

# COMPETITION TRENDS IN LATIN AMERICA AND THE CARIBBEAN 2022

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# Preface

On behalf of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI), I would like to thank the Organisation for Economic Co-operation and Development (OECD) for the invitation to prepare this preface to this report entitled “Competition Trends in Latin America and the Caribbean 2022”.

I will begin by highlighting that this regional report provides key data related to cases decided by the competition authorities in Latin America and the Caribbean. The data relates to the mandate of competition authorities to protect competition, as well as the legislative changes in the region to strengthen the mechanisms for competition protection. In addition, the report disposes of statistical data to assess recent trends such as the fines imposed by competition authorities and the budget evolution that countries have made to provide their competition authorities with more resources.

In the field of merger control, the report provides information related to merger control proceedings including the notification, which is the first stage for competition authorities to examine which transactions may lead to competition concerns, and consequently block or approve them, with or without restrictions. The competition analysis, as we know, involves several legal and economic elements that will determine the effects of the proposed transaction, the competitive constraints and alleged efficiencies in the market.

The trends related to anti-cartel enforcement is another part covered by the regional report, which includes comparisons between the enforcement numbers in Latin America and the Caribbean *vis-à-vis* the practice in OECD countries. In this regard, leniency programs emerge as fundamental tool to fight against cartels in the region. It is indeed an effective instrument, in which individuals or companies may inform competition authorities about the existence of a cartel in which they are part, engage in collaboration with public authorities, and benefit from full or partial immunity of the applicable sanctions. The cartel sanctions applied in the region by competition authorities is also present in the report, with comparisons to OECD averages.

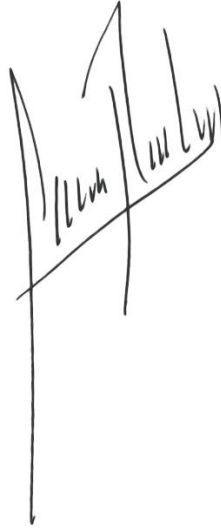
Still in the enforcement front, the OECD report provides information related to dawn raids and inspections to collect information in the premises of investigated companies. Through these practices, inspectors are able to examine documents that may lead to evidence of wrongdoing, such as physical or electronic files. In certain countries, they may also request explanations from the personnel of these companies. National and international experiences show that these inspections are one of the most effective tools to collect evidence, especially in cartel cases, since they benefit from the so-called surprise effect. Indeed, several pieces of evidence are obtained thorough this mechanism, which were key to sanction cartels that harmed a large number of consumers in the region.

In relation to abuse of dominance, when the offender enjoys a dominant position and have the ability to unilaterally influence the conditions of market, the report indicates recent trends on this matter, including the number of investigations initiated, the decisions, and evolution of the fines imposed in the region, in comparison to OECD countries.

In addition to enforcement actions and trends, the report provides information related to the competition advocacy, which may help to prevent or to mitigate negative effects of distortions to competition, without a

particular sanction. In particular, the regional report collects data related to market studies, which are a useful tool for issuing recommendations, after identifying concerns in a certain market or sector.

I kindly invite you to enjoy the reading of this important study, which constitutes a valuable contribution to the academic community and helps to disseminate the work that competition authorities ensure in the region, within their institutional mandates to protect and promote competition policy in their countries.

A handwritten signature in black ink, appearing to read 'Julián Palacín Gutiérrez', written in a cursive style. The signature is positioned above a horizontal line that extends to the left and then continues as a vertical line downwards.

**Julián Palacín Gutiérrez,**  
President of INDECOPI, Peru

# Foreword

Competition law has significantly progressed in Latin America and the Caribbean (LAC) over the last two decades with an increasing number of countries adopting competition laws and others strengthening enforcement. The field of merger control provides an illustrative example of this expansion: the region represents approximately 20% of total merger control regimes around the globe, which indicates the region's growing importance globally for future developments in competition law and policy.

Competition enforcement in the region has benefitted significantly from international co-operation, through mechanisms such as the OECD-IDB Latin American and Caribbean Competition Forum (LACCF) and the OECD Regional Centre for Competition (RCC). Such co-operation and sharing of practices and experiences has increased consistency between jurisdictions, supporting convergence in competition law and policy, and allowing for the creation of a more global playing field.

Identifying global and regional trends in competition can benefit international co-operation, as they provide an important tool for developing effective policies, drawing on good practices within and outside the region. This report presents some of the main competition enforcement trends in Latin America and the Caribbean based on an analysis of data from a total of 14 OECD and non-OECD jurisdictions in the region from 2015 to 2020, who together represent approximately 85% of both GDP and population in the region. By providing multi-year data on competition enforcement indicators, this report can support informed policy making and contributes to the continual improvement of competition law and policy in the region.

The OECD Regional Centre for Competition (RCC) for Latin America and the Caribbean contributed to the development of this report by connecting competition authorities to collect data and serving as a hub for competition policy in the region. The RCC is a joint venture between the OECD and the Peruvian INDECOPI, launched in November 2019 in Lima, Peru. Since then, it has benefitted more than 1 000 participants, including competition officials, regulators and judges. It provides a training centre for capacity-building activities related to competition for 25 jurisdictions in the region.

This report was prepared by Wouter Meester, project leader; Aura García Pabón, Daniel Westrik and Eloïse Bernadou, all of the OECD Competition Division. It was developed in close collaboration with Paulo Burnier da Silveira, Senior Competition Expert. The report benefitted from comments and suggestions by Antonio Gomes, Deputy Director of the OECD Directorate for Financial and Enterprise Affairs; Ori Schwartz, Head of the OECD Competition Division; Antonio Capobianco, Deputy Head of the OECD Competition Division; and Lynn Robertson, Competition Expert. The report was prepared for publication by Erica Agostinho.

We take this opportunity to thank the individual competition authorities who generously provided the information on which much of the analysis is based, namely those from Argentina, Barbados, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Paraguay and Peru.

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# Executive summary

This report identifies competition enforcement trends in Latin America and the Caribbean (LAC), based on data from the 14 jurisdictions in the LAC region that contribute to the OECD CompStats database. The data covers the years 2015-20 and includes variables on competition authorities' resources, cartels, abuse of dominance, mergers and advocacy efforts.

Data on competition enforcement indicators can support informed policy making and contribute to the continuous improvement of competition law and policy. This descriptive analysis does not determine causal relationships but instead highlights overall trends in the region and presents some correlations. The report is structured as follows: the evolution of competition law and policy in LAC; competition authorities' resources; merger control, cartel enforcement; enforcement of abuse of dominance; and, advocacy activities.

**General trends** – After a first wave of competition regimes in the 1990s in LAC, the past 20 years have witnessed the enactment of many new competition laws, substantial changes to existing ones and a significant number of competition authorities being established, showing the growing importance of competition enforcement in the region.

There has been an important effort to consolidate the competition culture and allow for more effective enforcement. Some jurisdictions have implemented institutional reforms, for instance, to establish greater independence for the competition authority or increase its competition enforcement powers. Others amended the substantive provisions of their competition laws, such as broadening the scope for enforcement. These reforms mainly involved, but were not limited to: (i) merger control regimes; (ii) leniency programmes; and (iii) investigative and sanctioning powers.

General trends in LAC with respect to competition resources and enforcement are in many cases similar to those found for the 73 jurisdictions analysed in the 2022 edition of OECD Competition Trends (OECD, 2022<sup>[1]</sup>). It is important to highlight that most of these trends are driven by a few jurisdictions, as enforcement activity is highly concentrated.

**Resources** – Competition authority resources in LAC increased over the period 2015 to 2020, with average budgets growing in most jurisdictions. The total competition budget increased by 18%, equivalent to a compound annual growth rate of 3.4%. However, most of this growth occurred between 2015 and 2018, with the overall competition budget decreasing in 2019 and 2020.

Similarly, the total number of competition staff in the region increased by 5% over this period, a compound annual growth rate of 1%. This increase was primarily driven by two jurisdictions who hired a large number of additional competition staff in 2017. Just over one-third of the jurisdictions in the region experienced a decline in the number of competition staff over the entire period.

Overall, competition resources in LAC are lower than the OECD average. The data show a positive correlation between the age of an authority and its resources, indicating that resources increase as competition authorities and the competition culture become more established.



**Mergers** – All LAC jurisdictions in the CompStats database except one have a merger control regime in force. Although their exact design differs, many regimes share similar characteristics in that: they follow a mandatory pre-merger notification system; charge a filing fee; use turnover as a merger notification threshold; adopt a two-phase regime; and, offer a simplified procedure for presumed harmless cases. The number of merger notifications and merger decisions increased from 2015 to 2018 before decreasing in 2019 and 2020. The decrease was steepest in 2020, potentially due to the disruption caused by COVID-19.

**Cartels** – Cartel enforcement in LAC was highly concentrated. One jurisdiction undertook nearly two-thirds of all ex-officio cartel investigations in the region from 2015 to 2020, while two jurisdictions represented 78% of all cartel decisions over the same period. The average number of ex-officio cartel investigations was lower than the OECD average over this period, while the average number of cartel decisions was similar to the OECD average.

As in the rest of the world, the number of leniency applications decreased in LAC, despite changes to several LAC leniency programmes in recent years. The percentage decline in leniency applications was slightly larger in LAC than in OECD jurisdictions, although of a similar magnitude. They declined by 61% in OECD jurisdictions between 2015 and 2020 compared to 66% in LAC.

While most LAC jurisdictions rarely use their dawn raid powers for cartel cases (or abuse of dominance cases), this has decreased even further in recent years.

Cartel fines in LAC were relatively low. They amounted to less than one-fifth of average cartel fines in OECD jurisdictions from 2015 to 2020. Average cartel fines in LAC jurisdictions steadily increased from 2015 to 2018, before declining in 2019 and 2020. Annual average cartel fines were lowest in 2020. Imposing fines on individuals in cartel cases is relatively common in LAC jurisdictions. The percentage of cases where individuals were fined was typically slightly higher than the OECD average, peaking in 2016 at 80%.

**Abuse of dominance** – Abuse of dominance enforcement in LAC was highly concentrated. Two jurisdictions were responsible for more than two-thirds of abuse of dominance decisions. The average number of abuse of dominance decisions in LAC slightly decreased from 2015 to 2020. Nevertheless, the average number of abuse of dominance decisions in LAC jurisdictions was significantly higher than the OECD average, with LAC jurisdictions taking on average six more decisions per year than the OECD average.

Although the average number of abuse of dominance decisions was materially higher in LAC than the OECD, the share of these decisions that used settlements or commitments was lower. Average fines for abuse of dominance in LAC amounted to only 3% of the OECD average from 2015 to 2020.

**Advocacy** – Similar to other parts of the world, competition authorities in LAC used market studies to proactively identify whether there are competition concerns in a specific market or sector, or to enhance their knowledge of a particular industry. While market studies can vary in duration and intensity, nearly all competition authorities in the region performed a market study from 2015 to 2020. However, most market studies took place in a handful of jurisdictions, with five jurisdictions representing almost 70% of all market studies from 2015 to 2020.

# 1 Introduction

The importance and application of competition law and policy in the LAC region has grown significantly in the past two decades, as countries have engaged in several reforms in favour of open market economies, with a prominent role for competition in achieving efficiency and promoting strong and sustainable economic development (OECD, 2012<sup>[2]</sup>). Several jurisdictions in the region have adopted their first competition law and established their new competition authority in the past 20 years, while those with an already well-established competition regime and authority have implemented significant amendments to their existing competition laws and regulations.

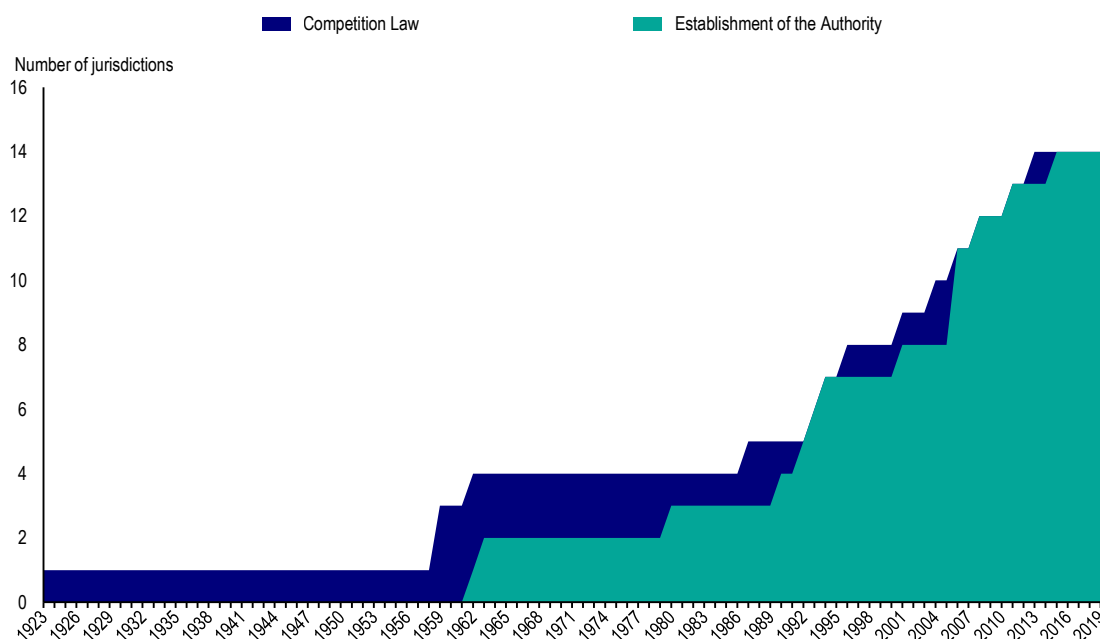
This report presents some of the main competition enforcement trends in LAC based on an analysis of data from 14 jurisdictions<sup>1</sup> in the region from 2015 to 2020, who represent approximately 85% of both GDP and population in the region.<sup>2</sup> By providing multi-year data on competition enforcement indicators, this publication can support informed policy making and contributes to the continuous improvement of competition law and policy in the region.

This section highlights some of the main changes in competition law and policy in the region over the past 20 years, outlining the role that the OECD has played in this evolution, and discusses high-level trends.

## 1.1. The emergence of new competition regimes in the region

LAC consists of competition regimes and authorities of different experience, some having been established fairly recently and others having been active for decades. Consequently, the average age of the 14 competition authorities in the region that participate in OECD CompStats database is 27 years, with a median age of 24.5 years. The *Comisión Nacional de la Competencia de Paraguay* is the youngest authority, established in 2015<sup>3</sup> and the *Conselho Administrativo de Defesa Econômica* in Brazil is the oldest, created in 1962.<sup>4</sup> From our subset of 14 jurisdictions, five introduced a competition law regime between 2002 and 2022,<sup>5</sup> while six new competition authorities were established in the same period,<sup>6</sup> as can be seen in Figure 1.1.

Figure 1.1. The evolution of competition law and enforcement in LAC and the rest of the world



Source: OECD CompStats database, LAC jurisdictions.

The mix of younger and older competition regimes, as well as some other potentially relevant factors,<sup>7</sup> in the region have led to differing levels of competition enforcement, which will be discussed in further sections of the report.

The new regimes established in the past 20 years in LAC include:

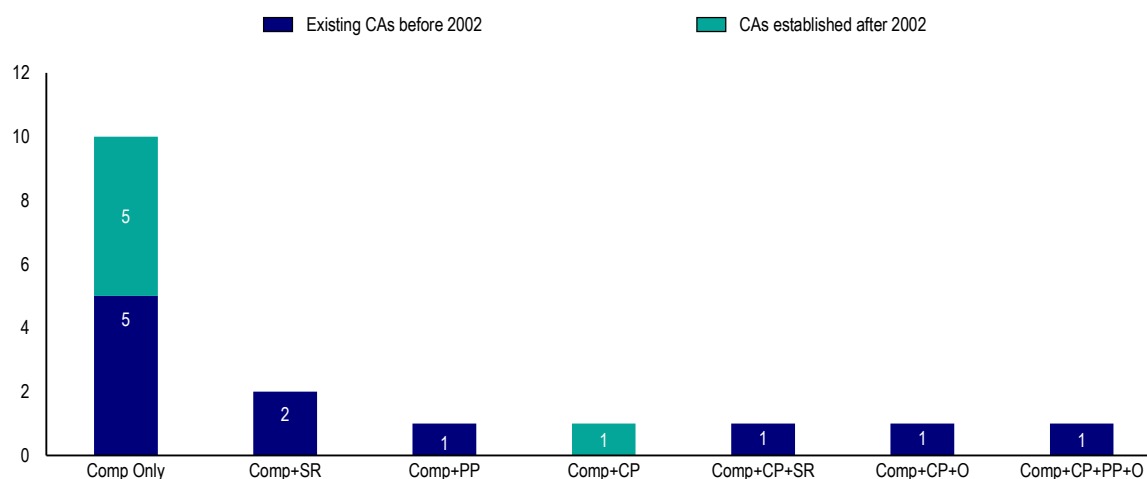
- El Salvador's first competition law was enacted in 2004 and took effect in January 2006, when the Superintendence for Competition was also established. This law underwent significant amendments in 2007, mainly aiming at increasing the enforcement powers of the authority<sup>8</sup> (OECD, 2008<sub>[3]</sub>).
- In Nicaragua, Law 601 for the promotion of competition was enacted in September 2006 and has been reformed three times since.<sup>9</sup>
- In Panama, although the first competition law was enacted in 1996, the competition authority (ACODECO) was created in 2006.<sup>10</sup>
- The Dominican Republic enacted Law 42 for the Defence of Competition in 2008. However, its entry into force was conditioned on the appointment of the Directive Committee and the Executive Director of the National Commission for the Defence of Competition,<sup>11</sup> which happened in 2011 and 2017, respectively, meaning that the law entered into full force only in 2017<sup>12</sup> (OECD, 2017<sub>[4]</sub>).
- In Ecuador, the Organic Law of Regulation and Control of Market Power was approved in 2011, establishing the Competition Authority (*Superintendencia de Control del Poder de Mercado*), which has been active since 2012.
- Paraguay was one of the last countries in LAC to pass its law on competition. Law 4 956 was enacted in 2013 and the competition authority in charge of its enforcement (*Comisión Nacional de la Competencia – CONACOM*) was established by Decree 3 842 in July 2015.

The newly established authorities in the past 20 years have also altered the mix of mandates or responsibilities of the competition authorities in the region. Almost all new authorities from the jurisdictions

analysed (5 out of 6) have competition powers only (see Figure 1.2), as a result of which now the large majority of competition authorities in LAC (10 out of 17) have solely competition powers. Consumer protection is the most common mandate added to a competition authority's responsibilities in the region. However, except for Panama's ACODECO, a newly established authority, the consumer protection is often combined with other responsibilities (OECD, 2012, p. 9<sup>[2]</sup>).

**Figure 1.2. Mandates of the 17 competition authorities in the region**

Comp=Competition, SR=Sector Regulator, PP=Public Procurement, CP=Consumer Protection, O=Others



Note: This graph presents information for the 17 competition authorities in the 14 LAC jurisdictions (The CompStats database includes two authorities with competition powers in Chile, Costa Rica and Mexico).

Source: OECD CompStats database, LAC jurisdictions.

## 1.2. The OECD support to competition law and policy in the region

In the past 20 years, the OECD has played an important role in the region by promoting best practices in competition policy through analytical work, capacity building and in-country projects.

### 1.2.1. Analytical work

The OECD actively encourages governments to tackle anti-competitive practices and fosters market-oriented reform throughout the world. Three jurisdictions in LAC have become OECD Members in the past 20 years: Chile (2010), Colombia (2020), and Costa Rica (2021), joining Mexico, who has been a member since 1994. Moreover, in 2022, three countries in the region were invited by the OECD Council to start their accession process: Argentina, Brazil and Peru.<sup>13</sup>

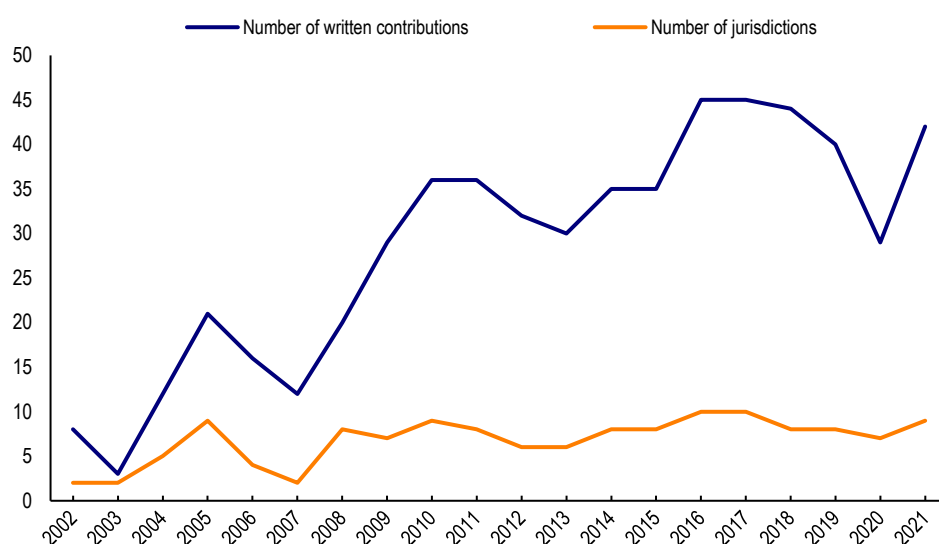
The OECD Competition Committee plays a key role by promoting regular exchanges of views and analysis on competition policy issues. Brazil is an Associate to the Competition Committee, while Argentina and Peru have status of participants to it. Other scenarios where these conversations happen are the OECD Global Forum on Competition (GFC) and the Latin American and the Caribbean Competition Forum, among others.

Since 2003, the OECD and the Inter-American Development Bank (IDB) jointly launched the Latin America and the Caribbean Competition Forum (LACCF), aiming at fostering co-operation in LAC and promoting dialogue, consensus building and networking among the policy makers and enforcers in the region (OECD, 2022<sup>[5]</sup>). The forum brings together competition officials and experts in LAC on a yearly basis to share best

practices and trends in the region. It also involves OECD Member Countries from other regions, as well as international organisations, to share their views and experiences. Over time, 25 countries from the region have participated in the meetings of the LACCF, including generally submitting written contributions to take part in the discussions. Within the framework of the LACCF, the OECD has also conducted multiple peer reviews of competition laws and policies in the region, which will be detailed below.

In the past 20 years, the participation of LAC jurisdictions in the activities, meetings and roundtables of the OECD Competition Committee, the GFC and the LACCF has been increasingly active. Figure 1.3 summarises the written contributions by jurisdictions in the region to these fora in the past 20 years. It demonstrates that jurisdictions in the region have submitted hundreds of written contributions,<sup>14</sup> and this number has been growing steadily. Between 2002 and 2006, jurisdictions in the region submitted 60 written contributions, while in the past five years (2017-21), this number increased to 200 contributions.

**Figure 1.3. Contributions from LAC jurisdictions to OECD roundtables**



Note: These numbers include written contributions to OECD roundtables held in the context of the Competition Committee, the GFC or the LACCF. It should be noted that the number of roundtables for which jurisdictions were invited to submit contributions, especially for the LACCF and GFC, have also increased over time since the early 2000s.

Source: OECD analysis.

### 1.2.2. Continuous capacity building

In November 2019, the OECD and INDECOPI launched the OECD Regional Centre for Competition (RCC) in Latin America, further expanding the OECD's work in the region by offering capacity-building activities for competition officials from the region. The RCC works to connect different competition authorities and jurisdictions, promoting regional co-operation and enhancing their understanding of the importance of developing a sound competition policy (OECD, 2019<sup>[6]</sup>). Since 2019, the RCC training activities have benefitted more than 1 000 civil servants from 25 jurisdictions in the region, including competition officials, regulators and judges.

### 1.2.3. Reviews, reports and projects

The OECD has conducted a series of reviews of competition law and policy regimes in LAC since 2003. Such peer reviews provide jurisdictions with insights and recommendations on how to support pro-competitive policies and regulatory reforms, which in turn will promote economic growth in the region

(OECD, 2021, p. 5<sub>[7]</sub>). In the past 20 years, the OECD has conducted 33 peer reviews, which are summarised in Table 1.1.

**Table 1.1. OECD Peer Reviews in the LAC CompStats jurisdictions between 2002 and 2022**

Jurisdiction	Number of peer reviews	Date
Argentina	3	(OECD, 2006 <sub>[8]</sub> ), (OECD, 2007 <sub>[9]</sub> ), (OECD, 2012 <sub>[10]</sub> )
Brazil	5	(OECD, 2005 <sub>[11]</sub> ), (OECD, 2007 <sub>[9]</sub> ), (OECD, 2010 <sub>[12]</sub> ), (OECD, 2012 <sub>[10]</sub> ), (OECD, 2019 <sub>[13]</sub> ).
Chile	4	(OECD, 2004 <sub>[14]</sub> ), (OECD, 2007 <sub>[9]</sub> ), (OECD, 2010 <sub>[15]</sub> ), (OECD, 2012 <sub>[10]</sub> )
Colombia	3	(OECD, 2009 <sub>[16]</sub> ), (OECD, 2012 <sub>[10]</sub> ), (OECD, 2016 <sub>[17]</sub> )
Costa Rica	2	(OECD, 2014 <sub>[18]</sub> ), (OECD, 2020 <sub>[19]</sub> )
Ecuador	1	(OECD, 2021 <sub>[7]</sub> )
El Salvador	3	(OECD, 2008 <sub>[3]</sub> ), (OECD, 2012 <sub>[10]</sub> ), (OECD, 2020 <sub>[20]</sub> )
Honduras	2	(OECD, 2011 <sub>[21]</sub> ), (OECD, 2012 <sub>[10]</sub> )
Mexico	4	(OECD, 2004 <sub>[22]</sub> ), (OECD, 2007 <sub>[9]</sub> ), (OECD, 2012 <sub>[10]</sub> ), (OECD, 2020 <sub>[23]</sub> )
Panama	2	(OECD, 2010 <sub>[24]</sub> ), (OECD, 2012 <sub>[10]</sub> )
Peru	4	(OECD, 2020 <sub>[25]</sub> ), (OECD, 2007 <sub>[9]</sub> ), (OECD, 2012 <sub>[10]</sub> ), (OECD, 2018 <sub>[26]</sub> )

Note: The list of Peer Reviews contains both those performed by the OECD Competition Committee and those jointly conducted by the OECD and the IDB within the framework of the LACCF.

Table 1.1 includes: (i) a follow-up report launched in 2007 that assessed the impact of five previous peer reviews and recommendations in Argentina, Brazil, Chile, Mexico and Peru (OECD, 2007<sub>[9]</sub>); and (ii) a report launched in 2012, as part of the LACCF's 10th anniversary, that pertains to a follow up from on nine peer reviews that had been reviewed by then.<sup>15</sup>

In addition to the many peer reviews, the OECD has undertaken numerous country and sector-specific projects in the LAC region over the past 20 years. Examples include: work on fighting bid rigging in public procurement;<sup>16</sup> work on competition and market studies in Latin America;<sup>17</sup> a review of relevant markets in telecommunications in selected OECD jurisdictions and Colombia (OECD, 2014<sub>[27]</sub>); and competition assessment reviews in key sectors.<sup>18</sup>

Overall, the work described has either contributed to the introduction of a first competition law, the amendment of an existing law or the implementation of best practices regarding competition policy in a number of jurisdictions.

### 1.3. Key regional developments in the past 20 years

Many jurisdictions in LAC have significantly changed their competition law and policy regimes since 2002. Some have implemented institutional reforms to, for instance, establish greater independence for the competition authority or increase its competition enforcement powers. Others amended the substantive provisions of their competition laws, such as broadening the scope for enforcement. This section summarises, non-exhaustively, some of the major milestones in the 14 CompStats jurisdictions in LAC in the past 20 years, divided into two themes: institutional changes and improvements in substantive provisions.

#### 1.3.1. Institutional changes in existing regimes

Since 2002, some of the LAC-jurisdictions have reformed their competition laws to implement changes to their institutional set-up, including concentrating all enforcement powers into a single competition authority and establishing such authority as an independent entity. This happened in the case of Peru, which in 2008, through Legislative Decrees 1 033 and 1 034, established INDECOPI as an authority with functional,

technical, economic, administrative and budgetary autonomy. Likewise, Colombia, in 2009, introduced many structural changes in the competition regime through Law 1340, including the designation of the Superintendence of Industry and Commerce as the only competition authority in the country. Similarly, Law 12 529 of 2011 in Brazil, which entered into force in 2012, changed the structure of the Brazilian System for the Defence of Competition. The new law most importantly concentrated the enforcement activities into a single competition authority (the Administrative Council for Economic Defence – CADE) with an internal division between investigative and decisive bodies, instead of the previous three different entities, and a clear procedure that included long-term appointments for commissioners.

In several jurisdictions, changes in institutional set-up were directly prompted by OECD recommendations. For instance, in Mexico, two peer reviews – one in 2004 and a follow-up in 2007 – had identified a lack of independence and autonomy of the competition authority as some of the main weaknesses in the country's competition policy (OECD, 2004<sup>[14]</sup>; 2007<sup>[9]</sup>). These weaknesses were addressed through a constitutional reform in 2013 and the subsequent enactment of a new competition law in 2014. First, the constitutional reform created the Federal Economic Competition Commission (COFECE) and the Federal Institute of Telecommunications (IFT, the telecommunications sector regulator with competition powers).<sup>19</sup> While there was already one authority that enforced competition in the country since 1993 (COFECO), it was only until the establishment of COFECE and IFT that the competition authorities in Mexico became constitutionally autonomous and independent.<sup>20</sup> Consequently, following the creation of COFECE and IFT, the enactment of the new competition law in 2014 further effectuated their independence and autonomy by making procedural changes with respect to the independence of the commissioners of COFECE in the decision-making process and by resolving issues between the two competition authorities regarding their powers and guarantee transparency on their actions (Gobierno de Mexico, 2013<sup>[28]</sup>).

Similarly, Costa Rica followed the OECD recommendation from 2014 to update the competition regime (OECD, 2004<sup>[22]</sup>; 2007<sup>[9]</sup>). The OECD had identified a large number of markets exempted from competition law enforcement, a lack of independency of the competition authority COPROCOM, and the need for a proper investigative and sanctioning procedure that applies to competition law (OECD, 2014<sup>[18]</sup>). In 2019, as part of the accession process of Costa Rica to the OECD, a new competition law was enacted.<sup>21</sup> The main objective of the new law was the modernisation of the functioning of the Commission for the Promotion of Competition (COPROCOM), which now had legal, administrative, technical and budgetary independence.

### **1.3.2. Substantive changes in existing laws**

Several jurisdictions in LAC have undertaken significant reforms of substantive provisions. These reforms involved mainly but were not limited to: (i) merger control regimes; (ii) leniency programmes; and (iii) investigative and sanctioning powers.

#### *(i) Introduction and reforms of merger regimes*

Nearly all jurisdictions in LAC in the OECD CompStats database (13 out of the 14) have a merger control regime that applies to all sectors in the economy. The Dominican Republic is the only analysed LAC jurisdiction with no merger control regime. Jurisdictions such as Chile, Costa Rica, Ecuador and Peru<sup>22</sup> established their merger regimes within the last 20 years, while others like Brazil, Colombia, Mexico and Panama updated theirs to incorporate best international practices and recommendations. Table 1.2 summarises the year of introduction of the 13 merger regimes in LAC.

**Table 1.2. Year of introduction of merger regimes in LAC**

Jurisdiction	Year introduction of the merger regime
Argentina	1999
Barbados	2001
Brazil	1994
Chile	1973
Colombia	1959
Costa Rica	2012
Ecuador	2011
El Salvador	2004
Mexico	1993
Nicaragua	2006
Panama	2006
Paraguay	2013
Peru	2021

Source: OECD based on public information.

Jurisdictions such as Ecuador, El Salvador, Nicaragua, Panama and Paraguay introduced their merger regimes together with their first competition laws or the legislations that created their competition authorities. Others introduced them later or went from voluntary regimes to mandatory ones in the past 20 years, again often as a result of the recommendations issued by the OECD.

For instance, Chile, with the enactment of Law 20 945 of 2016, introduced a mandatory merger control for transactions exceeding certain turnover thresholds. According to the legislative history of the latest competition law, these reforms were implemented as a result of recommendations made by the OECD after an assessment of Chile's merger control regime (Gobierno de Chile, 2015<sup>[29]</sup>). The review of the merger control regime focused on the establishment of a transparent, effective and timely merger regime by law that included a selected notification mechanism and thresholds, a substantive test to assess the mergers' impact on competition and adequate enforcement tools (OECD, 2014, p. 5<sup>[30]</sup>).

Costa Rica established an ex-ante merger regime in 2012.<sup>23</sup> In its 2020 peer review of Costa Rica's competition law and policy, the OECD highlighted the importance of a suspensory regime that allows authorities not only to identify possible anti-competitive transactions but also empowers them to carry out the measures necessary to implement such transactions (OECD, 2020, p. 10<sup>[19]</sup>). The report emphasises how the enactment of the new competition law of 2019 sought to implement the Competition Committee's recommendations made during the accession process, and thereby to further align Costa Rica with OECD standards in the competition field. This new law established a two-phase, ex ante merger regime with suspensory effects and notification thresholds that refer to gross sales and assets, both combined and individual (OECD, 2020, p. 10<sup>[19]</sup>).

Peru's merger regime is the newest in the region. Its mandatory ex-ante notification regime was introduced by Law No. 31 112 of 2021 after the OECD had advocated for its introduction in the 2018 peer review of Peru's competition law and policy (OECD, 2018<sup>[26]</sup>).

While Brazil already had an ex-post merger control regime since 1994 (Conselho Administrativo de Defesa Econômica, 2013, p. 15<sup>[31]</sup>), among the main changes introduced in their competition law in 2012 was the adoption of an ex-ante merger control. One of the reasons for the change was such recommendation by the OECD in the peer review report in 2010 (OECD, 2010, pp. 29-30<sup>[12]</sup>).

Colombia also adjusted significantly its merger regime, first in 2009 by Law 1340, and posteriorly through Resolution No. 10 930 in 2015 to incorporate relevant recommendations made by the OECD.<sup>24</sup> This included (i) establishing more clarity and transparency on which revenues and assets are taken into



account for the calculation of whether transactions meet the notification thresholds and (ii) the establishment of a fast-track procedure for when market shares of the merging entities are less than 20% of the relevant market(s). Furthermore, Law 2010 in 2019 introduced filing fees for merger notifications.

Some other amendments of competition laws in LAC that relate to merger control include the enactment of Law 36 of 2018 in Panama, that regulates mergers in the mobile telecommunications sector aiming particularly at an equal distribution of spectrum; and the creation of a fast-track or simplified procedure for some transactions in Mexico in 2011<sup>25</sup> and Ecuador in 2020.<sup>26</sup>

### *(ii) Introduction and reforms of leniency programmes*

Another substantive area with significant changes in the past 20 years across LAC jurisdictions is leniency programmes. All-but-one jurisdictions (Brazil) in LAC with a leniency programme have introduced their programme during the past 20 years (see Table 1.3).<sup>27</sup> These programmes differ significantly in scope and design, but generally include (i) full immunity for the first applicant and fine reductions for subsequent ones, (ii) a marker system for applications, (iii) certain preconditions to apply and to be granted benefits, (iv) provisions on co-operation with the investigation, and (v) transparency and confidentiality measures.

**Table 1.3. Year of introduction of leniency programmes in LAC**

Jurisdiction	Year introduction of the leniency Programme
Argentina	2018
Brazil	2000
Chile	2009
Colombia	2009
Costa Rica	2019
Dominican Republic	2021
Ecuador	2016
El Salvador	2007
Mexico	2006
Nicaragua	2006
Panama	2007
Peru	2008

Source: OECD based on public information.

Notwithstanding the proliferation of leniency programmes in LAC in the past 20 years, many have faced challenges when implementing their leniency programme, a trend that has been witnessed around the world (OECD, 2020, pp. 42-47<sup>[32]</sup>). Consequently, many recently considered means to improve them and increase their attractiveness, including reforms on their functioning (OECD, 2018, p. 3<sup>[33]</sup>). Particularly, the reforms made to leniency programmes in LAC in the past 20 years have commonly aimed at increasing transparency around the procedure, confidentiality of the applicant's identity and the information provided in the application, and the establishment of clearer criteria around eligibility for claimed benefits.

For instance, while Colombia established its leniency programme in 2009, it posteriorly made significant changes to its design, first in 2015, through Decree 1 523 and more recently in 2022 through Law 2 195.<sup>28</sup> The most recent adjustments included a new framework that allowed for an increase in the confidentiality of the identity of the applicants and introduced new criteria to award immunity. The new regulation determined a new timeframe for awarding immunity and other percentages of reduction of fines, and detailed the situations where applicants could lose their benefits.

Similarly, the leniency programme in Ecuador, introduced in 2016,<sup>29</sup> was restructured in 2019.<sup>30</sup> The update aimed at increasing transparency around the procedure for leniency applicants and included the

introduction of time for discussion and complementing the evidence provided in the application, as well as measures to ensure a clear and formal separation between the leniency and investigation processes. It also aimed at guaranteeing more confidentiality of the information provided during the process, and, in general, giving more clarity to the functioning of the programme.

In Peru, the Peruvian Competition Act originally established the leniency programme in 2008, although there were some leniency provisions since 1996. However, its features were further defined by amendments of, and additions to, the law in 2015,<sup>31</sup> such as the scope, requirements, stages and deadlines (OECD, 2018<sup>[26]</sup>).

Additionally, some jurisdictions have attempted to increase the attractiveness for infringing parties to apply for leniency by increasing the coverage of the programme. For example, Brazil extended the programme to related criminal conduct in 2011, with Law 12529. Similarly, Mexico, in 2014, together with the introduction of the new competition law, made reforms to the Criminal Code to allow the competition authority to eliminate criminal sanctions to leniency applicants. Finally, Colombia eliminated the joint liability for damage caused to third parties to leniency applicants in its latest reforms of 2022.

Guidelines on how to implement and optimise leniency programmes have also been an important tool for authorities. The OECD recognises the importance of guidelines for increasing the incentives to apply for leniency, thereby strengthening the competition authorities' infringement detection capabilities (OECD, 2018, p. 51<sup>[26]</sup>). These guidelines are important to establish legal certainty and can cover many aspects of the leniency programme, including establishing rules for the participants regarding the duration of the proceeding. From the 13 analysed jurisdictions in LAC with a leniency programme, at least seven have issued recently guidelines on the topic,<sup>32</sup> while some others are following steps to introduce them or have just regulated the functioning of the programme.<sup>33</sup>

As recognised by CADE, leniency guidelines are relevant for the effectiveness of the programme as they encompass the best practices and proceedings and establish clear criteria that include phases of negotiation, procedures after the agreements' signature and information regarding internal procedures and decision-making processes (OECD, 2017, p. 5<sup>[34]</sup>).

### *(iii) Strengthening of investigative and sanctioning powers*

The third area of significant changes in substantial provisions is the general strengthening of investigative and sanctioning powers of the authorities in the region. For instance, several jurisdictions, such as Chile, Colombia, Costa Rica, Mexico and Peru, have aimed at increasing sanctions for anti-competitive conduct (see Box 1.1). Other reforms have provided authorities with increased powers, either to conduct their investigations or to broaden the scope of their action. For example, authorities in Costa Rica,<sup>34</sup> Mexico<sup>35</sup> and El Salvador<sup>36</sup> increased the number of anti-competitive practices prohibited by their laws, introduced the possibility of settlement and commitment procedures (see Box 1.2) and acquired powers to conduct inspections.

Finally, some competition authorities in LAC also acquired powers to conduct market studies. This is the case of the FNE in Chile in 2016<sup>37</sup> and COPROCOM in Costa Rica in 2019<sup>38</sup>.

### Box 1.1. Reforms in LAC aimed at increasing sanctioning powers of competition authorities

Increasing the sanctioning capacity has been an important strategy to boost enforcement powers of competition authorities in LAC. Consequently, recent reforms in the region have aimed at increasing the fines, setting clearer criteria to calculate fines, and classify some infringements as criminal offences.

For instance, in **Colombia**, Law 1 340 of 2009 already updated the sanctioning capacity of the Superintendence of Industry and Commerce for competition infringements. This included an increase in the maximum fine (i) from 2000 to 100 000 times the minimum wage for enterprises, and (ii) from 300 to 2 000 times the minimum wage in the case of individuals. More recently, Law 2 195 of 2022 further increased the maximum fines for companies and individuals considerably. On top of a maximum fine expressed as a multiple of the minimum wage, it can now also be a percentage of income, equity, or the value of a contract (in case of an infringement related to bid rigging). Criteria for calculating the fines were also modified, particularly, with respect to the consideration of aggravating factors and reductions for guilty pleas.

In 2019, in **Costa Rica**, Law 9 736 of 2019 introduced higher limits to fines. Fines for minor infringements can represent up to 3% of the economic agent's gross income (during the tax year prior to the imposition of the fine), while severe infringements can be sanctioned through a fine of up to 5% of this amount and very severe infringements up to 10%.

In **Mexico**, a reform in 2006 increased the level of fines and included the possibility of sanctioning by ordering asset divestiture in cases of recidivism (OECD, 2020<sup>[23]</sup>). Posteriorly, in 2011, the Federal Criminal Code was modified to establish for the first time individual criminal sanctions of 3 to 10 years imprisonment for "absolute" practices (cartels). Moreover, in the competition law, maximum fines were increased to up to 10% of a firm's annual national revenues for an absolute practice and up to 8% for a "relative" practice (which includes, amongst others, unilateral anti-competitive conduct).

Similarly, Law 20 945 of 2016 in **Chile** defined cartel infringements as criminal offences, with the possibility of imprisonment of up to 10 years. Moreover, it increased maximum fines to 30% of the sales of the products involved in the infringement or double the gains obtained from the behaviour. Furthermore, it included new sanctions to individuals, such as the prohibition to act as director or manager to stock corporations, small or medium enterprises or trade for up to 10 years.

**Peru** also included anti-competitive behaviour such as the abuse of economic power in the Criminal Code and the Consumer Protection and Defence Code through Law 31 040 of 2020. The Law criminalises the abuse of economic power, establishing that those who abuse a dominant position in the market, will be punished with imprisonment of no less than two nor more than six years, with fines of 180 to 365 times the average daily income and disqualification. Previous reforms to the competition law in 2015 included the introduction of powers to sanction facilitators, new fines for obstructing investigations and the possibility for INDECOPI to start class actions.

Finally, in **Paraguay**, in 2020, regulations to introduce sanctions for not complying with the orders of the authority and for not co-operating with its investigations were introduced. This has been key as the Department for Restrictive Practices was just established in the same year.

### Box 1.2. Introduction of settlements and commitments procedures in LAC

Settlement and commitment procedures enable competition authorities to terminate certain investigations sooner and to redirect investigative resources to other cases. As in other parts of the world, there has been a wave in adoption of settlement and commitment procedures in the past 20 years (OECD, 2022, p. 41<sup>[1]</sup>). Their introduction has been complementary to other strategies to strengthen investigative powers such as the possibility to conduct inspections and the increase of fines, as discussed above.

For example, in **Costa Rica**, in 2012, Law 9 072 gave the authorities the possibility to conduct inspections and introduced a commitments procedure to finalise investigations. More recently, the new competition law of 2019 further strengthened the enforcement powers of the competition authorities. Major changes included the expansion of the scope of the law to include all economic agents; the increase in the number of anti-competitive practices, classifying them into minor, serious and very serious infringements; the introduction of advocacy functions to review potentially anti-competitive regulation; and the establishment of settlement procedures

Something similar happened in **Mexico**. First, reforms to the competition law in 2006 introduced commitment procedures and allowed the competition authority to conduct on-site inspections. Second, the new Mexican Competition Law, enacted in 2014, among other key reforms, gave powers to the competition authorities to order divestment of assets in their decisions. As a result of those changes, the OECD Peer Review prepared in 2020 concluded that Mexico's regime is equipped with strong powers, solid institutions and enforcement tools and draws recommendations in line with OECD competition policy instruments and international practices (OECD, 2020<sup>[23]</sup>).

More recently, in **El Salvador**, Decree Law No. 207 of 2021 introduced some reforms aimed at clarifying the investigative and sanctioning powers of the competition authority and harmonise them with the administrative procedures law were introduced. The Decree also served as a clarification of procedures such as settlements, which were not used so far, and the criteria to calculate fines (Superintendencia de Competencia de El Salvador, 2021<sup>[35]</sup>).

In 2013, **Brazil** introduced a reform to further promote settlements in cartel investigations (CADE's Resolution n. 5 from March 2013). It enables defendants to benefit from discounts on the expected fines if they recognised the participation on the facts under investigation. The size of the discount depends on the defendant's position in the line of the settlement application and the capacity to co-operate with investigations (e.g. bringing additional evidence to the proceeding). CADE also published Guidelines on Settlements that consolidates its practices (CADE, 2016<sup>[36]</sup>).

### 1.3.3. Conclusion

Over the past 20 years, the region has witnessed a remarkable increase in the importance of competition law and policy, as new regimes were established and others extensively amended theirs to match international good practice on issues such as independence of the competition authorities, enforcement powers and merger control. The OECD has played, and will continue to play, a significant role in this development. As the region will continue to develop rapidly in the area of competition law and policy, authorities should continue to benefit from each other's experience, either independently or through analyses in OECD materials or discussions in OECD fora and meetings.

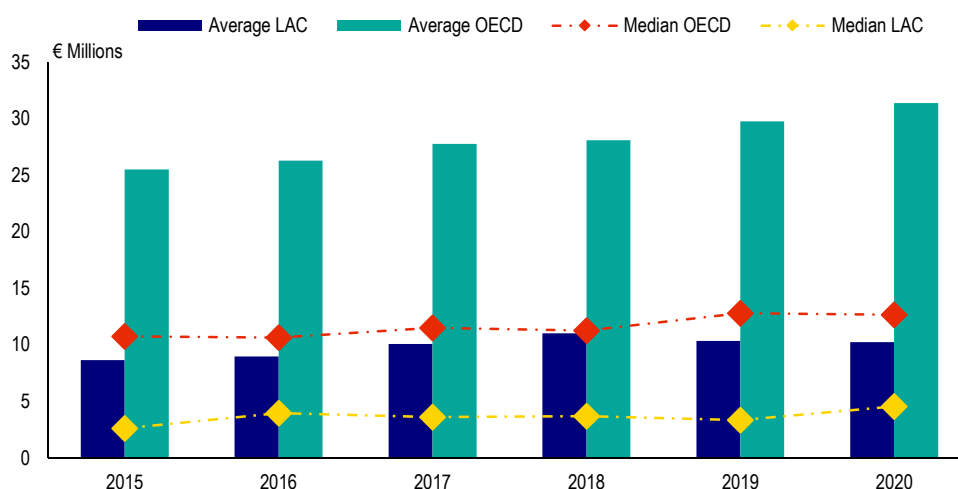
# 2 Competition Authority Resources

Competition authorities require sufficient resources, both in terms of competition budget and staff, to perform their duties and responsibilities effectively. Competition authority resources in LAC increased over the period 2015 to 2020, although most of this growth occurred in the period 2015 to 2018, and there was slight decline in 2019 and 2020. Growth in the amount of competition budget and staff in LAC jurisdictions was slightly lower than OECD jurisdictions over the same period. This section presents the LAC CompStats data on competition authority resources.

## 2.1. Budget

The average competition budget in LAC increased over the period 2015 to 2020 (see Figure 2.1).<sup>39</sup> It increased in most jurisdictions in the region, overall increasing by 18% over the period, equivalent to a compound annual growth rate of 3.4%. The growth in LAC was similar to, although somewhat lower than, OECD jurisdictions over the same period.<sup>40</sup> Average competition budget peaked in 2018 and dropped slightly in 2019 and 2020. However, the drop in 2020 was not material, suggesting only a minor impact from COVID-19.

**Figure 2.1. Average (mean and median) competition authority budget in LAC and OECD jurisdictions, 2015-20**



Note: This figure includes 13 LAC jurisdictions from the CompStats database that provided nominal competition budget for all six years. Nominal budget figures are in 2015 euros (i.e. non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate distortions due to currency fluctuations.

Source: OECD CompStats database.

The average competition budget is lower in LAC than for the OECD (Figure 2.1). Moreover, this average is significantly affected by a few larger jurisdictions in LAC with a particularly high competition budget, as shown by the large difference between the mean and the median budget.<sup>41</sup>

## 2.2. Staff

The average number of competition staff in LAC jurisdictions increased by 5% over the period 2015 to 2020, equivalent to a compound annual growth rate of 1.0% (see Figure 2.2 a). This was lower growth than in OECD jurisdictions over the same period.<sup>42</sup> However, this was driven by a large increase in two jurisdictions in 2017. The number of competition staff actually declined in around a third of the jurisdictions in the region. In specific jurisdictions, the number of competition staff increased and decreased materially, but these opposing trends cancelled out in the region overall, such that the total number of competition staff was stable for the period 2017 to 2020.

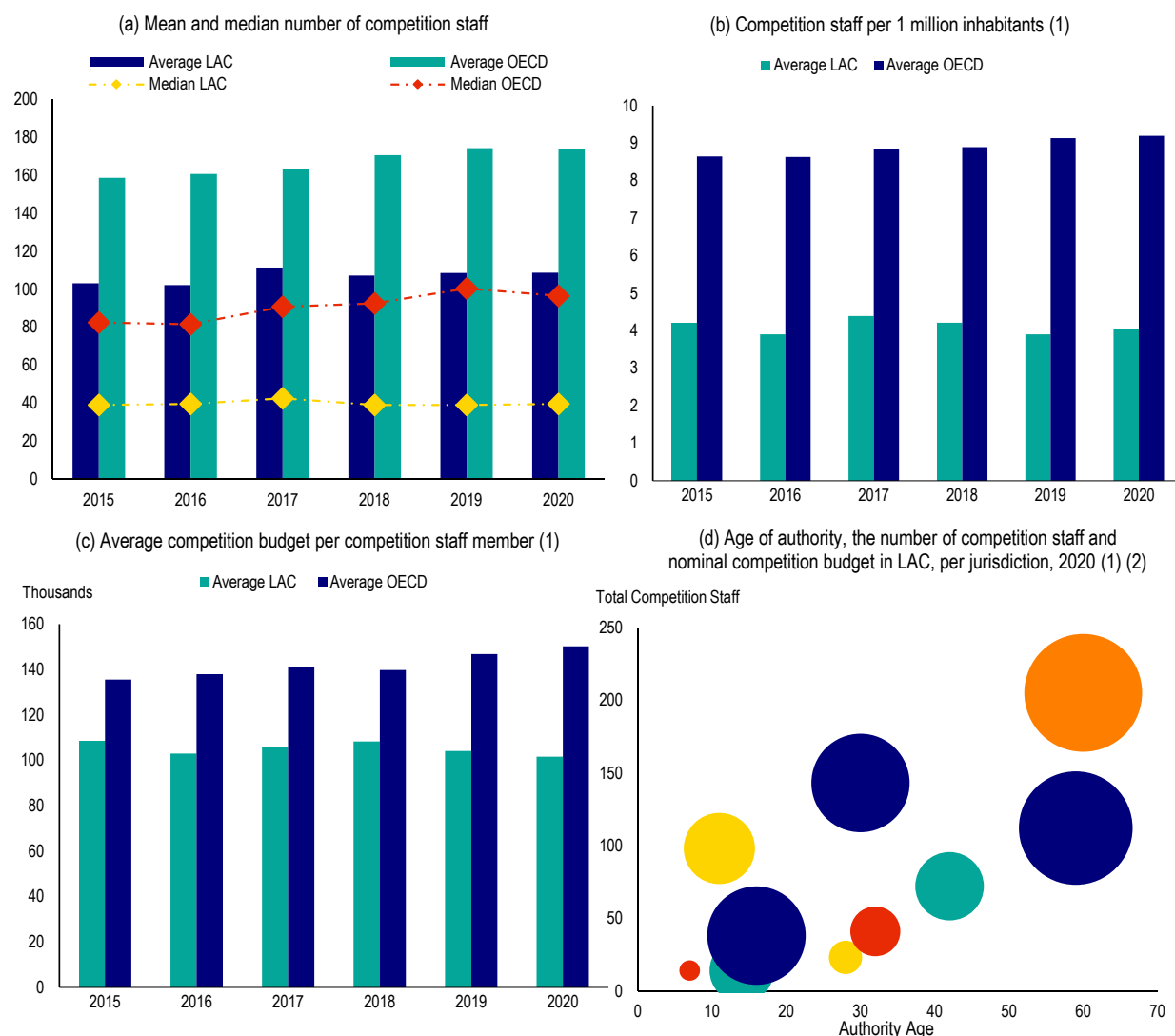
While the mean number of competition staff in LAC jurisdictions was 107 during the period 2015 to 2020, the median was 40, showing the high dispersion between the authorities in the region. Both averages were significantly below OECD average, even when adjusted by population size (see Figure 2.2 b).

The average number of competition staff per million inhabitants was around half the average in the OECD. This applied to most jurisdictions in the region, and it was not due to a single jurisdiction. The gap between LAC and the OECD increased over the period.

Similarly, the average budget per competition staff member was lower in LAC relative to the OECD (see Figure 2.2 c). The average in LAC jurisdictions declined over the period, while it increased in OECD jurisdictions. Therefore, the gap between LAC and OECD increased over the period.

There is a positive correlation coefficient of 0.24 between age of an authority and the number of competition staff, while the correlation coefficient was only 0.20 between age of an authority and competition budget (see Figure 2.2 d). However, excluding one large outlier jurisdiction, the correlation coefficients increased to 0.72 and 0.70 respectively.

Figure 2.2. Competition authority staff in LAC and OECD jurisdictions, 2015-20



Note: (1) The graphs in this figure include jurisdictions from the CompStats database that provided comparable data for all six years: (a) 13 LAC jurisdictions; (b) 14 LAC jurisdictions; (c) 13 LAC jurisdictions; and (d) 12 LAC jurisdictions. Nominal budget figures are in 2015 euros (i.e. non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate distortions due to currency fluctuations; (2) This figure excludes one large outlier jurisdiction that provided comparable data. The size of the bubble indicates the value of the nominal competition budget for each jurisdiction.  
Source: OECD CompStats database.

# 3 Merger control

As indicated in Section 1.3.2, LAC made considerable progress in merger control in recent decades, with several jurisdictions introducing merger regimes and others making substantive changes to existing laws to incorporate best practices. Nearly all jurisdictions in LAC in the OECD CompStats database (13 out of the 14) now have a merger regime that applies to all sectors in the economy.<sup>43</sup> While there is some variation in the region, LAC merger regimes have similar characteristics to regimes found in the rest of the world. Furthermore, trends in merger notifications and decisions in LAC over the period 2015 to 2020 were similar to global trends over the same period. This section presents the LAC CompStats data on merger control.

## 3.1. Characteristics of merger control regimes in the region

LAC jurisdictions mostly follow a mandatory pre-merger notification system (see Figure 3.1 a), charge a filing fee (see Figure 3.1 b), use turnover as a merger notification threshold (although market shares are also particularly important in LAC) (see Figure 3.1 c), adopt a two-phase regime (see Figure 3.1 d), and offer a simplified procedure for presumed harmless cases (see Figure 3.1 e).

## 3.2. Merger control activity

Merger notifications increased over the period 2015 to 2018, and then decreased in 2019 and 2020 (see Figure 3.2 a). The decrease was steepest in 2020, potentially due to the disruption caused by COVID-19. The trend in merger notifications was similar to the worldwide and OECD trends over the same period (Figure 3.2 a). LAC jurisdictions represented around 10% of merger notifications, and 9% of merger decisions, worldwide.<sup>44</sup>

Most merger notifications were concentrated in a handful of jurisdictions. Five competition authorities received 90% of all merger notifications over the period 2015 to 2020 (see Figure 3.2 b).

Merger decisions in LAC followed the same trend as merger notifications. The decline in merger decisions in 2019 and 2020 was greater than merger notifications. The decline in notifications and decisions in 2019 and 2020, and the discrepancy between notifications and decisions in 2019 and 2020, are predominantly driven by a single jurisdiction.

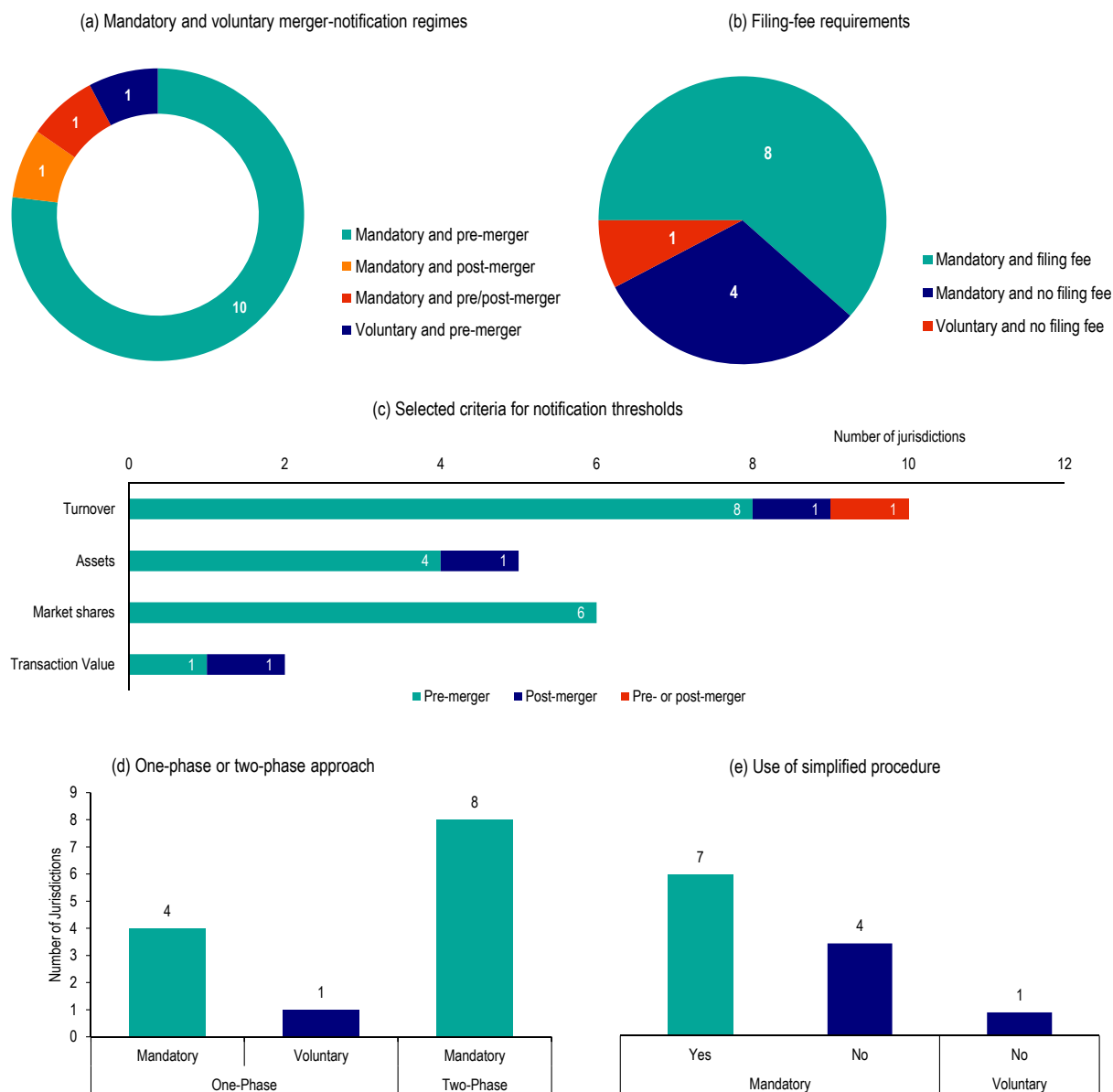
The type of merger decisions varied over the period (see Figure 3.2 c). Throughout the period, Phase I clearances without remedies were the most common type of merger decision. Between 2015 and 2017, phase II clearances without remedies were the second most common type of merger decision, with nearly 50 decisions per year. However, between 2018 and 2020, they roughly halved in number, and seem to have been replaced by phase I clearances without remedies.

LAC jurisdictions used remedies in a lower proportion of merger decisions than the global average (see Figure 3.2 d). Furthermore, the use of remedies became less common in the region over the period. The intervention rate (i.e. the number of decisions that were prohibited or required remedies) in 2020 was only 1.7% in LAC, compared to 2.4% globally.



The number of merger prohibitions and withdrawn mergers increased between 2015 and 2018, and then declined in 2019 and 2020 (see Figure 3.2 e).

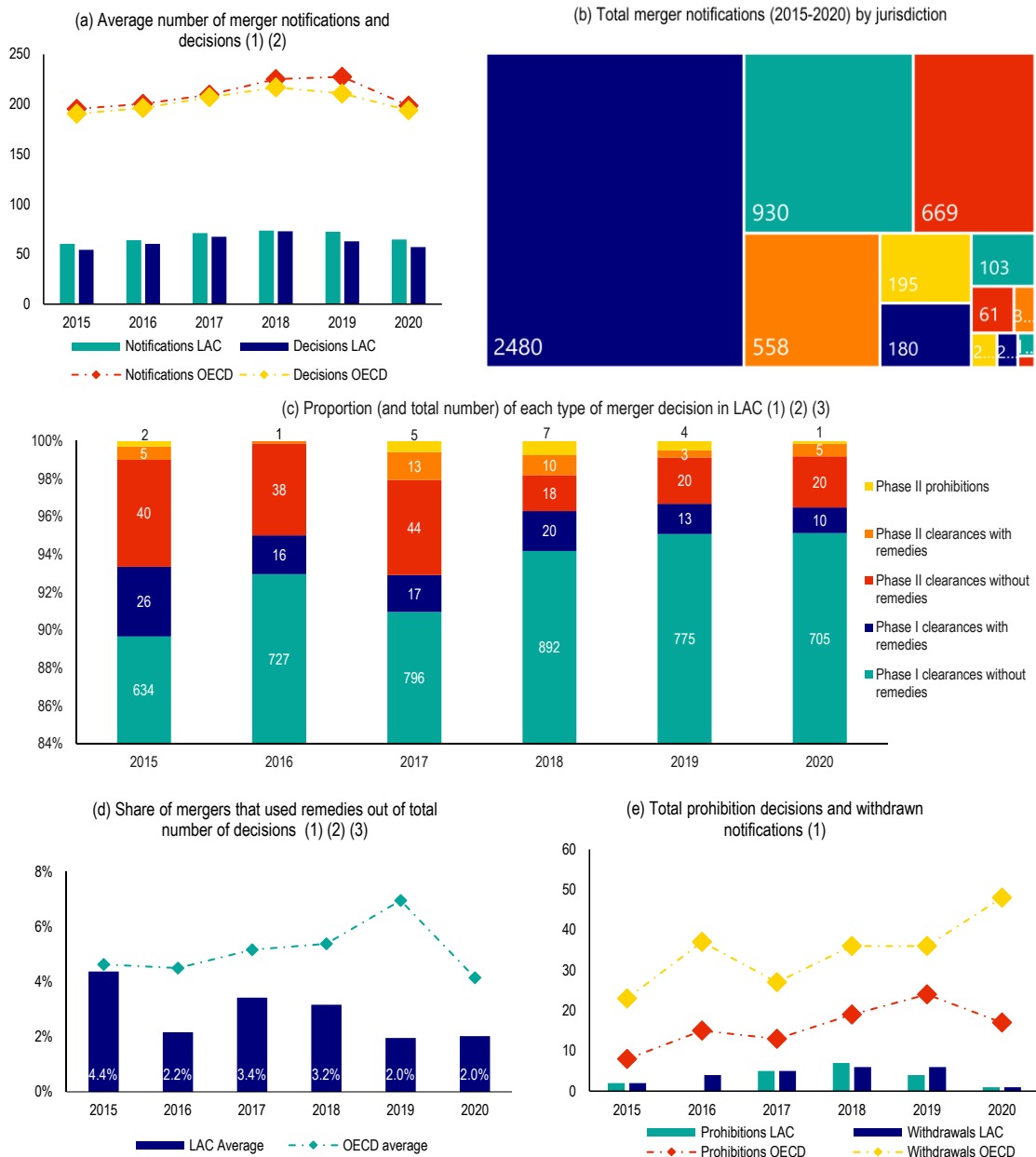
**Figure 3.1. Summary of merger regime characteristics for LAC jurisdictions, 2022**



Note: Graphs (a) to (d) include 13 LAC jurisdictions and graph (e) includes 12 LAC jurisdictions in the CompStats database that have a merger control regime.

Source: OECD CompStats database.

Figure 3.2. Merger control activity in LAC and OECD jurisdictions, 2015-20



Note: (1) The graphs in this figure include 13 LAC jurisdictions from the CompStats database with a merger control regime in place and comparable data for all six years; (2) Merger decisions include clearances (Phase I and Phase II), with and without remedies, and prohibitions; (3) The figures on mergers with remedies include Phase I and Phase II clearances with remedies.  
 Source: OECD CompStats database.

# 4 Cartel enforcement

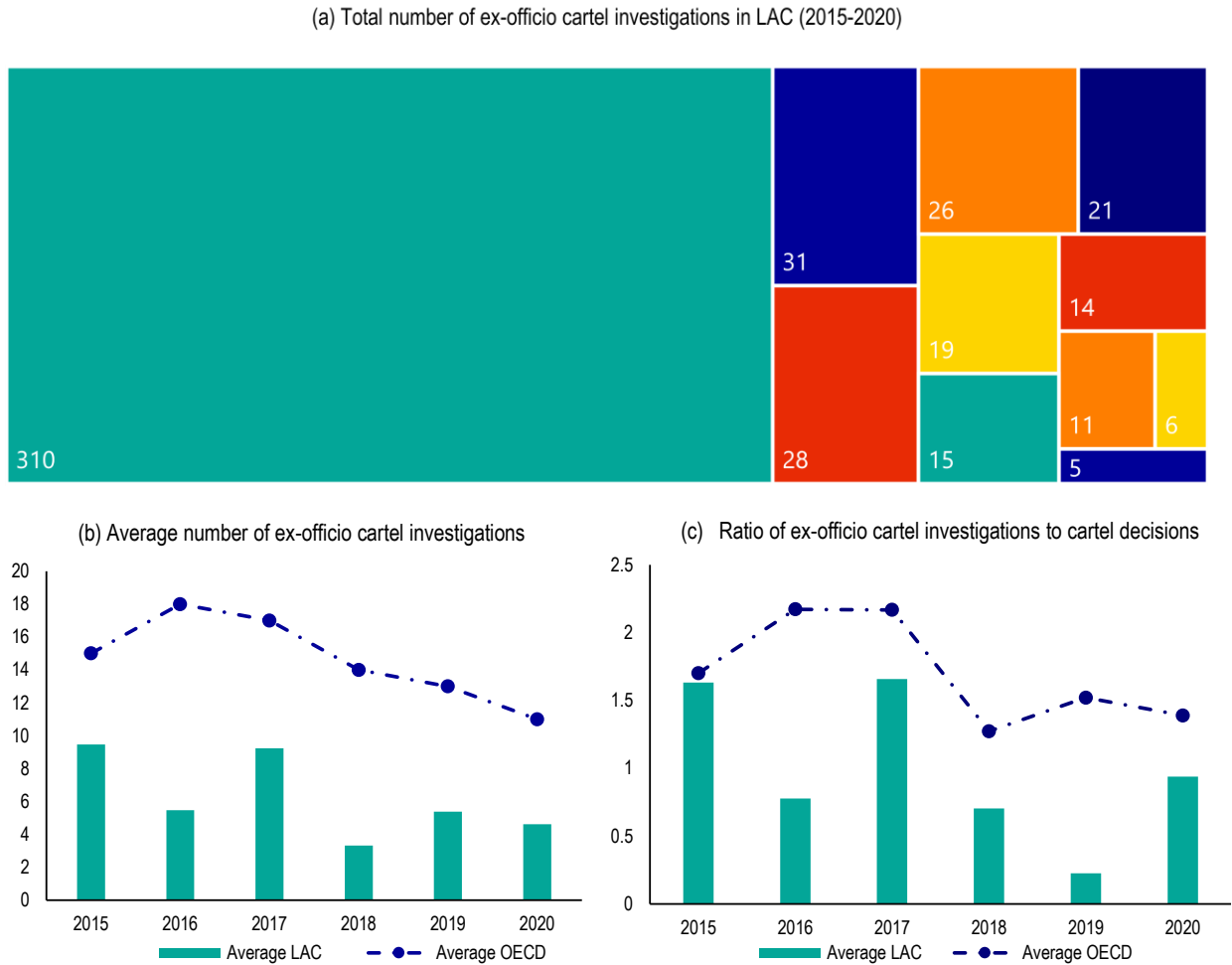
Almost all cartel enforcement indicators declined in LAC over the period 2015 to 2020. Over this period, there was a decrease in the number of ex-officio cartel investigations, cartel dawn raids, leniency applications, and cartel decisions. This trend was not limited to LAC, but also observed worldwide and in the OECD. This section presents the LAC CompStats data on cartel enforcement.

## 4.1. Ex-officio investigations

A single jurisdiction undertook nearly two-thirds of all ex-officio cartel investigations in the region (see Figure 4.1 a). Even with this particularly active jurisdiction, the LAC average was materially below the OECD average. The number of ex-officio investigations declined over the period 2015 to 2020, both in LAC and the OECD (see Figure 4.1 b).

The ratio of cartel ex-officio investigations to cartel decisions was lower in LAC relative to OECD jurisdictions over the period 2015 to 2020 (see Figure 4.1 c). This means that, on average, OECD jurisdictions open more ex-officio investigations per decision. The ratio of cartel ex-officio investigations to cartel decisions declined over the period, both in LAC and the OECD.

Figure 4.1. Cartel ex-officio investigations in LAC and OECD jurisdictions, 2015-20



Note: The graphs in this figure include jurisdictions in the CompStats database that provided comparable data for all six years: (a) 13 LAC jurisdictions; (b) 13 LAC jurisdictions; and (c) 12 LAC jurisdictions. Source: OECD CompStats database.

## 4.2. Leniency applications

There were 11 jurisdictions in 2020 and 13 in 2021 (out of 14) in LAC that had a leniency programme. However, only six jurisdictions had at least one leniency application during the period 2015 to 2020 and only three had at least one per year. This seems to indicate an underuse of leniency programmes in the region.

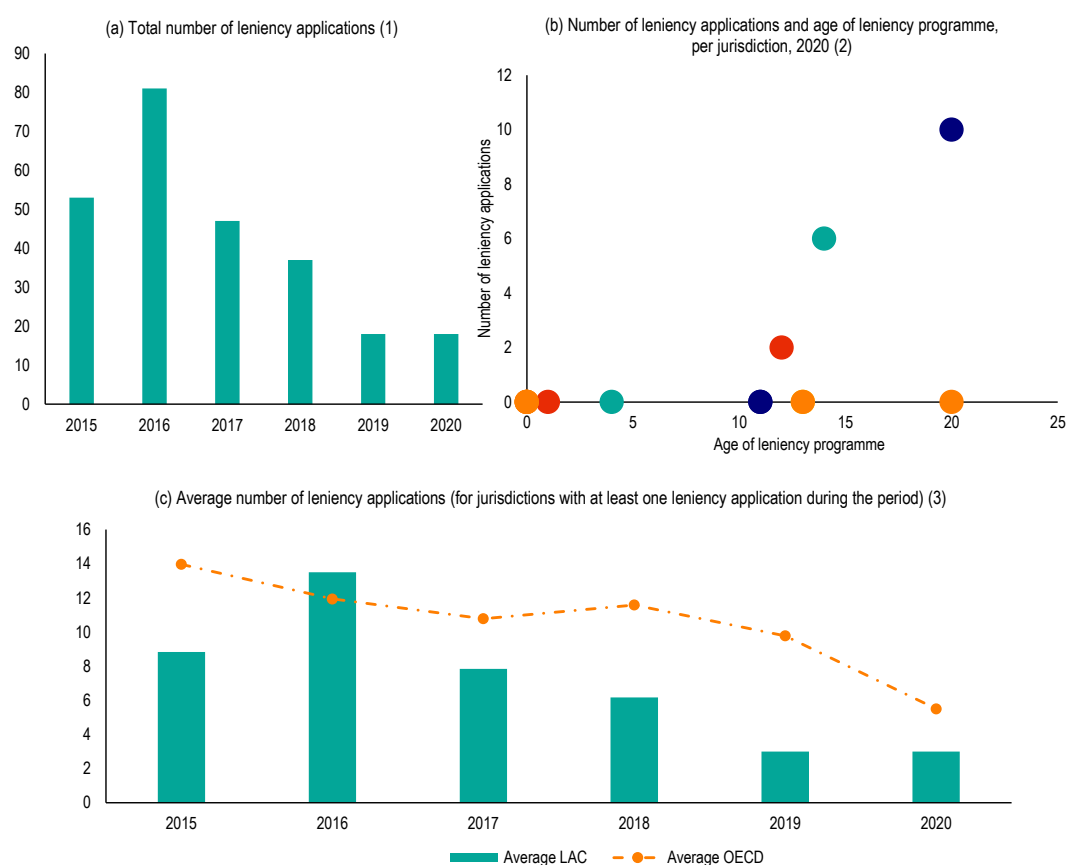
Moreover, the total number of leniency applications declined in the region, from 53 in 2015 and 81 in 2016, to 18 in 2020 (see Figure 4.2 a). The percentage decline in leniency applications was larger in LAC than the OECD, although of a similar magnitude (see Figure 4.2 c). Leniency applications declined 61% in the OECD between 2015 and 2020, with the peak in 2015 (OECD, 2022<sup>[1]</sup>). Leniency applications declined 66% in LAC between 2015 and 2020, and declined 78% relative to the peak in 2016.

There appears to be a positive correlation between the age of a leniency programme and the number of leniency applications a jurisdiction receives (see Figure 4.2 b). In particular, the number of leniency applications in 2020 was materially higher for some jurisdictions with leniency programmes over 10 years old, while those programmes younger than 10 years old typically had a relatively low number of leniency

applications (less than five) in 2020.<sup>45</sup> In addition to certain difficulties related to securing the first leniency case, this may indicate the need of further advocacy efforts to disseminate the existence of leniency programmes.

Over the period 2015-20, the average number of leniency applications by LAC jurisdictions (that received at least one leniency application) was lower than the equivalent number in OECD jurisdictions, for most years over the same period (see Figure 4.2 c). The average number of leniency applications declined in both LAC and OECD jurisdictions.

**Figure 4.2. Leniency applications, 2015-20**



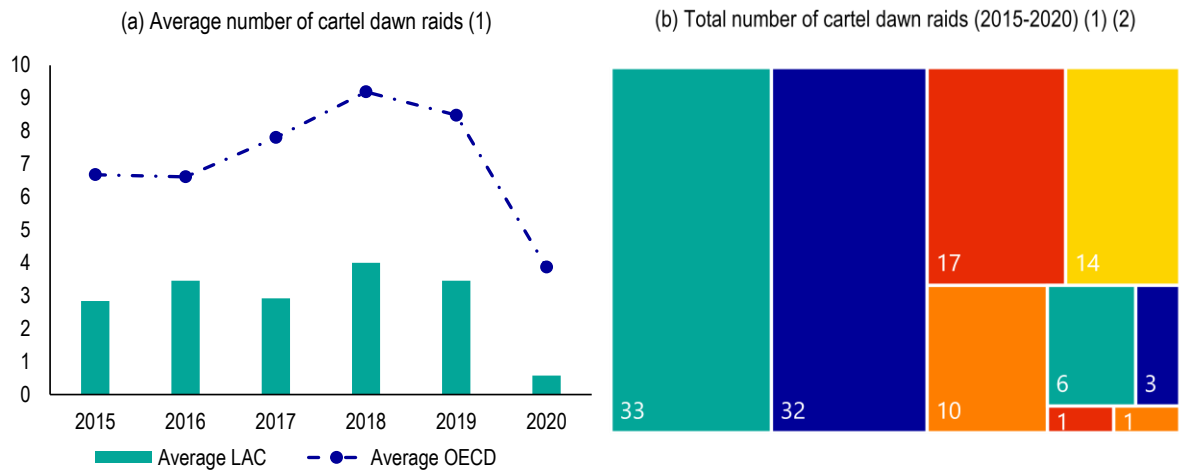
Note: (1) This graph includes nine LAC jurisdictions from the CompStats database that provided comparable data for all six years with a leniency programme in force; (2) This graph includes 11 LAC jurisdictions from the CompStats database that had a leniency programme in force in 2020; (3) The average in this figure is for the six (out of 14) LAC jurisdictions and 34 (out of 38) OECD jurisdictions in the CompStats database that received at least one leniency application over the period 2015-20.

Source: OECD CompStats database.

### 4.3. Dawn raids

Cartel dawn raids are less common in LAC as in the OECD (see Figure 4.3 a). However, the evolution of cartel dawn raids in LAC and OECD jurisdictions was similar over the period 2015 to 2020. The number of cartel dawn raids generally increased over the period 2015 to 2018, and then decreased in 2019 and 2020. In 2020, following the onset of COVID-19 and the subsequent restriction of movement, the number of cartel dawn raids declined significantly, both in LAC and the OECD. Two jurisdictions conducted 56% of all cartel dawn raids in the region between 2015 and 2020 (see Figure 4.3 b).

Figure 4.3. Cartel dawn raids in LAC, 2015-20



Note: (1) This figure includes 13 LAC jurisdictions from the CompStats database that provided comparable and complete data for all six years. One of the 13 jurisdictions did not make a distinction between dawn raids for cartel cases and abuse of dominance cases, thus all dawn raids were assumed to be cartel dawn raids (as abuse of dominance dawn raids are rare for most LAC jurisdictions); (2) This graph includes eight of 13 jurisdictions because five jurisdictions had zero cartel dawn raids over the period 2015-20. Source: OECD CompStats database.

#### 4.4. Settlements and commitments

Settlements and commitments are tools that competition authorities use to finalise concerted practices cases. Although settlements are most common, and usually used for cartels, the use of commitments for concerted practices is not rare (OECD, 2016, p. 15<sup>[37]</sup>). Five countries in the region closed at least one concerted practice investigation with commitments, indicating that this instrument is also being applied to such cases.<sup>46</sup>

A single jurisdiction represented 83% of all cases with settlements or commitments in LAC and drives the regional trend for this indicator (see Figure 4.4). The percentage of cases in which settlements or commitments were used in this jurisdiction was around 30-40% in most years, but peaked in 2017 at around 73%. There were only a few other jurisdictions that used settlements or commitments in a substantial proportion of cases. The vast majority of the jurisdictions in the region did not use them, or did so sporadically.

**Figure 4.4. Total number of cartel cases with settlements or commitments per jurisdiction in LAC, 2015-20**



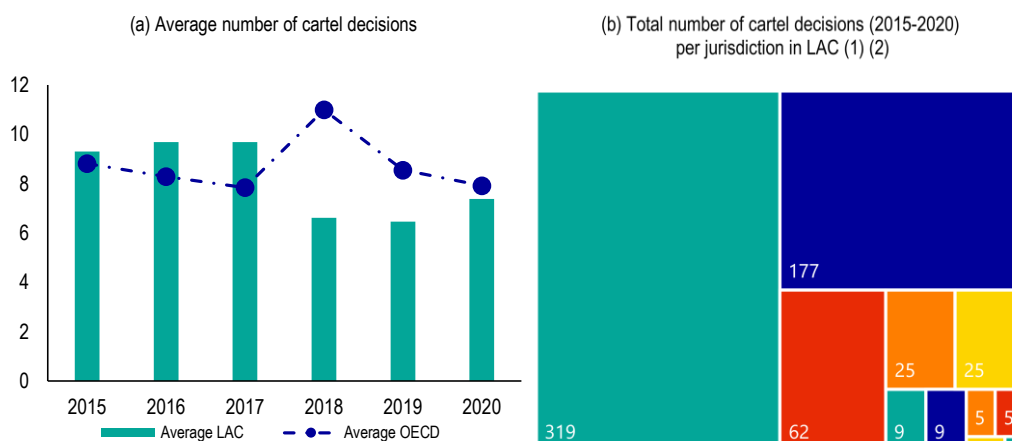
Note: This figure includes only eight of 14 LAC jurisdictions from the CompStats database because the other jurisdictions had zero cartel cases with settlements or commitments over the period 2015-20.  
Source: OECD CompStats database.

### 4.5. Decisions

The number of cartel decisions in LAC was similar to the OECD average (see Figure 4.5 a), although these cartel decisions were heavily concentrated in two jurisdictions with jointly 78% of all cartel decisions between 2015 and 2020 (see Figure 4.5 b). Similarly to the OECD, the average number of cartel decisions in LAC declined between 2015 and 2020.

Three jurisdictions did not have a single cartel decision during the period 2015 to 2020. Six jurisdictions had less than ten (but still greater than zero) cartel decisions over the same period.

**Figure 4.5. Cartel decisions in LAC and OECD, 2015-20**



Note: (1) The graphs in this figure include 13 LAC jurisdictions from the CompStats database that provided comparable data for all six years; (2) This figure includes 11 of 13 LAC jurisdictions because two jurisdictions had zero cartel decisions over the period 2015-20.  
Source: OECD CompStats database.

## 4.6. Sanctions

Average cartel fines imposed in LAC jurisdictions were less than one-fifth of the average in OECD jurisdictions during the period 2015-20 (see Figure 4.6 a). This average, as well as the average fine imposed per cartel decision (see Figure 4.6 c), steadily increased in LAC jurisdictions over the period 2015-18. The peak in 2018 was followed by a decline in 2019 and 2020. The annual average cartel fines in 2020 were the lowest during the period 2015 to 2020. Around 95% of all LAC cartel fines in the period 2015-20 were concentrated in just four jurisdictions (see Figure 4.6 b).

Overall, the average number of companies fined per cartel decision in LAC was relatively stable and lower than the OECD average over the period 2015-20, except for a peak in 2018 (see Figure 4.6 d). This peak was driven by the increase in companies fined in one jurisdiction.

Imposing fines on individuals in cartel cases is common in LAC jurisdictions. The percentage of cases with fines on individuals in the region was slightly higher than the OECD average, with a peak in 2016 when 80% of the cases had fines on individuals (see Figure 4.6 e). However, there was only one cartel case that led to imprisonment in LAC (Colombia 2019 for a bid-rigging cartel<sup>47</sup>).



Figure 4.6. Sanctions in LAC and the OECD, 2015-20



Note: The graphs in this figure include 12 LAC jurisdictions from the CompStats database that provided comparable data for all six years. Fines are in 2015 euros (i.e. non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate distortions due to currency fluctuations.

Source: OECD CompStats database.

# 5 Abuse of dominance enforcement

In several LAC jurisdictions, legal provisions related to unilateral anti-competitive conduct include vertical restraints, while these restraints are mostly covered under cartel provisions outside the region. Some competition laws in LAC refer to so-called “relative monopolistic practices” that include all types of actions carried out by one or several economic agents with substantial market power that have anti-competitive effects, regardless of whether this results from an agreement. With an emphasis on the presence, or absence, of a dominant position, rather than whether this results from an anti-competitive agreement, vertical restraints are included in this provision.<sup>48</sup>

Several LAC jurisdictions show a significant number of abuse of dominance (and other unilateral) decisions, as demonstrated by the average number of cases in LAC relative to the OECD jurisdictions. This may partly be driven by the aforementioned fact that in some jurisdictions vertical restraints are included in abuse of dominance cases. Moreover, this number may include investigations that ended in commitments, recommendations and non-infringement decisions, i.e. decisions that conclude an investigation by establishing the absence of an infringement, as this practice is quite common in certain jurisdictions in the region (including in jurisdictions that represent the highest number of abuse of dominance decisions).

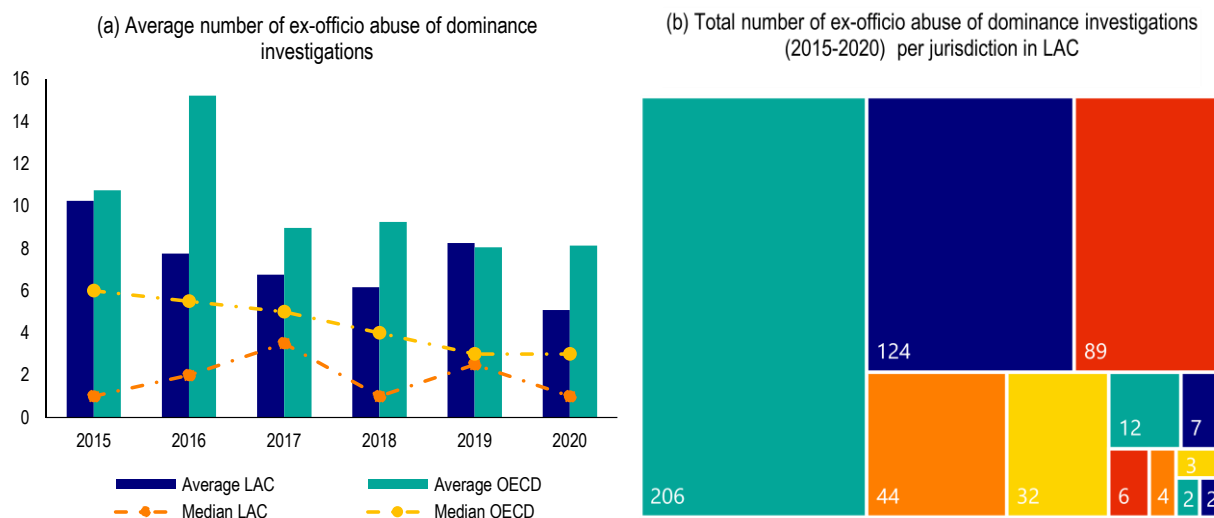
When comparing the region’s median value (or the “middle” value of the list) for abuse of dominance decisions instead of the mean, the region’s abuse of dominance activity is closer to the OECD. This is largely driven by the fact that a small number of jurisdictions (with a high number of abuse of dominance decisions) drive up the median value.

Despite a materially higher average number of abuse of dominance decisions, fines in abuse of dominance cases were negligible in LAC relative to OECD jurisdictions over the period 2015-20. This section presents the LAC CompStats data on abuse of dominance.

## 5.1. Investigations launched

The number of abuse of dominance investigations launched in LAC jurisdictions was slightly below the OECD average and mostly stable between 2015-20 (see Figure 5.1 a). However, they were highly concentrated in two jurisdictions, as these two were responsible for two-thirds of all abuse of dominance investigations launched in the region (see Figure 5.1 b).

**Figure 5.1. Abuse of dominance investigations launched in LAC and the OECD, 2015-20**

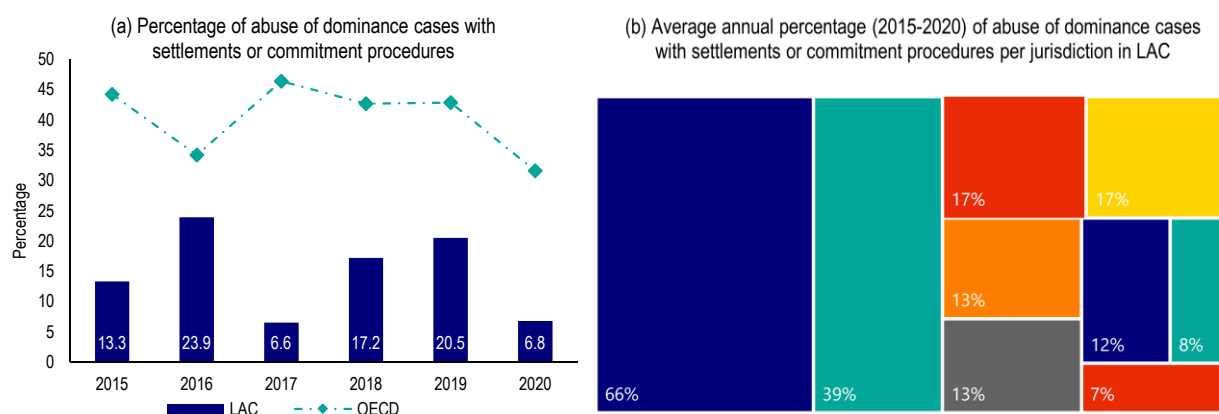


Note: The graphs in this figure include 12 LAC jurisdictions from the CompStats database that provided comparable data for all six years. Source: OECD CompStats database.

## 5.2. Settlements and commitments

In LAC, settlements and commitments in abuse of dominance cases are not very common. In fact, less than 15% of abuse of dominance decisions were closed with settlements or commitments – or one out of seven decisions in average – between 2015 and 2020, compared to an OECD-average of 40% (see Figure 5.2 a). Furthermore, the average of 15% for LAC was predominantly driven by two jurisdictions (see Figure 5.2 b).

**Figure 5.2. Settlements and commitments procedures in abuse of dominance cases in LAC and OECD, 2015-20**

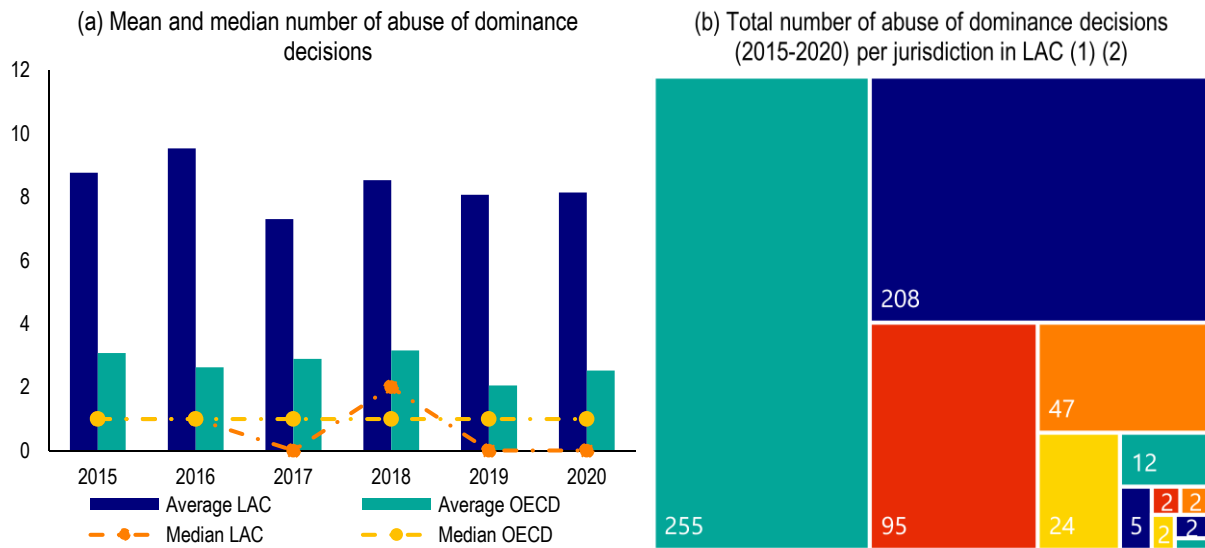


Note: (1) The graphs in this figure include 13 LAC jurisdictions from the CompStats database that provided comparable data for all six years; (2) This figure includes only nine of 13 LAC jurisdictions because four jurisdictions had zero abuse of dominance cases with settlements or commitments over the period 2015-20. Source: OECD CompStats database.

### 5.3. Decisions

Although the average number of ex-officio investigations was lower in LAC than the OECD-average, the average number of abuse of dominance decisions has been significantly higher, and stable over time (see Figure 5.3 a). However, as demonstrated by a median that is significantly lower than the average, there was a high dispersion among the jurisdictions in the region. In fact, two jurisdictions were responsible for more than two-third of the abuse of dominance decisions between 2015-20 (see Figure 5.3 b).

**Figure 5.3. Abuse of dominance decisions in LAC and the OECD, 2015-20**



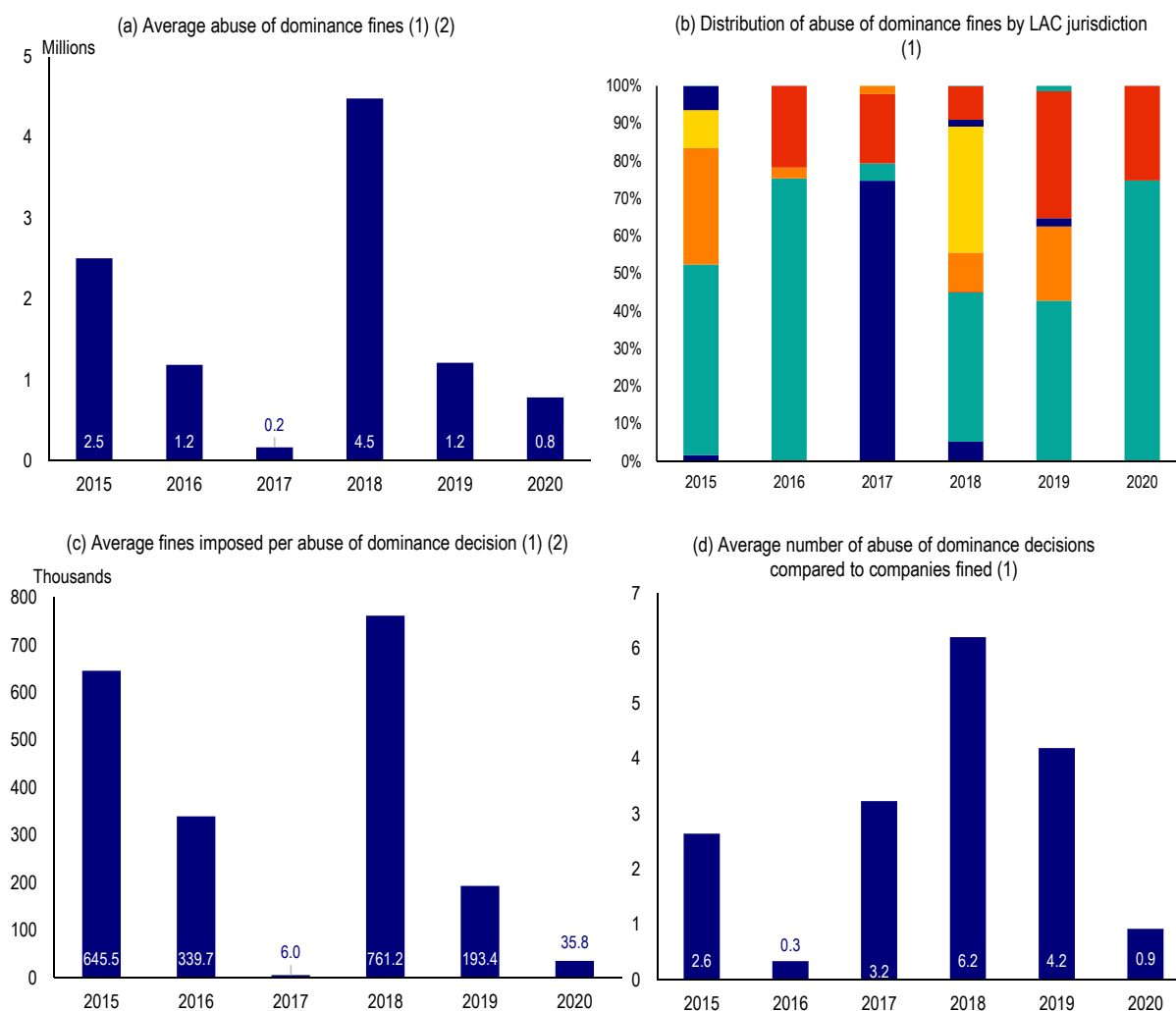
Note: (1) The graphs in this figure include 13 LAC jurisdictions from the CompStats database that provided comparable data for all six years; (2) This figure includes 12 of 13 LAC jurisdictions because one jurisdiction had zero abuse of dominance decisions over the period 2015-20. Source: OECD CompStats database.

### 5.4. Sanctions

Although there were more abuse of dominance decisions in LAC than in the OECD between 2015 and 2020, average fines in abuse of dominance cases in LAC jurisdictions (see Figure 5.4 a) were only around 3% of the equivalent in the OECD. Furthermore, across all LAC jurisdictions over the period 2015-20, on average there was one company fined for every eight abuse of dominance decisions (see Figure 5.4 d).<sup>49</sup> This could potentially be due to many non-infringement decisions in the region.

Sanctions for abuse of dominance cases did not follow a trend as they depend highly on the type of cases sanctioned each year. The total amount of fines peaked in 2018 when a total of EUR 58.2 million were imposed, representing an average of EUR 761 200 per decision taken that year (see Figure 5.4 c). One jurisdiction was particularly representative given the amount of fines imposed per year (see Figure 5.4 b).

Figure 5.4. Abuse of dominance fines in LAC, 2015-20



Note: (1) The graphs in this figure include jurisdictions from the CompStats database that provided comparable data for all six years: (a) 13 LAC jurisdictions; (b) 13 LAC jurisdictions; (c) 12 LAC jurisdictions; and (d) 13 LAC jurisdictions. (2) Fines are in 2015 euros (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate distortions due to currency fluctuations.

Source: OECD CompStats database.

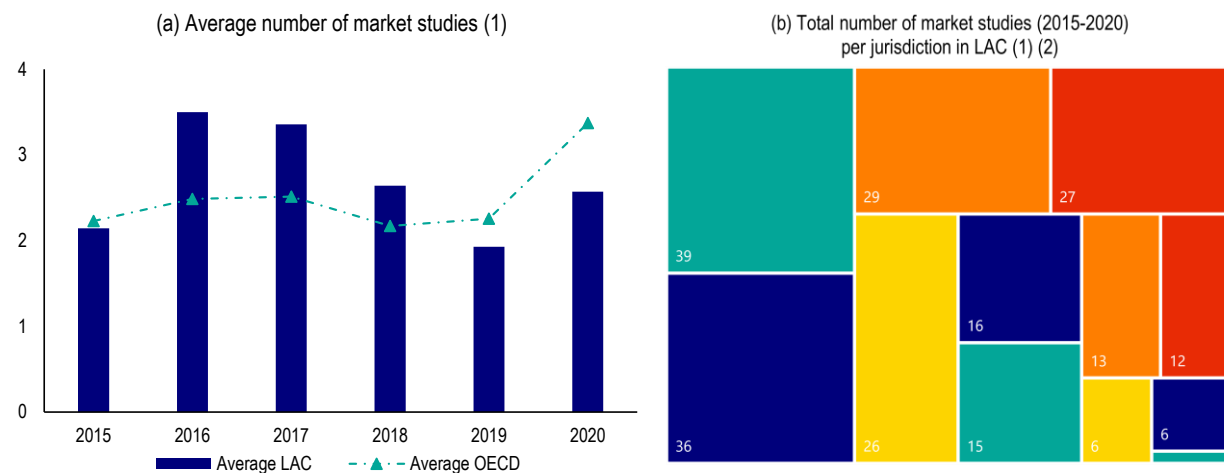
# 6 Advocacy through market studies

Market studies are mainly considered as an advocacy tool to issue recommendations to change laws and regulations, or as a pre-enforcement tool (OECD, 2016<sup>[38]</sup>). This section presents the LAC CompStats data on market studies.

The average number of market studies in LAC was fairly stable across the period 2015 to 2020, with around two to three market studies per jurisdiction per year (see Figure 6.1 a). This was similar to the OECD-average during the same period. The trend was also broadly similar to the OECD average, with a distinct increase in the average number of market studies in 2020.

While market studies can vary in duration and intensity, the vast majority of LAC jurisdictions (11 out of 13) undertook at least one market study during the period 2015 to 2020. At the same time, most market studies were conducted in a handful of jurisdictions, with five jurisdictions representing almost 70% of all market studies in the region over the period 2015-20 (see Figure 6.1 b).

**Figure 6.1. Market studies in LAC, 2015-20**



Note: (1) The graphs in this figure include 14 LAC jurisdictions from the CompStats database that provide comparable figures for all six years; (2) This figure includes 12 of 14 LAC jurisdictions because two jurisdictions had zero market studies over the period 2015-20. Source: OECD CompStats database.

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## Annex A. Methodology

This annex sets out the methodology that the OECD applied to ensure consistency, completeness, transparency, comparability, and accuracy.

The OECD CompStats database contains 32 variables obtained from questionnaire responses provided by competition authorities.

The time-series analysis in this report only contains jurisdictions that provided data for all six years to ensure consistency over time, allowing comparison between different years. The number of jurisdictions with data available for all six years varies depending on the variable. The analysis for 2020 uses the same set of jurisdictions as the time-series analysis to ensure consistency between figures.

For some jurisdictions, a competition authority's mandate extends beyond competition activities to consumer protection, public procurement, or other functions. To ensure consistency and comparability, the report only takes into account the budget and staff figures of those competition authorities reporting their budget and staff exclusively for competition law and policy activities for the six years (excluding, for instance, consumer protection).

Jurisdictions sometimes provided monetary values in their local currency. Financial figures (budgets and fines) of competition authorities are converted in euros to allow for comparison and aggregation.

For charts of financial figures over time, the official exchange rates from 2015 were used (published on 31 December 2015), to avoid fluctuations over time because of currency appreciations or devaluations. This means that the time series evolution in a given jurisdiction is not subject to any exchange rate effects. However, it also means that comparisons between jurisdictions in the years 2016-20 are not based on the current exchange rates in those years.

For the purpose of the report, merger decisions include both formal decisions and other outcomes, such as the expiration of the waiting period or no-objection letters. Merger prohibitions include trials.

# Notes

<sup>1</sup> Only those jurisdictions that have provided complete information, i.e. for all six years within the observed period (2015-20), have been included in the OECD CompStats Database. These jurisdictions are Argentina, Barbados, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Mexico, Nicaragua, Panama, Paraguay and Peru. The OECD CompStats database compiles responses from participating jurisdictions to the OECD Competition Basic Statistics Questionnaire on competition enforcement activity, covers 74 jurisdictions, 34 variables and six years (2015-20). In 2021, the database includes 14 jurisdictions from Latin America.

<sup>2</sup> The jurisdictions represent approximately 84.8% of GDP and approximately 84.1% of population. The sources used for GDP and population are the World Bank World Development Indicators and World Bank Population database (<https://databank.worldbank.org/source/world-development-indicators>).

<sup>3</sup> Some other authorities, particularly in the Caribbean, have been created recently. This is the case of the Trinidad and Tobago Fair Trade Commission, which started operating in 2014, and the Fair Trade Authority of Curaçao, established by the National Ordinance on Competition in 29 March 2016.

<sup>4</sup> Although only in 1994 with the enactment of Law 8884, the merger regime and an effective toolkit to enforce competition policy were created.

<sup>5</sup> Namely El Salvador (2004), Nicaragua (2006), Dominican Republic (2008), Ecuador (2011) and Paraguay (2013).

<sup>6</sup> Namely El Salvador (2006), Nicaragua (2006), Panama (2006), Dominican Republic (2008), Ecuador (2011) and Paraguay (2015).

<sup>7</sup> The institutional and political environment in which they operate, can limit the ability of national authorities to address anti-competitive conduct and unleash the potential of regional markets (OECD, 2012, p. 9<sup>[2]</sup>).

<sup>8</sup> Such as the possibility to conduct dawn raids and issue interim measures.

<sup>9</sup> Reforms: Law 668 of 2008, Law 773 of 2011, Law 868 of 2014.

<sup>10</sup> Law 29 of 1996, the first competition law in Panama, created the *Comisión de Libre Competencia y Asuntos del Consumidor*. This authority was replaced by the *Autoridad de Protección al Consumidor y Defensa de la Competencia* (ACODECO) in 2006.

<sup>11</sup> According to Article 67 of the law.

<sup>12</sup> Regulated by Reglamento 252 of 2020.

<sup>13</sup> These countries have been actively contributing to the work and discussions of the OECD Competition Committee as participants. Brazil was accepted as an associate member of the OECD Competition Committee in 2019 (OECD, 2019, p. 4<sub>[39]</sub>). Moreover, in 2019, the OECD, in a joint venture with the Peruvian Competition Authority (INDECOPI) launched the OECD Regional Centre for Competition in Latin America (see also Section 1.2.2).

<sup>14</sup> The OECD countries from the region have submitted the majority of the written contributions in the past 20 years, while other participants, such as Brazil, Argentina and Peru have also been active in their submissions. Other countries in the region have also contributed, mainly in the LACCF and particularly in sessions where topics that are key for developing economies were discussed. For example, roundtables on overcoming adversity and attaining success (focused on small agencies and those in developing economies) (OECD, 2017<sub>[42]</sub>), independence of competition authorities (OECD, 2016<sub>[50]</sub>), competition and poverty reduction (OECD, 2013<sub>[40]</sub>), among others.

<sup>15</sup> The peer reviews analysed in the report are Argentina in 2006 (OECD, 2006<sub>[8]</sub>), Brazil in 2005 (OECD, 2005<sub>[11]</sub>) and 2010 (OECD, 2010<sub>[12]</sub>), Chile in 2004 (OECD, 2004<sub>[14]</sub>) and 2010 (OECD, 2010<sub>[15]</sub>), Colombia in 2009 (OECD, 2009<sub>[16]</sub>), El Salvador in 2008 (OECD, 2008<sub>[3]</sub>), Honduras in 2011 (OECD, 2011<sub>[21]</sub>), Mexico in 2004 (OECD, 2004<sub>[22]</sub>), Panama in 2010 (OECD, 2010<sub>[24]</sub>) and Peru in 2004 (OECD, 2004).

<sup>16</sup> Including the health sector in Peru (OECD, 2021<sub>[44]</sub>), a review of the federal public procurement in Brazil (OECD, 2021<sub>[49]</sub>) and Argentina (OECD, 2019<sub>[43]</sub>); the report on public procurement in Colombia (OECD, 2014<sub>[46]</sub>), the evaluation on IMSS, CFE and Pemex procurement rules and practices and the impact of OECD Recommendations in Mexico (see (OECD, 2018<sub>[48]</sub>; 2018<sub>[47]</sub>; 2017<sub>[45]</sub>)).

<sup>17</sup> This project included the promotion of competition market studies and the methodology for undertaking them in Chile, Colombia, Costa Rica, Mexico, Panama and Peru in 2015. See (OECD, 2015<sub>[55]</sub>).

<sup>18</sup> Namely, in Mexico, the gas sector (OECD, 2019<sub>[53]</sub>), the pork meat market (OECD, 2019<sub>[51]</sub>) and the grocery retail industry (OECD, 2019<sub>[56]</sub>) and the chicken meat (OECD, 2018<sub>[52]</sub>), medicines (OECD, 2018<sub>[54]</sub>) and digital platforms markets (OECD, 2018<sub>[41]</sub>); and the sectors of ports and civil aviation in Brazil that are being conducted since 2021.

<sup>19</sup> Decreto 11 June 2013 in which articles 6, 7, 27, 28, 73, 78, 94 and 105 of the Political Constitution of the Mexican the United States are modified. As a consequence of the Decree, a specialised tribunal for competition matters was also created.

<sup>20</sup> Towards the independence of the competition authorities, the reform also established specific criteria to be met for being selected commissioner of both authorities and a clear procedure for their appointment.

<sup>21</sup> Law 9 736 of 2019, regulated by Decree 43305-MEIC.

<sup>22</sup> Since 1997, Peru had a merger regime but it applied only to the electricity sector.

<sup>23</sup> Law 9 072 of 2012.

<sup>24</sup> According to Resolution No 10 930 of 2015 of the Superintendence of Industry and Commerce.

<sup>25</sup> The 2011 reform of the Mexican competition law removed some notification obligations and streamlined the simplified notification procedure for clearly unproblematic mergers.

<sup>26</sup> Through Resolution No. SCPM-DS-2020-018 that entered into force in April 2020.

<sup>27</sup> From the OECD CompStats set of 14 LAC jurisdictions, only one does not have a leniency programme in place (Barbados).

<sup>28</sup> Regulated through Decree 253 of 2022.

<sup>29</sup> Issued by Resolution N° SCPM-DS-027-2016 which was published on 1 August 2016 and amended by Resolution N° SCPM-DS-010-2017 which was published on 7 April 2017.

<sup>30</sup> Resolution No SCPM-DS-2019-38.

<sup>31</sup> By Decree Law 1 205 of 2015.

<sup>32</sup> Brazil (2016), Chile (2017), Colombia (2013), Mexico (2020 and 2021), Panama (2015) and Peru (2017) have issued specific guidelines describing their leniency programmes. Furthermore, Argentina discusses leniency in their guidelines for associations (2018).

<sup>33</sup> For example, as of February 2022, leniency guidelines in Costa Rica were in a public consultation process. Moreover, Nicaragua issued the relevant regulation on the topic in 2021.

<sup>34</sup> In 2012, Law 9 072 gave the authorities the faculty to conduct inspections and created the commitments procedure to finalise investigations. More recently, the new competition law of 2019 also introduced major changes to strengthen the enforcement powers of the competition authorities in the country. The major milestones were the expansion of the scope of their law, which started to apply to all economic agents; the increase in the number of anticompetitive practices and their classification into minor, serious and very serious infractions; the introduction of advocacy functions to review potentially anti-competitive regulation; and the establishment of settlement procedures.

<sup>35</sup> Reforms to the competition law in Mexico in 2006 introduced commitment procedures and allowed the competition authority to conduct on-site inspections, while the new Mexican Competition Law, enacted in 2014, among other key reforms, gave powers to the competition authorities in the country to order divestment of assets in their decisions. As a result of the those changes, the OECD Peer Review prepared in 2020 concluded that Mexico's regime is equipped with strong powers, solid institutions and enforcement tools and draws recommendations in line with OECD competition policy instruments and international practices (OECD, 2020<sup>[23]</sup>).

<sup>36</sup> Decree Law No. 207 of 2021 introduced some reforms aimed at clarifying the investigative and sanctioning powers of the competition authority and harmonise them with the administrative procedures law were introduced. The Decree also served as a clarification of procedures such as settlements and the criteria to calculate fines (Superintendencia de Competencia de El Salvador, 2021<sup>[35]</sup>).

<sup>37</sup> Through Law 20 945 of 2016.

<sup>38</sup> Through Law 9 736 of 2019.

<sup>39</sup> Competition budget figures are in nominal values: in 2015 Euros (non-euro currencies are converted using 2015 official exchange rates on 31 December 2015) to eliminate distortions due to currency fluctuations.

<sup>40</sup> The average nominal competition budget in the OECD increased by 23% over the period 2015-20, equivalent to an annual growth rate of 4.2%.

<sup>41</sup> The mean budget is materially above the median budget, suggesting a few jurisdictions in the region have a particularly high competition budget.

<sup>42</sup> The average number of competition staff in the OECD increased by 9% over the period 2015-20, equivalent to an annual growth rate of 1.8%.

<sup>43</sup> The Dominican Republic is the only jurisdiction in LAC without a merger regime in force.

<sup>44</sup> Based on the jurisdictions included in CompStats over the period 2015-20.

<sup>45</sup> It is worth noting that the two jurisdictions with higher leniency applications also had relatively larger economies, thus the relative size of the jurisdiction may also play an important role.

<sup>46</sup> Such commitments might include the compromise to stop sharing sensitive information or publishing competitive information such as prices, among others.

<sup>47</sup> Case No. CUI:11001-60990-87-2018-00028. Juzgado 55 Penal del Circuito con Función de Conocimiento de Bogota. This was the first conviction of an individual for a bid-rigging case, based on the finding that this person had agreed to deliver a sum of money to the other bidders in order to achieve the award of a contract in an advance selection process by the government Secretariat of the Department of Antioquia. The individual was sentenced to 30-six months in prison and disqualified from executing public functions for the same term of the prison sentence as well as from contracting with the state for four years.

<sup>48</sup> Examples of jurisdictions that assess vertical restraints with the same provisions of abuse of dominance cases are Brazil, Chile, Honduras, Mexico and Panama (OECD, 2021, p. 17<sup>[57]</sup>).

<sup>49</sup> In LAC jurisdictions, over the period 2015 to 2020, there were 86 companies fined in abuse of dominance cases and there were 655 abuse of dominance decisions. Therefore, on average there was one company fined for every eight abuse of dominance decisions.

