorities since its creation in 2001, together with merger control.

A number of tools have been indeed developed to help agencies start or deepen their advocacy journey. It is worth mentioning the Advocacy Toolkit,⁷ a *vademecum* containing important recommendations – amongst others, on agencies' strategic

5. More info on the event at: [www.icn2015.com.au], accessed: 12.10.2014.

6. At: [www.internationalcompetitionnetwork.org/working-groups/current/advocacy.aspx], accessed: 12.10.2014.

7. At: [www.internationalcompetitionnetwork.org/uploads/library/doc745.pdf], accessed: 12.10.2014.

and effective communication, media relations and stakeholders' involvement methods, especially through consultation processes – that little by little has become the main benchmark of reference.

The Recommended Practices on Competition Assessment is the most recent output of the AWG that were approved at the 2014 Annual Conference in Marrakech.⁸ The Recommended Practices in particular emphasize the necessity of an on-going competition assessment of a proposed or existing policy that should be carried out through a three-step evaluation assessing respectively the policy's impact on competition, the possible justifications for any competition restriction and the potential less restrictive alternatives to achieve the intended policy goals.

The importance acquired by the AWG is also demonstrated by the fact that ad hoc workshops are held annually starting from 2012, when the first ICN Advocacy Workshop officially kicked-off in Paris, hosted by the French *Autorité de la Concurrence*⁹ that at the time was indeed climbing the international rankings as one of the leading agencies worldwide due to the important results achieved in advocacy, transparency and openness towards its stakeholders.¹⁰

The seeds which were sown during the 2012 Advocacy Workshop germinated one year later in Rome. The Italian Competition Authority held the ICN Advocacy Workshop "Advocacy: a driver for change", which took place in December 2013. During the workshop, discussions and sharing of experiences among ICN member competition agencies and NGAs designated by their respective agencies (above 120 participants from 57 countries) further explored the way advocacy strategies, approaches and tools of competition authorities are able to promote the benefits of competition, encouraging the introduction of pro-competitive reforms and improving liberalization processes, particularly in times of economic crisis.¹¹

8. The Practices include: (i) General Framework for Competition Assessment; (ii) Creating an Enabling Environment for Competition Assessment; (iii) Selecting Policies for Competition Assessment; (iv) Conducting a Competition Assessment; (v) Evaluating the Likely Impact on Competition; (vi) Delivering the Assessment.

9. See programme at: [www.autoritedelaconcurrence.fr/doc/program_icn_8nov12.pdf], accessed: 12.10.2014.

10. Subscribers of the Global Competition Review (GCR) may see "Rating Enforcement 2013: the annual ranking of the world's top antitrust authorities", at: [www.autoritedelaconcurrence.fr/doc/GCR.pdf] and [http://globalcompetitionreview.com/rating-enforcement], accessed: 12.10.2014.

11. For a thorough analysis of the Rome Advocacy Workshop and the experience of the Italian Competition Authority in the field of advocacy see "Competition advocacy: the Italian experience", Salvatore Rebecchini (Commissioner, Italian Competition Authority), Italian Antitrust Review, n. 2 (2014), at: [http://iar.agcm.it/article/view/10194/9489], accessed: 12.10.2014.

The workshop's three plenary sessions dealt respectively with: (i) Advocacy as a driver for change; (ii) Facing current challenges: building on the findings; and (iii) ICN as a resource centre for advocacy: lessons learned and future opportunities. A number of eminent speakers highlighted the main issues that agencies should look at to build a solid and effective advocacy approach towards their stakeholders. The core of the discussion investigated how to ensure that competition culture is preserved throughout the policy and law making processes.

In particular, Bruno Lassere (Chairman of the French *Autorité de la concurrence* since 2009), analyzing how advocacy fits into commissioners' mandate as competition enforcers, stressed that the primary responsibility resting on an independent competition agency is to keep emphasizing the benefits of competition. He also observed that in dealing with competition assessment, authorities frequently focus on *ex ante* competition assessment of proposed legislation that helps to prevent unnecessary restrictions to competition. However, *ex post* assessment is also important, requiring that competition authorities define priorities, which are open to public debate.

Lassere also highlighted the role of judges in the dissemination of competition culture. In particular, engaging into a dialogue with the judiciary is likely to foster their inclusiveness in the competition enforcement chain, which in turn is instrumental in ensuring consistency in the implementation of competition law in one's jurisdiction – another factor for competition regulation to be better perceived by the business community and consumers alike.

As highlighted by António Gomes, President of the Portuguese Competition Authority (PCA), the role of competition authorities must go well beyond enforcement, simultaneously exerting “hard power” and “soft power”, advising the government and other public bodies on how to make policies more pro-competitive or less harmful to competition. This is important, especially during difficult economic times when competition has a central role to play in contributing to solid economic recovery and sustained economic growth. Gomes also mentioned the creation of a Special Unit for Competition Assessment of Public Policies within the PCA entrusted to implement a competition impact assessment procedure of public legislative and regulatory activities. In particular, the Special Unit aims to: (i) promote the competition impact assessment of public policies; (ii) follow the impact on competition of legislative initiatives of the Parliament or the Government; (iii) address recommendations to the Government, sector regulatory authorities and other public entities; (iv) diffuse the culture of continuous competitive impact assessment of public policies; and (v) establish relations with national and international institutions, always regarding the competition impact assessment.

Benjamín Contreras Astiazarán, Commissioner of the Mexican Competition Authority stressed the importance of implementing a competition assessment

that reduces the risk of adverse effects from regulation on competition, which was included in the Mexico's Federal Regulatory Impact Assessment (RIA). RIA's competition assessment is designed for the detection of restrictions to competition by non-economist or staff without competition specialization. This mechanism can be used in the general assessment of existing regulations, in the assessment of future regulations and in the development and review of regulations at national or sub-national levels. It contains a general methodology (for detecting unnecessary limitations to competition and finding out alternatives) as well as a checklist (based on the OECD's Competition Assessment Toolkit).¹²

Dimitris Loukas, Vice-Chairman of the Hellenic Competition Commission (HCC), put emphasis on the HCC's strategy based on three main pillars: keeping a consistent level of competition enforcement, despite the financial crisis; strengthening market monitoring actions; diversifying and expanding competition advocacy in order to promote structural reforms in the context of Greece's Economic Adjustment.

According to Salvatore Rebecchini, Commissioner of the Italian Competition Authority (AGCM), explaining the benefits of competition is crucial for advocacy as a driver for change, expressing the advantages of competition as a fuel for growth and a precondition for social upward mobility, especially in times of financial crisis. The message highlighting the expected benefits shall be supported by studies and surveys of international organizations such as the OECD and the World Bank – given successful examples from other sectors with similar competition concerns – and have external support from local academics, think tanks, as well other sources (e.g. blogs). Finally, building a competition culture in public administration and local authorities is considered fundamental, at least according to the Italian experience.

It goes without saying that also NGAs substantially contributed to the sparkling debate in Rome. One for all, Paolo Palmigiano, Chairman of ICLA Europe – In-house Competition Lawyers Association,¹³ regarding the role of the private sector in advocating competition to governments and enhancing competition culture efforts, made clear that both the private bar, in-house lawyers and businesses are key stakeholders for a competition authority. They are at the receiving end of antitrust enforcement and therefore ideally placed to value and appreciate the strengths and weaknesses of competition policy enforcement. A competition authority should therefore engage with them in an appropriate manner.

Finally, the peculiarities of competition advocacy in emerging economies were also stressed by a number of speakers. There are several challenges that should be

12. See below, footnote n. 14.

13. At: [<http://competitionlawyer.co.uk>], accessed: 12.10.2014.

considered for an environmental change such as the use of advocacy to promote liberalization of former state monopolies and regulated sectors and to spread competition culture and knowledge within the judiciary. In jurisdictions that are still in the process of developing their competition legal framework, a proper and effective use of agencies' advocacy function may really make the difference in fostering pro-competitive reforms.¹⁴

The seeds sown in Paris and germinated in Rome bloomed in Balaclava (Mauritius) at the beginning of November when the third Advocacy Workshop "Advocacy: Foundations, Strategies and Assessment" was held.¹⁵ The two-day event focused on how the foundation for advocacy activities in agencies may be successfully established, in particular by prioritizing a number of activities towards the key stakeholders to disseminate competition principles and create solid basis for the enactment of pro-competitive reforms. Moreover, a number of practical suggestions were discussed to develop advocacy strategies and evaluate the effectiveness – in enhancing competition culture – of the agencies' advocacy efforts (the so called "Advocacy Toolbox").

Furthermore, during the Workshop the state of implementation of the projects currently managed by the AWG were also discussed and so the role of NGAs in contributing to the advocacy virtuous cycle.

b. OECD and World Bank

The path undertaken by the ICN has been replicated by other international organizations, in particular the OECD and the World Bank. These have eventually recognized the importance of advocacy in competition promotion and market liberalization embarking on initiatives often hand in hand with the ICN.

The OECD in 2007 has published a Competition Assessment Toolkit,¹⁶ lastly updated in 2010.¹⁷ The intended aim of the Toolkit – available in a number of languages – is to provide governments with practical suggestions on how to identify and remove unnecessary hurdles to competition that go further than necessary. Following a thorough market impact assessment, these may be replaced by alternative less restrictive measures still able to make governments achieve the

14. See, *infra*, the winning stories of the 2013 World Bank/ICN Competition Advocacy Contest.

15. See: [<http://icnadvocacy2014.ccm.mu/English/Pages/default.aspx>], last accessed: 12.10.2014.

16. At: [www.oecd.org/competition/assessment-toolkit.htm], last accessed: 12.10.2014.

17. The latest version of the Toolkit includes a "Competition Checklist" that provides policymakers with indications to identify well in advance potential competition issues in the policy development process.

intended policy objectives. Moreover, the Toolkit may be used to develop new regulatory frameworks on the basis of a more careful consideration of the possible outcomes from the competition point of view. To the benefit of consumers, the industry, the market at large.

Likewise, with a view to foster competitive markets, competitiveness, promote growth and employment, the Investment Climate Department¹⁸ of the World Bank assists governments to develop reforms aimed at improving the environments in which businesses are operating. The implementation of business friendly policies and the effective enforcement of competition laws are both priorities of the Department. The latter, by leveraging on the volume of materials produced by the World Bank Group (beside the services and financing opportunities offered), through researches and diagnostics creates the basis for thoroughly evaluating the investment climate. Moreover, the Department offers a full range of advisory services to support the design and implementation of pro-competitive reforms with a view to further promote investments.

An important project that has seen the collaboration of the ICN and the World Bank Group is the 2013 Competition Advocacy Contest.¹⁹ The main purpose of the contest was to collect and disseminate successful advocacy stories on competition reforms carried out by competition agency from developing and emerging markets as examples on how a culture of competition may be built or promoted in specific markets or sectors.

DEVELOPMENTS AT EU AND NATIONAL LEVEL

a. The European Commission

The role of the European Commission ("EC" or "Commission") in competition law reforms has changed in the last decade importantly. The Treaty on the Functioning of the European Union (TFEU or Treaty) entrusts the EC with the responsibility to enforce competition rules, namely arts. 101 and 102 of the TFEU. It represents an integrated public authority with investigation powers that may order bringing infringements to an end and impose sanctions.

Furthermore, the results of the advocacy function of the Commission, given the key role played at European level, have been impressive. In a number of cases it has managed to positively influence the implementation of competition reforms also in jurisdictions located beside the European borders, its initiatives being an important point of reference especially for newer agencies. The important achievements and

18. See: [www.wbginvestmentclimate.org/index.cfm], last accessed: 12.10.2014.

19. At: [www.wbginvestmentclimate.org/advisory-services/cross-cutting-issues/competition-policy/winners-2013-competition-advocacy-contest.cfm], last accessed: 12.10.2014.

the leading role acquired make it surely deserve the inclusion in the “Elite” category of the Global Competition Review (GCR) Rating Enforcement.²⁰

A current example of the Commission’s advocacy function is provided by the Report on the functioning of Regulation 1/2003²¹ and its accompanying Staff Working Paper. In the Report the EC attempts to assess how modernization of the EC antitrust enforcement rules has worked during the ten years, reaching a number of conclusions, among others, on the importance for the National Competition Authorities (NCAs) to maintain a high level of independence. According to the Staff Working Paper, in order to ensure effective enforcement of the EU competition rules, it is generally accepted that NCAs should be independent when exercising their functions. Independence means that the authority’s decisions are free from external influence and based on the application and interpretation of the competition rules relying on legal and economic arguments. The desired inclusion of this rule into legislative framework also illustrates the advocacy role of the EC in terms of influencing the independence of NCAs.

One of the most important platforms for the Commission (and NCAs) to advocate pro-competitive reforms at EU level is the European Competition Network (ECN), established, in fact, as a consequence of entry into force of Regulation 1/2003. The ECN was intended to promote discussion and cooperation of NCAs to ensure an efficient division of work and an effective and consistent application of EC competition rules. At ECN level the NCAs discuss issues of common interest so that a continual dialogue between the different enforcers is assured to achieve a highly harmonized – if not common – competition culture approach. Consultation and cooperation tools have been introduced to ensure the effective and coherent application of the common competition rules, including individual cases issues and solutions provided therein.

Among others, the ECN Leniency Model Program²² was adopted. The ECN has also endorsed recommendations on key investigative and decision-making powers. In addition, it is worth mentioning that cooperation within ECN goes beyond the application in close cooperation of arts. 81 and 82 of the Treaty. That is witnessed

20. See above, footnote 9.

21. Communication from the Commission to the European Parliament and the Council – (SEC(2009)574)/COM/2009/0206 final/, Commission Staff Working Document SWD (2014) 230 – Ten Years of Antitrust Enforcement under Regulation 1/2003 (SWD(2014) 230/2, 9.7.2014), Commission Staff Working Document SWD (2014) 231 – Enhancing competition enforcement by the Member States’ competition authorities: institutional and procedural issues (SWD(2014) 231/2, 9.7.2014), available at: [<http://ec.europa.eu/competition/antitrust/legislation/regulations.html>], last accessed: 12.10.2014.

22. At: [http://ec.europa.eu/competition/antitrust/compliance/index_en.html], accessed: 12.10.2014.

by the setting up of a Merger Working Group to foster increased consistency, convergence and cooperation among EU merger control frameworks.

As far as antitrust compliance is concerned, the EC's advocacy function has been effective in disseminating, also within the ECN, key competition rules and methods that companies should respect to ensure compliance with EU competition rules, for instance through the recent brochure "Compliance matters"²³ that aims to assist companies in successfully developing a proactive compliance strategy. However, as far as the evaluation of compliance efforts by companies in antitrust is concerned, more and more NCAs are indeed looking at the British experience (Competition Market Authority, formerly Office of Fair Trading) in the field – positively recognizing the industry's efforts in compliance, e.g. with fines' reduction – rather than the granitic position of neutrality affirmed by the EC. The interaction between advocacy and compliance will be further analyzed below.

Within the European Commission, the Directorate General for Competition (DG COMP) plays the key role in antitrust enforcement and is also particularly active in influencing other Directorates in order to integrate competition and consumer protection principles in other policies (a form of "internal advocacy"). Recent examples include sectors such as telecommunication, transport or financial services, e.g. the recently finalized reform of roaming rates initiated by Ms. Viviane Reding, from 2004 to 2010 Commissioner responsible for Information Society and Media and further continued by Ms. Neelie Kroes – between 2010 and 2014 Commissioner for Digital Agenda (former Commissioner for Competition). As a result the EC, among others, set a wholesale and retail caps on the roaming rates for the services within EU as well as implemented a number of structural measures, leading in particular to mandatory access obligation and freedom to switch retail roaming provider.

Another illustration of DG COMP's "internal advocacy" function is the recent study on "The economic impact of modern retail on choice and innovation in the EU food sector" as a result of the assessment initiated to evaluate the impact of recent developments in the European retail sector on consumers. This study is the result of calls by stakeholders on increased concentration of retailers/food manufacturers and other factors (such as shop type/size, private label success, socio-demographic characteristics) that seem to influence choice and innovation in the European food supply chain.²⁴

Alongside the Commission's traditional – "physiological" – role as investigator and enforcer deriving from Treaty's provisions (beside that of advocate of reforms

23. [http://ec.europa.eu/competition/ecn/mlp_revised_2012_en.pdf], accessed: 12.10.2014.

24. The study, published in September 2014, is available at: [<http://ec.europa.eu/competition/publications/KD0214955ENN.pdf>], accessed: 12.10.2014.

vis-à-vis the Parliament and the Council), a new skin has been little by little forming possibly as a result of the need to speedily react to the recent market trends.

The Commission approach to encourage initiatives of self-regulation by the industry well represented, in particular, by Charlie McCreevy – European Commissioner for Internal Market and Services between 2004 and 2010 and serious supporter of free-market economics – has been criticized by many for failing to regulate earlier in the financial services area and contributing to the Eurozone crisis in 2010. Likewise, Neelie Kroes – Competition Commissioner during the same years – made use of its enforcement powers to curb anticompetitive behavior whenever required, in so doing following the path traced by her predecessor Mario Monti. However, no attempts to proactively regulate market forces (competition, in other words) had been seen, at least until the beginning of the financial crisis required exceptional state aid regimes to be enacted.

The beginning of the crisis prepared the path for a sudden switch of the Commission from purely antitrust-based approach to regulatory intervention. The reasoning is quite straightforward: if market behavior (allegedly) seems to have contributed to the crisis rather than alleviate its effects, then the Commission is entitled to react at regulatory level, at least in the most sensitive sectors. Indeed, in a number of instances specific individual cases are the background for legislative action provided that the Commission finds that there are market failures.²⁵

Examples include the energy market²⁶ and the pharmaceuticals sector²⁷ and, most importantly, the developments of the case law and debate in the field of payment cards. The 11.09.2014 Court of Justice's MasterCard ruling²⁸ and the so called MIF Regulation²⁹ clearly brought to light the EC's newly acquired role as regulator that complements that of pure antitrust enforcer. The sparkling debate surrounding this judgment and the new approach adopted towards regulation

25. G.Orton, *When Lobbying DG COMP Makes Sense: European Competition Officials are Policy-Makers as well as Regulators*, available at: [www.cliffordchance.com/briefings/2011/11/when_lobbying_dgcompmakesenseeuropeancompetitionofficialsarepol.html], accessed: 12.10.2014.

26. See Third package for Electricity & Gas markets, at: [http://ec.europa.eu/energy/gas_electricity/legislation/third_legislative_package_en.htm], accessed: 12.10.2014.

27. See the Proposal for a Directive of the European Parliament and of the Council relating to the transparency of measures regulating the prices of medicinal products for human use and their inclusion in the scope of public health insurance systems, Brussels, COM(2012) 84 final, 2012/0035 (COD) at: [http://ec.europa.eu/enterprise/sectors/healthcare/files/docs/transpadir_finalprop01032012_en.pdf], accessed: 12.10.2014.

28. Case C-382/12, MasterCard and Others v. European Commission.

29. Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card based payment transactions, COM (2013) 550.

would deserve an article themselves, and so the role of competition agencies from purely administrative authorities to criminal prosecutors in light of recent developments at EU level.³⁰

Let's now see if the newly appointed European Commission and, in particular, the new Commissioner for Competition Margrethe Vestager will further develop the latest trends. According to the initial guidelines indicated by President Jean-Claude Juncker³¹ and the points made by the Commissioner during the hearings held before the European Parliament, surely the collaboration with (and advocacy towards) the other DGs will have to be further deepened. Moreover, "Maintaining and strengthening the Commission's reputation world-wide and promoting international cooperation in this area" will have to be one of Margrethe Vestager's focal points of action.

Will DG COMP manage to further develop its leading role on the international scenario?

b. Brazil and South America

Moving to the developments of the role of competition authorities in South America, their growing position in the international scenario should be first recognized.

It might be that these agencies have in a few years acquired the experience of well established North American as well as European authorities, due to the fact that these countries are considered one of the new frontiers for investments – for instance, as a result of the experience gained in assessing a considerable number of M&A transactions in a short period or in evaluating repeated attempts to stiff and make the most of highly profitable markets by a few players. At the same time,

30. See the European Court of Human Rights (ECHR)'s judgment in *A. Menarini Diagnostics v. Italy* no. 43509/08 of 27.09.2011, relating to a penalty imposed by the Italian competition authority for anti-competitive practices. In particular, the ECHR considered that, because of the severity of the fine imposed, the latter fell within the criminal sphere. However, it also indicated that entrusting the prosecution and punishment of breaches of the competition rules to administrative authorities is not inconsistent in so far as the person concerned has an opportunity to challenge any decision made against him before a tribunal that offers the guarantees provided for in art. 6 of the ECHR. In this respect, the question of the separation of powers applicable to criminal proceedings and its influence on the carried proceedings in the light of the ECHR case law, was raised in a case concerning imposition of fines on a number of elevators producers including the Schindler Group. See judgment of the General Court of the European Union of 13.07.2011 in Case T-138/07 *Schindler Holding and Others v. Commission* [2011] ECR II-0000.

31. See President Juncker's 10 September letter to Margrethe Vestager at: [http://ec.europa.eu/about/juncker-commission/docs/vestager_en.pdf], accessed: 12.10.2014.

it might be that looking at the results achieved in more mature jurisdictions, they have benefited of a consolidated knowledge to be taken as a basis and developed at a quicker pace.

Whatever the reason might be the truth is that in South America, currently, the development of antitrust – including the advocacy function in this field –³² has been a reality in most of its countries.

This section will focus on Brazil, Chile, and Argentina but other countries – Colombia, Peru and Venezuela – deserve some comments too.³³

Brazil

Competition advocacy in Brazil has increased since 2000, due to the substantial investments undertaken by the Brazilian Administrative Council of Economic Defense (*Conselho Administrativo de Defesa Econômica – Cade*). Amongst the initiatives aimed at increasing the diffusion of antitrust culture and transparency of Cade's activity, the following should be mentioned:

- the broadcasting of all trials live in its website;
- the publishing of the decisions and the public versions of documents of cases on Cade's website as well as informative materials (on a number of subjects, e.g. cartel, leniency programs) in a comprehensive language to increase knowledge and understanding among people;³⁴
- the organization and attendance by Cade of a number of conferences around Brazil to spread the culture of fair competition, including the Anti-Cartel Enforcement Day;

32. See the OECD "Follow-up to the Nine Peer Reviews of Competition Law and Policy of Latin American Countries (2012)", published in July 2013, containing a review of Brazil and other eight south American countries also on the impact of the authorities work on pro-competitive regulatory reforms, at: [www.oecd.org/daf/competition/2012Follow-upNinePeer%20Review_en.pdf], accessed: 12.10.2014.

33. It should be also recalled, as far as South America is concerned, that the Protocol on Competition of Mercosur (Mercosul), signed in the city of Fortaleza (Brazil), in December 17, 1996 (Decision n. 18/96), known as Fortaleza Protocol, was enacted with a view to homogeneously increase the defense of competition within Mercosur internal market (Argentina, Brazil, Paraguay, Uruguay and Venezuela). Its rules were meant to be applied to acts performed by individuals or legal persons governed by public or private law or other entities whose purpose is to harm competition within Mercosur and affecting trade between these countries. However, the Fortaleza Protocol was never applied, remaining the antitrust legal framework individually crafted by each of the States Parties.

34. A comic book for children was also published featuring very popular characters in a plot about the so called lemonade cartel. Moreover, Cade publishes every six months an Antitrust Magazine and, periodically, statistic data on-line.

- the issuance – by the Public Relations Unit – of Cade's most important decisions in Portuguese and in English, strengthening relations with national and international press.

It is also important to notice that the 2011 Brazilian Competition Law (Law 12.529/2011, effective from May 2012) implemented the Brazilian Competition System (*Sistema Brasileiro de Defesa da Concorrência* – SBDC) comprised of Cade and of the Economic Supervision Office of the Ministry of Finance (*Secretaria de Acompanhamento Econômico do Ministério da Fazenda* – Seae). According to the Law, Seae's main task is to promote competition before government agencies and before civil society.

On a different side, following Law 12.529/2011 a pre-merger control system was adopted. The latter meant a huge change for the business community and for the work developed by Cade. The average process time of a merger considered simple (fast-track proceeding) takes in fact now less than 30 days. On the other hand, Cade's efforts against anticompetitive conduct practices (cartels and unilateral conducts) are still considered too slow and have to be improved as the number of new cases is expected to further increase.

On the international scenario, Cade has been nominated Vice-co-Chair of the ICN. Furthermore, according to the Global Competition Review (GCR) Rating Enforcement 2014,³⁵ where Cade is ranked four stars (very good) “2013 presented consistent results after the legislative changes and showed that Cade is improving and being recognized as one of the top competition agencies worldwide”.

Chile

Chile's National Economic Prosecutor's Office (*Fiscalia Nacional Económica* – FNE) managed to successfully advocate and implement in 2012 a number of structural and procedural reforms as the creation of the new mergers research division and internal guidelines aimed at fast-tracking merger approvals. The voluntary pre-notification of mergers introduced by the Chile's competition law will lead companies to notify FNE to avoid the unnecessary risk of a delay in their mergers. However, due to the fact that presently the delay in merger's clearance can take up to two years, some changes in the merger control regime are expected by the end of 2014 to introduce mandatory clearance of specific mergers.

Furthermore, the FNE's work against cartels and unilateral conduct has been positively evaluated by practitioners and endorsed by Chile's courts. The Global Competition Review Rating Enforcement 2014³⁶ makes clear that “In all, 2013 was

35. See above, footnote 9.

36. See above, footnote 9.

not only a successful year in terms of results but an important year for the Chilean competition system as a whole". FNE is ranked two and a half stars (fair).

Argentina

Despite the fact that the Argentinean Antitrust Law has been issued back in 1999, setting out the creation of the National Tribunal for the Defense of Competition within the scope of the Ministry of Economy – the antitrust regulator in Argentina – as of today the Tribunal has not yet been created. The National Commission of the Defense of Competition is today in charge of technical reviews and investigations of mergers and issues advocacy recommendations to the Secretary of Domestic Trade of the Ministry of Economy which is considered the body that decides antitrust matters in Argentina.

The performance of the National Commission is considered very slow, in particular as regards the analysis of merger control cases. It should be considered in fact that in Argentina any economic concentration in which the aggregate volume of business activity generated by the companies involved in the transaction exceeds approximately USD 24 million requires the clearance of the National Commission.

As a result, it is very likely that in the following years the stakeholders – many of which are multinational energy companies – will engage in a hopefully constructive dialogue to improve the present system to foster competition in the market through a number of reforms.

Colombia, Peru and Venezuela

In Colombia, the Superintendence of Industry and Commerce (SIC) is the authority in charge of enforcing the merger control regulations. SIC's main concerns are the unilateral effects and the coordinated effects that result from a merger considering the benefits to consumers. The notification of a merger is compulsory if the jurisdictional thresholds are met, i.e. if the business activities or the participation of the undertakings in the same vertical value chain, combining gross assets or operational turnover exceeding approximately EUR 23 million/ USD 33 million and in a single or combined market share exceeds 20% of the relevant market. The SIC's advocacy activity is developing – as the competition legal framework as a whole.

Peru has been able to undertake a number of initiatives aimed to spread competition and a consumer protection culture. Moreover, it has established a multidisciplinary agency called Indecopi (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual*) despite facing economic bottlenecks in the 1990s and the first decade of 2000. According to a document issued in 2005 following the Competition and Consumer Protection for Latin

America (Compal) Programme, for Peru "It is crucial to promote competition in coordination with non-governmental organizations or associations that have the necessary means to ensure the self-sustainability of these activities".³⁷ The programme, supported by the UNCTAD, technically assists Bolivia, Colombia, Costa Rica, Ecuador, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru and Uruguay in strengthening their capacities and institutions in the areas of competition and consumer protection laws and policies.

In Venezuela, where the National Assembly is presently discussing the new Competition Law, the *Superintendencia para la Promoción y Protección de la Libre Competencia (Procompetencia)*, an autonomous agency under the Ministry of Commerce, is the authority responsible to enforce the Competition Law and the Merger Regulation. The notification process of mergers is voluntary even if a transaction meets the jurisdictional threshold, which means that the aggregate value of sales in Venezuela exceeds approximately USD 3 million. Procompetencia, however, within the first year after the closing can investigate its impact on the market. As highlighted in relation to the Colombian SIC, Procompetencia's advocacy activity is still in the process of being developed, as the competition legal framework in its entirety.

As noticed in the paragraphs above, South America (at least the countries that have been evaluated) somehow is improving the diffusion of competition culture, specifically on merger control. However, tone from the top seems still to be lacking. As some have commented "competition law will not be broadly accepted or fully enforced unless key leaders in government have adopted market principles as the underpinning of economic development".³⁸

c. Poland

The Urząd Ochrony Konkurencji i Konsumentów (UOKIK) is the Polish Competition Authority, supervising the application of the Act for the Competition and Consumer Protection. It was established as Antimonopoly Office at the very beginning of the Polish transformation in 1990 and the changes in its role illustrate the progressive development of the country's economy. The de-monopolization was indicated as one of its priorities.

37. See "Compal Programme: Strengthening Institutions and Capacities in the area of Competition and Consumer Protection Policies in Latin America: Cases of Bolivia, Costa Rica, El Salvador, Honduras, Guatemala, Nicaragua and Peru" United Nations, 2005, p. 53, at: [http://unctad.org/en/Docs/ditcclp20043_en.pdf], accessed: 12.10.2014.

38. See JOEKES, Susan; EVANS, Phil. *Competition and Development: the power of competitive markets*. Ottawa: IDRC, 2008, p. ix.

After 2000, and especially after the Polish accession to the EU in 2004, it became increasingly important to foster competition in the infrastructure sectors (particularly in the telecommunication, energy and air transport ones) and combat unilateral conduct practices.

In March 2014, the new Chairman of UOKIK Mr. Adam Jasser was quite unexpectedly appointed by the Polish Prime Minister Donald Tusk. There is a question whether Poland may expect revolution or evolution of its antitrust, state aid and consumer protection policy.

During 2013, UOKIK has been quite active.³⁹ The statistics show that great focus was put by the Authority on cases concerning vertical agreements when compared to cases on horizontal ones. Still, the major interest for the Authority remains unilateral conduct cases. The small number of decisions issued in horizontal cases shows that the Authority is less focused on them. It will be interesting to see whether under the new Chairman this trend will be confirmed, although it is doubtful since only a few antitrust proceedings were started until October 2014.

UOKIK is also responsible for consumer protection and so far has been very active in this area. This policy is expected to be maintained since the new Chairman has already announced publicly that the major focus for the Authority would be consumer protection.⁴⁰ This change in the policy is also illustrated by the new name of the Consumer Department, which is now called Department of Consumers Interest Protection (formerly Consumer Policy Department).

Among other activities of UOKIK it is important to mention, as far as the advocacy function is concerned, that the Authority substantially intervenes in the legislative process including areas such as renewable or refundable pharmaceuticals. In particular, it recently took part in the discussion focused on whether the local competition legal framework should also apply to the activity of the National Health Fund Organization.

Furthermore, UOKIK very recently promoted a revision of the Act on Competition and Consumer Protection that will enter into force on 18.01.2015. The most important changes include a new two-step procedure for the control of concentrations, changes in the leniency application procedure, negotiation of remedies, fines for individuals. A number of these changes have been carried out following the input put forward by a number of stakeholders, which demonstrates a changing attitude of the UOKIK to take into account suggestions received by the industry.

39. The Report of the UOKIK activity in 2013 [www.uokik.gov.pl/sprawozdania_z_dzialalnosci_urzedu.php], accessed: 12.10.2012.

40. See "Interview with Adam Jasser at Dziennik Gazeta Prawna", [<http://serwis.gazetaprawna.pl/poradnik-konsumenta/artykuly/795934.jasser-potrzebna-siec-na-rzecz-konkurencji.html>], accessed: 12.10.2012.

d. Italy

The advocacy function of the Italian Competition Authority (ICA) has seen important developments starting from the end of 2011. The reasons are twofold.

The first reason is connected to the fact that in November 2011 Mario Monti was sworn in as Prime Minister of Italy. Due to his successful past experience and strong reputation gained as European Competition Commissioner from September 1999 to October 2004, amongst others,⁴¹ Super Mario Monti – so nicknamed by the press following the important results achieved –⁴² was expected by the public opinion to devote much effort in promoting growth and restoring market confidence in Italy through an ambitious set of pro-competitive reforms. And he did, in fact, obtaining immediate positive feedbacks,⁴³ despite his mandate will be remembered by many for the austerity measures implemented in the wake of the Italian debt crisis.

A few days after the appointment of Monti as Italy Prime Minister, the current Chairman of the ICA, Giovanni Pitruzzella, started his term while his predecessor – Antonio Catricalà – joined the Government following his appointment as State Undersecretary to the Presidency of the Council of Ministers. In such a difficult moment for Italy, the fact that Monti and Pitruzzella commenced their mandate in parallel surely helped. The ICA and the new Government were given the possibility to work from scratch, jointly (together with the other stakeholders), on strategies that then resulted in well designed reforms to enhance the country's competitiveness and reputation.

Most importantly, it certainly assisted Pitruzzella the possibility to negotiate reforms with a counterpart (Monti, beside Catricalà) that is very sensitive about competition issues, holds a long-lasting experience in this field and may rely on a consolidated network of competition professional worldwide.

Between November 2011 and April 2013 – when Mario Monti then resigned as Prime Minister – a number of legislative amendments were enacted that introduced

41. Between 1994 and 1999 Mario Monti was responsible as a European Commissioner for Internal Market, Financial Services and Financial Integration, Customs and Taxation.

42. Amongst others, "Who is Italy's 'Super Mario' Monti?" by Laura Smith-Spark, CNN, 04.11.2011, at: [<http://edition.cnn.com/2011/11/11/world/europe/italy-mario-monti-profile/index.html>], accessed: 12.10.2014; "Mario Monti: profile of Super Mario" by Nick Squires, The Telegraph, 10.11.2011, at: [www.telegraph.co.uk/news/worldnews/silvio-berlusconi/8881761/Mario-Monti-profile-of-Super-Mario.html], accessed: 12.10.2014.

43. "Italy has embarked on an ambitious, much needed reform programme to strengthen its public finances, to restore growth and to improve the competitiveness of the Italian economy. (...) The reform programme is well designed and comprehensive. (...)", Statement by OECD's Gurria after meeting Italian Prime Minister Mario Monti, 06.11.2012, at: [www.oecd.org/italy/statementbyoecdsgurriaaftermeetingitalianprimeministermariomonti.htm], accessed: 12.10.2014.

important changes to the Italian antitrust law and granted new functions and powers to the ICA.⁴⁴ Among others, the creation of new business law specialized courts' sections for antitrust litigation (*Tribunali delle Imprese*); the granting of new tasks assigned to the ICA concerning the administrative protection against unfair terms in business-to-consumers contracts and against misleading and/or aggressive conducts causing damages to micro-enterprises; the introduction of the prohibition of interlocking directorates in the credit, insurance and financial services markets.

Furthermore, important amendments were also passed in relation to the ICA's powers of advocacy. First of all, according to the new provisions, the government is required to obtain the competition authority's mandatory prior opinion on regulations that introduce restrictions on access to and exercise of economic activities. Also, the mandatory prior opinion is necessary with regard to government regulations to be adopted in order to give effect to the liberalization and simplification standards.

Moreover, the ICA is entitled to appeal against general administrative acts, regulations and provisions of any public administration that lead to violations of provisions for the protection of competition. In addition, the authority, when it considers that a public administration has infringed competition rules, may issue a reasoned opinion within a given timeframe. If the administration does not comply with the opinion within 60 days, the ICA may propose appeal before the competent administrative court.

The second reason lies in the important developments of the ICA's advocacy function under the Pitruzzella mandate, as a result of the substantial investments undertaken by its Chairman from the very beginning and in line with his expectations.⁴⁵ The latter devoted much efforts in enhancing the credibility and accountability of the agency, explaining the benefits of competition to the public opinion, further develop its role on the international scenario. The ICA is now perceived as an agency characterized by an open-door approach. It managed to

44. See in particular Law Decree n. 201 of 06.12.2011 (so called "Salva Italia" Decree), Law Decree n. 1 of 24.01.2012 (so called "Cresci Italia" Decree) and the Law Decree n. 5 of 09.02.2012 (so called "Semplifica Italia" Decree). For a thorough analysis of these pieces of legislation see the OECD Review "Better Regulation in Europe: Italy 2012", at: [www.keepeek.com/Digital-Asset-Management/oecd/governance/better-regulation-in-europe-italy-2012_9789264204454-en#page1], accessed: 12.10.2014.

45. See "An interview with Giovanni Pitruzzella", Global Competition Review (GCR), vol. 16, issue 1 Dec.-Jan. 2012, p. 6, at: [www.agcm.it/component/joomdoc/doc_download/3591-grc-interview2012.html], accessed: 12.10.2014 "(...) Another thing I really care about for my country is promoting a competition culture. Much has been done by the authority, but much remains to be done to promote the knowledge of antitrust rules (...) That's why I greatly strengthened our advocacy. Our legislative proposals to open up markets have been followed by the government".

further enhance transparency of its activity and the interaction with the various stakeholders, basing it upon an on-going constructive debate.

Due to the progress made in the last three years as regards the advocacy function – with a primary role played by the ICA's Directorate for European and International Affairs – the Italian authority is now co-chairing the Advocacy Working Group within the ICN and represents without doubt a model for younger agencies to be replicated.

COMPETITION LAW REFORMS AND ANTITRUST COMPLIANCE

Antitrust compliance is being recognized more and more as an effective advocacy tool in the hands of agencies to spread compliance culture amongst enterprises.⁴⁶

Indeed, the substantial investments of companies in antitrust compliance and the increased dialogue and exchange with competition authorities on the matter, has led a number of agencies to reform the applicable legal framework to discipline and encourage the adoption of compliance programs. In particular, at EU level, the European Commission, has recently issued "Compliance Matters", a brochure aimed to inform stakeholders at any level about the Commission's approach towards antitrust compliance as well as the methods and principles that it considers important to ensure on-going respect of EU competition rules.

The brochure is actually available in the recently opened compliance section of the DG COMP web site⁴⁷ that may be considered an important milestone itself. The section contains in fact a number of sources of information on the matter, including reference materials also from business organization and national competition authorities. A demonstration of the importance for the Commission to promote the use of platforms where the interested parties may exchange views on such an important topic, making the debate progress.

As mentioned, also the industry proactively embarked in a number of initiatives aimed to promote compliance that delivered unexpected results, often being considered points of reference by the agencies themselves.⁴⁸ Moreover, it is likely

46. "(...) The advocacy function is also increasingly addressed to undertakings, with the aim of enhancing their awareness of antitrust misconducts and improve compliance. The adoption of formal antitrust compliance programs is promoted and actively encouraged by many competition authorities", see above, footnote 10, "*Competition advocacy: the Italian experience*", Salvatore Rebecchini, Italian Antitrust Review, n. 2 (2014), p. 17-18, at: [<http://iar.agcm.it/article/view/10194/9489>], accessed: 12.10.2014.

47. At: [http://ec.europa.eu/competition/antitrust/compliance/index_en.html], accessed: 12.10.2014.

48. See in particular the International Chamber of Commerce (ICC) "Antitrust Compliance Toolkit", launched on 22.04.2013 at the 5th ICC Roundtable on Competition Policy

that further developments in this regard will be seen in the near future due to additional initiatives undertaken at both agency and industry levels.

One of the topics that it is likely to be pivotal in the next months is the diffusion of competition culture amongst small and medium sized enterprises (SMEs). These often lack financial and human resources to invest in competition compliance, beside a rather diffused perception that antitrust laws are not applicable to entities that individually detain a negligible market power. There are a number of important economies world-wide that are based on SMEs. As a result the diffusion of antitrust culture at this niveau is of utmost importance to increase ethical standards in antitrust at global level.

These positive developments, demonstrating the growing importance taken on by compliance programs world-wide, are the results of the advocacy efforts put forth by both agencies and companies with one another through an interactive process. The added value of these initiatives – far from being a purely internal exercise – positively affects market behavior by promoting ethical conducts and produce concrete results for societies.

CONCLUSION

Interventionism, interaction and cooperation are likely to be the words that better describe the role that will be played by competition authorities in advocating pro-competitive reforms in the near future.

On the one side, the recent economic downturn, in particular, has somehow convinced antitrust agencies that market inefficiencies should be anticipated and prevented through a more intrusive participation in the (*ex ante*) regulation of market dynamics, and not only through the (*ex-post*) enforcement activity. Moreover, merely relying on self-regulation initiatives undertaken jointly by market players seems to have proven to give little results.

On the other side, market inefficiencies may not be properly assessed and corrected through reforms developed and implemented by the agencies individually, based on the parameters usually applied in each jurisdiction. The crisis hit the competition agencies themselves that have to deal with an increased number of cases – often with supranational effects – employing the same financial and human resources and therefore striving to maintain, at the same time, a high level of credibility and independence.

in Warsaw (Poland) [www.iccwbo.org/Data/Policies/2013/ICC-Antitrust-Compliance-Toolkit-ENGLISH], accessed: 12.10.2014. For a thorough analysis of the latest initiatives in antitrust compliance see also Simone Pieri, Jacques Mosciandese, and Irene de Angelis "In-house Compliance of EU Competition Rules in Practice", *Jeclap – Journal of European Competition Law and Practice*, 07.07.2014.

Markets are global and so businesses that are more and more active on a multinational basis. If agencies intend to effectively cope with cartels, unilateral conduct cases and mergers that may have an anti-competitive impact on markets, they need to share information, enhance interaction and collaboration. They also need to join the forces. However, not only at antitrust agencies' level, globally, which should be taken for granted. Rather by interacting and cooperating with all the parties that may gain a benefit from competition: governments, parliaments, courts, organizations, the industry, consumers.

Only reforms that are the result of a mutual exchange of views – at national and supranational level – and take into consideration the interested parties' perspectives will be likely to be workable in practice and succeed in delivering positive results. For these reasons competition advocacy is likely to be confirmed in the near future as the most important driver for change.

As it was mentioned in the OECD 2011 Roundtable on promoting compliance with competition law “competition compliance should rest on two pillars: competition law enforcement and competition value creation”.⁴⁹ However, it is impossible to effectively spread competition culture without active participation of stakeholders. Compliance will not replace enforcement, however can complement it in an efficient way.

PESQUISAS DO EDITORIAL

Veja também Doutrina

- II Seminário Internacional de Direito da Concorrência, de Sem Autor – *RIBRAC* 3/6 (DTR\2011\4822), e
- Painel II O controle dos atos de concentração segundo as melhores práticas internacionais, de Mauro Grinberg, William Blumenthal, William Rowley, Michael Reynolds, Cláudio Considera e Ronaldo Porto Macedo – *RIBRAC* 10/89 (DTR\2011\5095).

49. See the OECD Report at: [www.oecd.org/daf/competition/Promotingcompliancewithcompetitionlaw2011.pdf], accessed: 12.10.2014.