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Basque Competition Authority

“Close” application of competition law: The
advantages of decentralized enforcement.

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My thesis:

Only a decentralized enforcement of competition law can lead to a really efficient application of the competition systems.

Therefore the cost of de-centralization is much lower than the increase in benefit created by the model.

How will I develop it

- Spain as case for analysis
- Pros of decentralization
 - The biggest advantage
 - Several examples of the Basque Antitrust Authority
- Risks of decentralized systems.
 - Ways to reduce them
- Conclusion

Spain

- It is an administratively decentralized system.
- There are 17 regions (two autonomous cities)
- Each region has a statute of autonomy and capacity to legislate in certain matters. The powers of enforcement are very developed.
 - The constitution does not create the system of decentralization in the whole country, the statutes define each situation.

Antitrust powers

Decision of the Constitutional Court 11th november 1999, Cases 2009/1989 and 2027/1989 (Catalonia and Basque Country).

- The Court recognized the power to enforce the national rules but not to create new regulations based on the competence on internal commerce.
- After this judgment Basque Country, Cataluña, Galicia, Andalusia created their own antitrust authorities and after this 10 others created their own.
- The **structures** are different and they have big differences in **efficiency** based on different factors: social and economic structure of the region, budget devoted to the agencies, independency and technical skills of the councils.

Why is this system advisable?

- The agencies have closer knowledge of the **leading economic sectors** of the region and are in a better position to look for the most harmful infringements. (transport, pharmacies...)
- They can deal with infringements of **smaller** companies that would fall out the scope of interest of a national authority but that are very harmful for the society and reach more citizens (school uniforms and materials, bakeries, funeral undertakings, driving schools, professional bodies...).
- They can contribute in a much better position to the **promotion of the competition culture** in the more efficient way (universities, business, high school programs, ...).
- There is a **political positive effect** of a report coming from the region instead of coming from the central administration or outside the country.

The biggest advantage of these agencies

- Advocacy of competition policy in relation with the administration
 - Public procurement
 - Regulation

A. Public procurement

Classic bid rigging cases

- Problems created in the design, enforcement and control of the public procurement procedures

Different levels

- Municipal level

- Pinosolo: Sports facilities where the company that was advising the administration in the creation and design of the procedure and the evaluation, was proved to have an agreement with the winning company before the opening of the procedure.
- Creation of clauses that restrict competition: sanitary disposals
- Incorrect use of in-house providing

- Provincial level.

Transport of persons in one of the provinces. The administration gives 51% to the price (being this the only arithmetic criteria of calculation but the way of calculation shows that the difference between the lowest and the highest price is 6.

- Regional level.

Basic and High school lunches. Begins with a bid rigging case that also shows that the criteria included for finance and technical capacity are much higher than those required to pay the service and the worry of problems in the enforcement leads to decision in the public procurement process that closes and alters the market.

B. Regulation

- **Regional level**
 - Sports
 - Limits to freedom in commerce
 - Ports
- **Provincial:**
 - Imposition of the provincial collective bargaining agreement in public procurement in the province
- **Municipal**
 - Taxi drivers limiting the number of hours of service “in order to share the demand among the offerors”.

Of course there are risks

- Political or lobby control of the agencies.
 - Is it the closer the easier??
- Lack of technical skills?
- Lack of independence?
- Lack of budget?
- Not uniform application?
- Parcelling of the market
- In-sufficient structure

How to minimize them:

- Convincing politicians and population of the cost of non competition
- With sufficient structures with power for sanctioning and advocacy
- With flexible and reasonable systems of cooperation between agencies.
- With motivated, impartial and technically prepared members of the panels

Efficiency in application would be easier with authorities that are

- Close from the market,
- Close from the consumers,
- Close from the Administrations.



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- Ciclo de conferencias: Competitividad y Competencia. Enero- Mayo de 2015, Bilbao
- The Basque Competition Authority & Deusto School of Law Review call for Submissions to the Estudios de Deusto. (english)
- La Autoridad Vasca de la Competencia pone en conocimiento de la Fiscalía determinadas informaciones aparecidas en Medios de Comunicación en relación al expediente de Comedores Escolares
- Cierre convencional del expediente sancionador de servicios farmacéuticos en residencias de personas mayores de la CAPV
- Abierto expediente a las empresas que prestan servicio de comedores escolares
- La Autoridad Vasca de la Competencia abre expediente sancionador a dos empresas del puerto de Bilbao
- La AVC presentó sus estrategias de comunicación en la Asamblea de la UNCTAD (Naciones Unidas)

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