A major step in the fight against cartels

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An effective policy for fighting cartels must act on three fronts: repression in the administrative sphere; repression in the criminal sphere; and compensation in the civil sphere, so that people injured by the activities of a cartel may submit claims for compensation for damages.

On October 8th, the Ministry of Justice announced an exciting initiative directed to the second of the three fronts: the National Strategy to Fight Cartels ("Enacc"). This Brasilia Declaration sets out guidelines for creating a broad network of cooperation between government agencies for implementation of the policy. The most exciting aspects of the Enacc initiative are the decentralization idea and the fact that the Public Attorney's Office will be cooperating fully in activities directed to achieving the proposed objectives. Enacc represents an important step toward guaranteeing that the related regulations will act as major deterrents, increase the number of complaints, and make it more likely that there will be more frequent and severe criminal punishments.

The first step was taken some time ago when the Federal Police were incorporated into the investigations carried out by the Office of Economic Law (SDE). Federal Police cooperation has made the threat of punishment more vividly clear to offenders, lending speed and quality to the search for evidence.

Punishment

Government action, however, has depended almost exclusively on initiatives centralized in the SDE, which has been instrumental in repressing cartels. Although there have been a few criminal convictions, the possibility of punishment (as well as civil judgments) still

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seems to weigh little in decisions to take part in a cartel. Administrative centralization, furthermore, reduced the incentives to comply with regulations, because there are not enough staff to effectively monitor market competition in a country with the peculiarities and territorial dimensions of Brazil.

That is why the role of the Enacc — with the commitment of cooperation from the Public Attorney's Office and continued interaction with SDE technical staff — may be extremely effective. I would like to stress at least two positive examples: Experience in the field of consumer and environmental law and the history of repressing white-collar and corruption crimes in Brazil show that the involvement of the Public Attorney's Office is essential to making effective laws the enforcement of which clashes with powerful social, economic, or political interests.

Learning exercise

More intense routine action by the Public Attorney's Office in the fight against anti-competitive behavior may also trigger collective learning processes that may be mutually complementary and reinforcing — first, within the office itself, as its members gradually become familiar with the new terminology and new tools of analysis, and then among magistrates themselves. Their newly acquired knowledge will also be beneficial for judging cases that raise different issues but whose solution requires basic statistical and economics knowledge — any case, in other words, that has economic consequences.

Finally, the visibility of the Public Attorney's Office will promote and disseminate throughout civil society the knowledge that

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cartels are a cunning means of extracting wealth from victims and deserve to be denounced and punished. There is a very short distance from that to the idea of civil actions for individuals to seek compensation from offenders.

The positive ramifications of the Ministry of Justice's initiative in adopting Enacc are numerous. Provided that the necessary measures, such as personnel training and the assignment and coordination of mandates, are taken, the benefits will far exceed the costs. Obviously, implementation requires more than political good will. To transform words into deeds and to exploit its full learning potential, this proposal requires resources and commitment from all parties. Let's hope they materialize.