Big Law Redefined Podcast – Competition in the Americas Miniseries – Episode 5

Miguel Flores: Hello, [00:01:00] and welcome back to Competition Law in the Americas. I'm your host, Miguel Flores in Mexico City, and [00:01:30] today we're going behind the scenes of cartel enforcement in Latin America, where those price, rates, digital tracking, and international teamwork are all in a day's work. I'm joined by two outstanding guests, Viviana Blanco Barboza, president of Coprocom Costa Rica, Costa Rica's competition commission. Viviana is a leading voice in international competition law, known for her hands-on approach to enforcement and her commitment to modernizing [00:02:00] Costa Rica's antitrust regime. She has overseen landmark investigations in Mexico and Costa Rica, and is a champion for regional cooperation. And Victor Meyer, Director General for Cartel Enforcement of Mexico's Anti-Monopoly Commission. Victor is one of Mexico's top cartel investigators with a reputation for creative enforcement strategies and a deep understanding of digital evidence. He has led some of the country's most high profile [00:02:30] cartel cases and is a frequent speaker on international antitrust panels. Thank you both for joining us.

Victor Meyer: Thank you so much, Miguel, for the invitation. It's an honor to be here.

Viviana Blanco ...: Thank you very much, Miguel, for the invitation. I'm truly honored to be here and I'm glad to contribute to this fifth episode.

Miguel Flores: Thank you both for joining us. We'll break down headline cases, enforcement tactics, and the secrets of successful cross-border teamwork with [00:03:00] a few stories you won't want to miss. Viviana and Victor, let's start with some myth-busting. Viviana, what's the funniest or most surprising excuse you've heard from a company during a cartel investigation?

Viviana Blanco ...: Sure, Miguel. In a recent procurement investigation in the pharmaceutical sector, two companies submitted bids so similar that even the spelling mistakes were identical. [00:03:30] When asked to explain, one company said it had no experience and had therefore taken inspiration from the other, including accidentally copying the other's company's name inside its own documents. So in this case, we saw that sometimes the copy paste is playing the story faster than any testimony.

Miguel Flores: Well, that's quite a coincidence. And Victor, is there a myth about cartel enforcement [00:04:00] in Mexico that you wish you could bust once and for all?

Victor Meyer: Yes. I would say that there's two of them. The first one is that the one where they're like, "I'm never going to get caught."

We have many tools are at disposals to detect and prosecute cartels. And the second one, which is related closely to this one, is the fact that it's better to not cooperate with the authority and to just try to [00:04:30] push back on our investigations, that it's going to yield better results for the companies, which is actually quite the contrary. If you do not cooperate, the result is going to be

much likelier something that's going to be way more prejudicial for the companies. I'd argue here that once I heard from another investigator from another country that you have to consider that the competition authority will never get all the information that they're looking for. That's [00:05:00] a fact, but we will also never get... We won't leave with our hands empty. That's the big message that I would send companies.

Miguel Flores: Thank you, Victor. Well, let's now turn to the headland cases. Let's talk about these headland cases. Think of these as our competition criminal law TV serious segment. Victor, can you share a recent cartel case in Mexico that had [00:05:30] everyone talking? What made it so dramatic or precedent setting?

Victor Meyer: I guess there's a lot of them to talk about. I'm going to just mention them quite fast. I start by mentioning the two highest fines that the commission ever imposed, which were in the LP gas case and the bus service case. In both of them, the evidence was quite egregious. It was very cynical of the companies, what they were doing and trying to hide [00:06:00] their conduct from the agency. And there was a lot of evidence. And obviously since it was such an important seg, both were very important markets, the damage to consumers was extremely high. So we have those two cases. We also have a couple of cases dealing with gas and diesel, which were built entirely on indirect evidence, particularly on economic analysis. So I think it's worth highlighting those two. And [00:06:30] I argue also a non-compete agreement, which was sanctioned as was considered actually a cartel since it didn't have any elements that made it a non-compete agreement in the traditional sense of it.

And finally, I'd argue the first case that we had on labor markets, which was a couple of years ago, but still very relevant in the football league, the soccer league, which had a no poach agreement and a wage fixing agreement. And if I had to [00:07:00] mention one final case, and I'm rushing here to promote everything we do, I'd argue it was the collective action that COFECE in that moment presented against the distributors of medicines for colluding. So those are, I think, the biggest cases of the last two or three years.

Miguel Flores: Okay. And Viviana, what would be the most memorable cartel case you've handled in Costa Rica? Any plot, twists, or lessons learned?

Viviana Blanco ...: [00:07:30] Yes. I think the most significant case for us was the rice cartel. Rice is one of the most widely consumed supple grains in Costa Rica. And in this case, nine of our industrial firms coordinated an agreement not to purchase the national harvest until the government issue a price setting decree that will define the purchase conditions. What made this case particularly clear was the sequence in which the conduct evolved. [00:08:00] It began in trade association meetings, progress to formal assemblies, and ultimately appear in board decisions. For us, the lesson delivered from this case was very clear. And it is that in a small economies, cartels often do not originate from explicit or clandestine agreements, but from a gradual alignment of behavior that develops through routine interactions, share regulatory incentives [00:08:30]

and repeated coordination opportunities. Over time, this progressive alignment turns into a common course of conduct until the line between mere coordination and an actual conclusive agreement becomes impossible to ignore. This case was one of the cases that allow us to apply the new sanctions in the new competition law, the [00:09:00] law 9736.

Miguel Flores: Okay. And for both of you, are there industries in your countries that seem to attract more cartel activity? If you have to pick a cartel hotspot, what would it be?

Viviana Blanco ...: Could I start?

Miguel Flores: Yeah, sure, please.

Viviana Blanco ...: Okay. I see two recurring [00:09:30] hotspots. First, traditional agricultural markets, where industry associations are very close and their members interact frequently. This closeness creates an environment where information circulates easily and where firms may gradually align their behavior, sometimes without initially realizing how far that alignment can go. And second, public procurement, particularly in pharmaceutical services. We [00:10:00] have identified several cases through early alert, thanks to our close coordination with the social security form. These coordinations allow us to identify patterns, socials, identical documents, synchronized submissions and repeated errors that have been especially revealing in the analysis of these cases.

Miguel Flores: And Victor?

Victor Meyer: So it's very similar to what [00:10:30] Viviana is saying. It's got to be public procurement. That's still the biggest hotspot that we have. And it's also dealing with health products, public procurement of health services or health products. That's the biggest hotspot that we still have to this day.

Miguel Flores: Okay. Well, now let's turn to discuss enforcement tools and tactics. Let's take a look at the detective work of cartel enforcement. [00:11:00] Victor, downgrades sound like something out of a movie. What's the most unexpected thing you've encountered during array?

Victor Meyer: Oh, well, they are very much like a movie. There's so much stuff that we've found that has been quite unexpected, but if we want to keep this family friendly, I can't go into much detail. But I'll just say that after carrying out dawn raids, I've learned to keep my [00:11:30] office very clean and everything. I don't want anyone going through it. That's as far as weird stuff that we've seen. But when we talk about evidence, I think that the biggest thing that we've found or the most surprising pieces of evidence we usually find is handwritten notes. Everyone talks a lot about digital evidence and that's the future and everything, but people still write a lot of stuff down and by hand. So we have found so much [00:12:00] evidence from handwritten notes, agendas or anything where they're

actually admitting the agreement and they're keeping notes of how they're going to allocate the market and everything.

And it's very surprising, because you would think that they would be more careful and they are careful when it comes to electronic data, but not necessarily through handwritten stuff, because it's not as easy to search through or to eliminate. So that's one that I think it's quite surprising. [00:12:30] Printed out stuff is also, people like to print out stuff and they don't remember what they used to do, what they would print. As I was talking before, in our football case, we found the wage fixing agreement. That wage fix agreement that was affecting female soccer players, we found it printed out when we carried out one of the dawn raids. I don't think we might have come across that if we were looking for electronic evidence, because it's not [00:13:00] something we were looking for. So that was actually quite exciting. And so, I would argue that those two points are, I think, the most surprising elements, where you actually do find evidence.

And just to top it off, if you allow me, I'd like to mention a quite interesting and funny story that we had, where once we came into this dawn raid, this company and there was this huge safe. And when we asked the company to open it, they were like, "We don't have the combination. [00:13:30] We've never opened it."

And we're like, "No, of course you must have opened it in the past."

And they were like, "Nope." So at first we didn't believe them, but they were like, "Okay, we'll call a locksmith to open it for you." But it took one day, two days, and the excitement was building up, like what's inside this safe. And the company was like, "We also want to know what's inside the safe. It's got to be something important."

And one day they bring in this locksmith, he just basically had to destroy the lock [00:14:00] itself and there was nothing. So yeah, those are the things that happened during the company that was actually quite surprising. It's like, "Oh, that was anti-climatic." But yeah, that happens as well.

Miguel Flores: Great. Viviana, well, digital evidence is changing the game. And have you ever cracked a case thanks to astray WhatsApp messages or email?

Viviana Blanco ...: Well, in our case, I think the digital evidence [00:14:30] is used through other methods. For example, one of our most powerful investigative tools has been the digital analysis of documents submitted through the national procurement platform called CCOP, because every bit leaves a digital footprint and we can examine metadata, submissions, timestamps, authorship patterns, text pattern similarities, unusual structural coincidences. These elements [00:15:00] often reveal connections that will be impossible to justify independently. For instance, in the pharmaceutical case, the combination of these repeated errors, identical sections of text and parallel documents formatting made the coordination very

clear. So in this sense, digital evidence allow us to reconstruct the sequence of actions more effectively than any witness statement could. And that's how we have used the digital [00:15:30] tools.

Miguel Flores: Okay. And for both of you, what's the most creative enforcement tactic you've used or seen in action? Victor?

Victor Meyer: Well, from our side, we've done some type of undercover work that has actually yielded some good results. And we also, [00:16:00] we've had to deal with indirect evidence. So for example, requesting information from airlines, from hotels, from restaurants that could help us prove the meetings is always extremely useful. And we've managed to prove actual meetings where, for example, we've managed to prove that two competitors were meeting in the exact same hotel before presenting their bids in procurement cases. So working with indirect evidence is always fun, [00:16:30] and it always requires a lot of thinking, a lot of imagination, and trying to thinking outside the box.

Miguel Flores: Right. And Viviana?

Viviana Blanco ...: From our perspective, I think that being a small authority forces us to innovate. So we cannot rely only on larger scale investigative operations. So we focus on building smart, targeted tools. For example, we have two approaches that have been [00:17:00] especially effective. First, the cross agency work with the superintendency of telecommunications and the Ministry of Finance. With these two institutions, we have already developed joint guidelines and delivered target training programs for procurement officials. The Ministry of Finance, for instance, they have a large cross-national platform to allow us to reach to a lot of procurement officials. So [00:17:30] we can help them to identify early red flags, understand risk patterns, and recognize situations that may require escalations to the authority. In addition, we are exploring new tools and analytical methods to threaten early stage detection of potential collusion using the resources of these two authorities. And second, one thing that has been very successful for us is the [00:18:00] operational cooperation with the social security fund.

As the country's largest public buyer, the social security fund processes thousands of procurement procedures. So when something seems unusual, such as similar bids, repetitive language, or unexpected supplier patterns, they alert us immediately. In return, we train their teams on competition risk, give them [00:18:30] assessment of consultations. These two-way channel has been central to every major procurement case we have solved. In this sense, interinstitutional cooperation, I think has become our most effective investigative multiplier or two.

Miguel Flores: That's great. And now you were talking about cooperation, and [00:19:00] let's talk about regional cooperation in the Americas, a little bit about that. Cartels don't respect borders, of course. So how do you team up across countries to

fight cartels? Victor, can you share a buddy cop story, where Mexico worked with another country to crack across border cartel?

Victor Meyer: Certainly. Yeah. There's been quite some efforts in that regard. Many, many years [00:19:30] ago, we cooperated with several agencies. I think that among them, we had the JFTC from Japan with the cases that were dealing with different technological parts, but that was back in the day. And for a while, I think that the commission didn't try to get into international cartels that much, but in the last couple of years, we've tried to push back on international cartels [00:20:00] and try to get more investigations dealing with that matter. So we've been investigating, it's a public investigation that's dealing with international cartel, that has to do with scopolamine, which is components for medicines.

And we've been cooperating with several authorities on that case. And recently, well, last year we opened an investigation into the fragrance market, which [00:20:30] as it's been publicly revealed by other authorities, there was a cartel dealing with fragrances. And COFECE in that moment announced that we've been cooperating with the Department of Justice and with the CMA from the UK to bring these cases to a successful result. So basically it's working with them in cooperation, trying to carry out and [00:21:00] trying to obtain the same results, being strategical in our investigation methods. And we've been getting some really good results with that.

Miguel Flores: Excellent. And Viviana, what in your view will be the secret to successful teamwork between agencies in Latin America? Any lost in translation moments that you can remember?

Viviana Blanco ...: Yes. Well, I [00:21:30] think Latin American agencies share many structural characteristics. They have small or medium size markets, high concentration levels, strong reliance on public procurement and sectors where firms interact frequently. Because of this, cooperation is not just desirable, but is extremely practical. Over the last year, Costa Rica has a stretching collaboration through new agreements with the competition agencies of Argentina, the Dominican [00:22:00] Republic, Ecuador, Guatemala, complementing longstanding ties with Mexico, Brazil, Colombia, Paraguay, and others. But the real value comes from the networks that allow constant technical exchange. For example, in our case, the participation in RECAC, which is the Red Centroamericana de Competencia. This is a key platform [00:22:30] for discussing enforcement trends, digital issues and regional challenges. We have also GRACA, the Grupo Hensel de Competencia America, and it is a broader Latin American working group that address not only public procurement, but also investigative tools, cross border issues and capacity building.

And of course, the OECD and very importantly, inside the OECD, the regional center for competition in Latin America based [00:23:00] on Lima, Peru. This is one of the region's most valuable training spaces for agency staff. The SCC currently not only provides hands-on high level training, but also facilitates cooperation by creating direct communication channels between officials,

making it easier to exchange information, compare approaches and coordinate when similar issues arise. And I think these networks help us to [00:23:30] identify better patterns, refine methodologies, and anticipate emerging risk, especially in markets where coordination can develop gradually. And in this sense, I think that when one country discovers a new red flag, a new pattern or a more efficient detection method, the entire region becomes stronger. Actually, in the last [00:24:00] session of the OECD competition committee, many agencies from different countries, they share new approaches to fight collusion or to fight algorithms, risk or collusion through algorithm prices. And I think that when all the... [foreign language 00:24:32].

Miguel Flores: [foreign language 00:24:32]. [00:24:30] Please.

Viviana Blanco ...: No, talk [foreign language 00:24:38], no?

Miguel Flores: No, no. [foreign language 00:24:40] I'm going to speak in English, because somebody that speaks English is going to do the editing. So please tell us from where do you want to start and no problem with that.

Viviana Blanco ...: Okay. Maybe I will start from how this network help us to identify [00:25:00] patterns and methodologies and these things, no?

Miguel Flores: Okay.

Viviana Blanco ...: How can I start again? Okay. So these networks help us to identify patterns, refine methodologies, and anticipate emerging risk, especially in markets where coordination can develop gradually. And in this sense, when one country discovers a new red flag, a new pattern, or a more efficient detection method, the entire region becomes stronger. So the message I think [00:25:30] here is that in enforcement, knowledge truly functions as a regional public god.

Miguel Flores: Okay. Thank you. Well, yes, international organizations and venues are very important to discuss new trends. A question for both of you, if you had a magic wand and could create any technology or system to make international cartel investigations [00:26:00] easier, what would you invent and how would it change the game for enforcement agencies? Victor?

Victor Meyer: Well, I think that there's one basic thing, and that's trying to make the confidentiality restraints disappear. That's the biggest difficulty that we faced. So for example, if we were to find evidence [00:26:30] of an international cartel in one of our dawn raids, we cannot just hand that document to the other authority. And that same thing happens to the other authorities, so they can't share it with us. And I think that's our biggest headache between agencies, because we each have our legal frameworks that we have to respect. And thus it becomes very difficult to obtain evidence if it's not through leniency applicants, for example, because while we can exchange information, [00:27:00] strategies and perhaps theories of the case, exchanging documents, exchanging evidence,

it's just not possible. And I think that that has created a problem for international cartel enforcement.

It's still ongoing and it's still very, very much alive, but it would be so much easier if we had the same requirements and we could share information freely, because to be honest, cartels are... [00:27:30] Each day they're more globalized, so it doesn't make sense to have different requirements. Of course, I'm talking as a utopian, something that I realize it's not possible, but it would just make life a lot easier for us.

Miguel Flores: And Viviana?

Viviana Blanco ...: Yes, I would say three simple principles. First, implement compliance that is real and [00:28:00] internalized across all levels of the organization. Policies only works if employees understand, apply them. Training must be continuous and practical. And second, and especially helpful in our economies, is that be extremely cautious in trade associations, because many problematic situations begin in legitimate spaces, such as meetings, committees, workshops, where competitors [00:28:30] interact frequently. So sharing sensitive information can unintentionally turn alignment into collusion. Third, review technological tools that may unintentionally facilitate asset coordination. We see now how pricing algorithms, monitoring platforms and benchmarking systems can create transparency that push firms [00:29:00] toward parallel conduct. Above all, ask early. I think that authorities prefer clarifying dogs to the economic agents before conduct occurs greater than opening an investigation afterward.

Miguel Flores: Okay. Thank you. Well, now we'll turn to practical takeaways for companies, and we would [00:29:30] like to have some rapid advice from you. Viviana, what's the first thing you tell a business to check if they want to stay cartel-free in Costa Rica?

Viviana Blanco ...: Sorry. Did you change the order of the questions?

Miguel Flores: [00:30:00] No, maybe... Oh, sorry. The last answer was for this question.

Viviana Blanco ...: Yes.

Miguel Flores: All right. Okay. So we'll edit that. And so, this will be the question?

Viviana Blanco ...: Yes. The principles to stay cartel free were the compliance and the associations.

Miguel Flores: All right.

Viviana Blanco ...: Yes.

Miguel Flores: Okay. Okay. Okay. Yeah, because [00:30:30] I thought that that was the answer to both question on segment three, but we can edit that, so you don't have to

provide the answer. So I'll just go to ask Victor the same question. Okay. So Victor, what's the biggest compliance blind spot you see in Mexico?

Victor Meyer: I'm sorry. I think that [00:31:00] most people, regular people are not aware that talking with your competitor is illegal, especially when dealing with prices, output and everything. So I see a lot of companies doing compliance efforts on the higher levels of the company, but not necessarily in middle management. And we've come across many, many cases, where it all began because one employee, [00:31:30] well, there were a couple of employees that were friends and one of them left for another company, for the competitor. And then they established a link and they started communicating, because they're friends. And then they started talking about prices and everything.

And higher management is not aware of the situation. And it's actually middle management that's doing this and it's obviously creating a liability for them. That's not going to prevent them from being punished for [00:32:00] being a cartel. So I think that that's one of the blind spots that many companies have, where they go and do a lot of compliance efforts, but to higher management and it has to cascade down, so that everyone is well aware of what is illegal and most importantly, what to do once they discover that it's illegal or they find out that the peer or a colleague or someone that's actually above them [00:32:30] is doing this, which is the right pathway to report it, reserve the evidence, and then hopefully apply for leniency before the agency.

Miguel Flores: Okay. Thank you, Victor. And for both of you or for any of you that want to answer this one, what's your favorite success story, a company that turned things around and became a model of compliance?

Viviana Blanco ...: In our case, we have [00:33:00] seen real progress in sectors like cement and pharmacies, where companies have stretched their compliance programs and show genuine openness to dialogue. In merger reviews, for instance, it's increasingly common for parties to include compliance commitments in the remedy proposals to prevent collusion. This reflects, I think, a cultural chief that prevention [00:33:30] is now seen not only as a regulatory obligation, but as a strategic advantage.

Miguel Flores: And Victor?

Victor Meyer: From our side, I'd argue that most companies that are sanctioned for cartel conduct are success stories, because it's very rare that we... It does happen, but it's very rare that we investigate them again, because we find more evidence that they were doing it again. [00:34:00] But it's very rare. It does happen, but it's very, very rare. I think that particularly every single one of our leniency applicants has been a success story, and that's I think the biggest... It means that things are working well, the fact that we do not have many repeat players on our investigations. It's very clear, and I love when, particularly when this happens, when we have a leniency applicant [00:34:30] that cleans out. So you commonly see that they're reporting their conduct in different industries. That I

think is the best possible solution. And it's extremely helpful for us and certainly commendable to these companies.

Miguel Flores: Thank you. Now, talking about real life examples, let's imagine a multinational company facing a cartel investigation in both Mexico and Costa Rica. [00:35:00] Victor, what's the smartest move they could make in Mexico to improve their outcome?

Victor Meyer: Number one, apply for leniency. That's the go go, especially now that we have different types of leniency, where if you apply during an investigation, you're not going to be able to acquire the full benefit of 100% reduction. You're going to get a 50% reduction. So you're going to get type B. So if there's an investigation, it means that either there's already [00:35:30] a leniency applicant or we already have evidence to go against you. So apply for leniency. That's the first thing that they have to do. And second, it's cooperate with the investigation. Maybe you don't want to apply for leniency. I can understand that, but do cooperate with the investigation, because sometimes as the fines for not cooperating are extremely high, and especially with the new changes that we had to our law, they're going to be extremely high. So those are my two big advices for any company [00:36:00] that's facing an investigation.

Miguel Flores: Great. Thank you. And Viviana, what's the best way to cooperate with Coprocom in Costa Rica?

Viviana Blanco ...: Maybe the best approach is early, open and structured communication. Our leniency program clearly explains how to apply, what information to submit and what benefits are available. When firms come early before positions harden or evidence becomes augmented, [00:36:30] the process is more efficient for everyone. Companies can also submit formal consultations to the authority or request in house training. These preventing tools help avoid risky decisions and build a culture of compliance. We receive a lot of consultations from economic agents when they don't know if they are in risk of [00:37:00] having an anti-competitive practice. So it's very common for the authority to receive this type of consultations. And I think early cooperation consistently leads to clearer procedures, fewer disputes, and better outcomes.

Miguel Flores: Great. Great advice. And for both of you or any one of you that want to answer this question, any what not to do stories from companies who have made [00:37:30] things worse for themselves?

Viviana Blanco ...: Well, I can start. I think there are a few strategies that consistently end up harming the company. First, procedural obstruction. For example, filing cascading appeals, delaying hearings or refusing to cooperate only prolongs the process and [00:38:00] signals bad faith from the perspective of the authority. Second, withholding information or providing incomplete answers. Authorities usually obtain the information anyway through procurement records or third party data or digital analysis. So it's better to cooperate and give the information complete. Third, providing false information. This is [00:38:30] the

most damaging, I think. The true always emerge through inconsistencies, metadata or third party evidence. And in this case, reputational harm often exceeds the sanction and can last for years.

Miguel Flores: That's very true.

Viviana Blanco ...: Yes.

Miguel Flores: And Victor?

Victor Meyer: I would have to agree with Viviana, just not cooperating during an investigation. We've had [00:39:00] so many horrible stories, where companies refused to even provide the information we requested, or they refused to bring forth their employees for interviews, and they ended up with multimillion, well, not dollars, but Peso fines that really, really, really brought them down. So they think that this would be like any other legal matter or dealing with other sorts of authority, [00:39:30] but that's not the case. And as Viviana has just said, we're going to find the evidence, even if you don't come and cooperate with us and you're just going to get a really, really, really, really high fine that maybe... And maybe if you had cooperated with the authority, you wouldn't even have been fined for the cartel and you're getting a fine for not cooperating with authority. I think that's the biggest what not to do and be very careful of that.

Miguel Flores: [00:40:00] Thank you. Thank you for sharing that. Well, we are closing now and I want to give you a huge, huge thanks to Viviana Blanco and Victor Meyer for sharing their stories and wisdom in this episode. And next time we'll tackle abuse of dominance and exclusionary conduct. Don't miss it. Subscribe, share, and stay cartel free. Thank you very much.

Victor Meyer: Thank you, Miguel.

Viviana Blanco ...: [00:40:30] Thank you, Miguel.

Miguel Flores: [foreign language 00:40:40].

Viviana Blanco ...: [foreign language 00:40:40].

Miguel Flores: [foreign language 00:40:40]...