

# **REGULATORY STATE AND REGULATORY AGENCIES IN THE COMPETITION SECTOR: THE MEXICO, NORWAY, AND BRAZIL CASE**

## **ESTADO REGULADOR Y AGENCIAS REGULADORAS EN EL SECTOR DE LA COMPETENCIA: LOS CASOS DE MÉXICO, NORUEGA Y BRASIL**

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### **RESUMEN**

El presente artículo pretende analizar, desde una perspectiva institucional/es-  
tructural, cómo el diseño institucional de las agencias reguladoras, en particular,  
aquellas relacionadas con la promoción de la competencia económica, es capaz de  
hacer frente a las prácticas democráticas como la rendición de cuentas, la transpa-  
rencia y el potencial riesgo de la falta de coordinación dentro del sector público.  
El artículo está delimitado al estudio del diseño institucional de las agencias regu-  
ladoras a cargo de la regulación y competencia económica del sector financiero,  
analizando las agencias reguladoras en México, Brasil y Noruega. El autor explora  
cómo el diseño institucional de dichos organismos reguladores afecta la tensión  
entre autonomía y control, así como el potencial conflicto entre rendición de  
cuentas y transparencia, por un lado, y eficiencia y eficacia, por el otro.

Palabras clave: Estado regulador, Agencias reguladoras, Diseño institucional, Sec-  
tor de la competencia.

### **ABSTRACT**

Drawing from an institutional/structural perspective, the article intends to analyze  
how the institutional design of regulatory agencies, and more specifically those re-  
lated to foster economic competence, is able to deal with democratic practices like  
accountability, transparency and the potential risk of lack of coordination within  
the public sector. The article is delimited to the study of the institutional design of  
the regulatory agencies in charge of economic competence and regulation of the  
financial sector by analyzing regulatory agencies in Mexico, Brazil and Norway.  
The author explores how the institutional design of such regulatory bodies have an  
impact on the tension between autonomy and control and the potential conflict  
between accountability and transparency versus efficiency and effectiveness.

Keywords: Regulatory state, Regulatory agencies, Institutional design, Competi-  
tion sector.

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## INTRODUCTION

Whilst there has been much research and interest on NPM and Post-NPM reforms, studies show that far from being a homogeneous movement, NPM has been evolved as a collection of managerial and economic techniques with divergent outcomes and significant variations (Kettl 2000), even within the same countries and similar administrative-political traditions. Neo-managerialism has been unfolded in a set of different dimensions like the creation of markets and quasi-markets, and therefore the establishment of a collection of independent regulatory agencies (IRAS) to regulate competence and the financial sector. However, unlike regulatory orthodoxy that stresses more autonomy for the public agencies and less regulation in economic sectors, the case of the regulatory reforms and the creation of IRAS show that such reforms have been subject to a certain kind of adaptability processes, which in certain cases paradoxically drives to more regulation, less independence, and problems in terms of transparency and accountability. The above lead to consider a set of questions, like how similar the independent regulatory agencies are in terms of their institutional design and its implications; in other words, how different historical-institutional contexts of the States and regulatory agencies have influenced the development of IRAS.

Drawing from an institutional/structural perspective, this article intends to analyze how the institutional design of regulatory agencies, and more specifically those related to foster economic competence are able to deal with democratic practices like accountability, transparency and the potential risk of lack of coordination within the public sector. The article is delimited to the study of the institutional design of the regulatory agencies in charge of economic competence and regulation of the financial sector by analyzing regulatory agencies in Mexico, Brazil and Norway; in particular we will explore how the institutional design of such regulatory bodies have an impact on the following dimensions: (1) the tension between autonomy and control, (2) the potential conflict between accountability and transparency versus efficiency and effectiveness.

In this sense, the article seeks to provide insights about transparency, accountability, new forms of regulation. At a theoretical level, the central argument is that the continuous interactions between the institutional context, the institutional design and the structural-organizational characteristics of these regulatory organizations could have an effect on the possible areas of tension when management reforms are implemented. Accordingly, the dilemma that I will explore in Mexico, Norway and Brazil consists on how to establish and design regulatory agencies that need sufficient autonomy and flexibility to perform their functions, but at the same time to develop institutional mechanisms that promote accountability for the citizens and for the regulated sectors.

The order of the article is structured in the following way. First I point out a brief discussion about regulation and development of regulatory agencies. Afterwards, I spell out the main ideas of the approach regarding the institutional/organizational perspective; in particular I focus on the relevance of the institutional design and its implications in terms of transparency and accountability. Then, I review the case studies, –Brazil, Mexico and Norway–, with special attention to their institutional design. Finally, I will draw some general considerations. Methodologically speaking the article derives from a broader investigation program in regulation and IRAS, which involves revision of public documents from the central and federal government, papers from International organizations, interviews to public servants (Mexico) and academics (Brazil and Norway), as well as an extensive analysis of the legal framework under which the competition agencies operate.

## **REGULATION AND REGULATORY AGENCIES**

Regulation is essentially understood as a broad concept that entails several meanings and has been transformed over the time. One approach conceives regulation as a set of authority instruments such as norms, rules and semi-autonomous public agencies, a second way refers to any kind of governmental intervention into the economy and private sphere through public property, and a third manner relates regulation to any form of state and non-state involvement as a form of social control (Christensen and Lægveid 2005, Greeve 2008, Baldwin and Cave 1999). Even though there is a variety of meanings, the institutional perspective emphasizes the role of the institutional arrangements; for instance for the new institutionalism in economics, regulation occurs within an institutional framework and regulatory agencies become a mean through which market failures and problems of information can be solved; meanwhile, from a more sociological approach, the phenomena of regulation is best explained in terms of the political structure and organizational design of the independent agencies, either through some kind of isomorphism or as a product of historical processes (Baldwin and Cave 1999, March and Olsen 1983, Hall and Taylor 1996).

The phenomena of regulation is part also of a wider movement such as NPM; in so far, administrative reforms have encouraged the creation of markets and quasi-markets in sectors that usually belonged to the public sector, in consequence such reforms have established a collection of semi-autonomous organizations aimed at regulating the functioning of the created markets. In this regard, the regulatory reform has been characterized mainly by a new way of formulating norms and rules to regulate the markets and quasi-markets created as a result of NPM reforms, as well as the establishment of semi-independent organisms that regulate the behaviour of the actors in certain sectors of the economy. Whether NPM transformations tend to delegate more authority to decentralised

departments or to strengthen the control exercised by the Ministries (Flinders and Buller 2006), regulatory reforms imply the development of new types of institutions and innovative organisational designs to standardise the interactions between citizens and the State. As OECD points out:

Agencies represent a decentralised mode of government, with a new organisational form, which was associated with the New Public Management (NPM). Whereas traditional agencies still report to the executive, even if they are granted significant operational and budgetary autonomy, independent regulators are often designed in a way that ensures a significant independence. (OECD 2005b: 72).

Regulatory agencies are associated with the development of NPM movement and their design symbolise a new mode of government by means of delegation of powers, in which a principal/agent relationship is established to fulfil specific tasks. Regulation, therefore is conceived as a new form of regulatory capitalism that encompasses new forms of relation between state and society, changes in the roles of politicians and expert in developing public policy, innovative forms of regulation like the self-regulation or the growing responsibility of networks of experts (Jordana and Levi-Faur 2004).

Although there is a wide variety of regulatory agencies and a greater divergence has been recognised in the adoption of regulatory reforms (Bouckaert et. al. 2006, Gilardi, Jordana and Levi-Faur 2006), in ample terms, these hybrid organisations have been described as:

(...) non-departmental organisms, formally separated from the ministry, which carry out public tasks at a national level on a permanent basis, are staffed by public servants, are financed mainly by the state budget, subject to public legal procedures and created with a single purpose (Christensen and Lægheid 2005: 45).

In this regard, these organisations possess at least three characteristics: (1) depoliticisation, (2) a certain degree of autonomy, (3) decision-making processes based on expertise and knowledge.

Depoliticisation has been one of the main arguments not only for the creation of the regulatory agencies, but also to explain the process of agencification of the public sector in such a way produces disaggregation of administrative structures (Flinders and Buller 2006) the idea behind is that agencies insulated from any kind of control from politicians would have better performance than those under the influence either politicians or interest groups. Although the term depolitic-

sation may consider a broad range of definitions, there are certain characteristics that avoid overlapping with other concepts such as independence or autonomy; these features can be summarised as the mechanisms of institutional transformation through which politicians and other groups are moved away directly or indirectly from any decision or policy field that is considered as desirable (See Flinders and Buller 2006, Christensen and Læg Reid 2005) and essential for credibility of regulatory policies (Majone 2005).

During the last decades one of the most important key features of the governance systems relates to the degree of autonomy that regulatory agencies should possess. However, there is also a recognised distinction between formal autonomy and autonomy in practice or *de facto*; this implies that autonomy becomes a multidimensional concept (Læg Reid, Roness and Rubecksen 2005) and may vary not only over time, but also among similar agencies with the same institutional design. Thus, the degree of autonomy may be seen in relation with the type of operations and the nature of the control with the higher bodies in the public sector structure.

Thus, despite of the fact that autonomy may cover a wide range of elements, it can be unfolded in two categories: formal or legal autonomy and informal autonomy. The first one relates to the institutional design of the regulatory agencies, and the second one is linked to the daily operations and cultural values of such agency. For instance, it is likely to find agencies with a high degree of legal autonomy, but in practice are largely influenced by politicians and private actors from the regulated sector. Thus, under these two dimensions it is possible to observe different forms of autonomy depending on whether the level of the decision is either strategic or operational, such as budget and personal management autonomy, policy autonomy and operational decisions (Verschuere et. al. 2006).

Another source of legitimacy and credibility has been the capacity of the regulatory agencies to carry out their own decisions based on the expertise and knowledge of the regulated sector; this implies, on the one hand an increase in the horizontal specialization of the personnel, and in the other, the development of some sort of transnational networks of knowledge with the purpose of building some kind of epistemic communities, and in terms of their organisational structure, a higher degree of complexity not only in their tasks, but also in the internal procedures. Nevertheless, according to Baldwin (2005: 90) regulatory agencies may achieve legitimacy through five sources: (1) first, on the basis of a legal mandate derived from a democratic system, (2) second, on the basis of the perceived agreement of the people, (3) third, in the use of procedures considered as fair, (4) fourth, via the trust placed on the experts, and (5) finally when a decision is considered as efficient.

## THE INSTITUTIONAL-ORGANIZATIONAL APPROACH

The point of departure of a structural/organizational approach is the belief in the possibility of designing organizations with the purpose of reaching certain objectives based upon the manipulation of several parameters, and emphasises the formal design of the agencies. Thus, the designers, or reformers, try to settle down those structural adjustments that would allow that the organization works in a better way, and thus to obtain suitable measures of efficiency and effectiveness. Nevertheless, this perspective supposes, on the one hand, a high degree of malleability in the structural design of the organization and on the other, a high level of certainty in the definition of objectives and goals of the agency (Christensen et. al. 2007).

In the case of the regulatory agencies, this approach emphasises the manner in which the public sector is formally organised, which implies to focus the attention on the degree of centralisation/decentralisation in terms of their forms of affiliation with the Secretariat of the sector, for example whether the agency is decentralised or deconcentrated, or if the agency fails have been designed at a (1) Ministerial department, (2) Ministerial agency, (3) independent advisory board, (4) independent regulatory authority, as well as the governance mechanisms, such as the composition and appointment of the board, and the degree of complexity of the agency. In this regard, it is feasible to suggest that a potential tension between autonomy and independence on the one hand and transparency and accountability on the other, is reflected on the institutional design of the regulatory agency in terms of degree of (1) centralisation/decentralisation with respect to the principal, (2) type of organization (3) the governance mechanisms, and (3) degree of complexity. In this manner, autonomy is seen as the level of discretion of the regulatory authorities, while control concerns the structural constraints through which Ministries or Secretariats influence the decision-making process or competencies of these agencies.

Under this perspective, all the procedurals to enhance proper institutional mechanisms accountability and transparency are strongly influenced by the formal structure of the agency and have become a multidimensional concept. Accountability refers not only to the obligation to explain and justify their decisions, as well as to provide answers and to inform the use of public resources and their implications, but also to establish some kind of responsibility or liability for their performance. This implies to know who is accountable and to whom; in other words, which type of relationships and formal obligations exist towards other powers of the State. Transparency, on the other hand, generally refers to those institutional mechanisms that encourage the extent to which decisions, resolutions and the use of resources are transparent and available to the citizens (Schedler et. al. 1999).

**Table 1: Institutional design and autonomy**

Variable	Characteristics
Type of organization	(1) Ministerial department (2) Ministerial agency (3) Independent advisory board (4) Independent regulatory authority
Governance mechanisms	Board of commissioners (collegiate) General Director (top down)
Composition of the board	Members from Public sector Members from Public/private sector Members from Private sector
Dimensions of autonomy	Legal Financial Human resources Administrative Political

Source: Own elaboration.

**Table 2: Accountability and transparency mechanisms**

Variable	Characteristics
Accountability	Obligation to explain and justify their decisions, inform the use of public resources responsibility or liability
Transparency	Availability of information.

Source: Own elaboration.

## THE BRAZILIAN COMMISSION OF COMPETENCE

### GENERAL BACKGROUND

The case of Brazil tends to be similar to many other Latin American countries, including Mexico. To a certain extent, competition policy has been a major concern during several decades. For instance, from 1945, the Brazilian Government has implemented various laws aimed at protecting and promoting a healthy competition policy and in 1962 actually established its own public entity responsible for monitoring the proper functioning of markets and to prevent anticompetitive practices. However, it was not until 1994 when the system of promotion and defense of competition was transformed. These changes took place in the middle of a series of transformations in the State, primarily involving the privatization of public enterprises, reduction of bureaucratic apparatus and the introduction of programs and plans consistent with the so-called new public management, and

on the other hand, the liberalization of trade that brought as a result more foreign investment and the introduction of companies in the Brazilian market (OECD 2000a, 2001a, 2003a).

From 1962 until 1994, the promotion of competition in the Brazilian system was responsibility of the Administrative Council for Economic Defense (CADE), whose performance was primarily related to direct intervention on the market in order to protect the so-called “popular economy”; this in turn, consisted mainly on establishing a set of prohibitions related to speculation and predatory pricing for products, as well as price controls. In 1994 a new competition act was promulgated which gave more powers to CADE and reformed the system of promoting competition (OECD 2000a, 2001a, 2003a). It is important to mention that by means of this law, CADE obtained a higher degree of autonomy from the federal/central administration, for example the fact that its board members could stay in office for a fixed term which could be renewed once (OECD 2003a, 2005a, 2005b). In addition, in 1995 the Congress approved changes in the Constitution of Brazil, through which it allowed the participation of private capital in areas where the State had control, such as telecommunications, electricity and oil.

In this way competition in Brazil system consists of three main public entities: the Secretariat for Economic Monitoring (SEAE) attached to the Ministry of Finance, the Secretariat of Economic Law (SDE) linked to the Ministry of Justice, and the Administrative Council for Economic Defense, (CADE) as an independent regulatory agency. The SDE is responsible for monitoring markets and investigate antitrust issues; the SEAE has a minor role dedicated to the issuance of opinions in cases of mergers and existence of anti-monopolist practices, while the CADE is the agency responsible for implementing competition law and impose fines and penalties (Brazilian legislation).

### INSTITUTIONAL DESIGN

According to the law of Brazil, CADE is a public agency linked to the Ministry of Justice, whose purpose is to control and prevent any kind of economic abuse, either with a preventive or repressive nature. The first one is developed through the analysis and studies related to the possible existence of anticompetitive practices and concentrations, while the second makes it through the imposition of fines and penalties to economic agents who commit a crime or offence related to economic competition. Another feature is the educational, which involves the diffusion of competition culture, dissemination programs in universities or research centres, or from the organization of seminars and conferences. As we have seen previously, the CADE is part of a system of different Ministries related to economic development, and sometimes also involving other agencies such as the National Agency for Telecommunications (ANATEL) (see OECD 2005a, 2005b)



As regards the institutional mechanisms of decision and Governance, the highest organ of the CADE is the plenary, composed of a Chairman and six Commissioners appointed by the President of the Republic and must be approved by the federal Senate. The term of their responsibility is two years with the possibility of renewal once more. The independence of these counsellors is guaranteed not only because the impossibility of its removal, since they can only be removed by special offences, but also because they have to work full-time to CADE. The same applies to the General Attorney, who is also essential in the composition of the CADE structure.

In terms of transparency and accountability, the CADE has a web page to spread resolutions and cases carried out, and have a link on the federal government transparency. On the other hand, the plenary through its President is obliged to submit an annual activity report. Finally, unlike other competition agencies, the CADE incorporates educational function as a way to comply with the mechanisms of accountability and transparency (Brazilian legislation).

## THE MEXICAN COMPETITION AGENCY

### GENERAL BACKGROUND

The policy of competition has not been a new problem, actually it exists since 1857 when the Liberal Constitution was issued; and later the current constitution published in 1917 adopted the importance of developing a healthy competition and prohibited the existence of monopolistic practices (art. 28). From the 1990's, the Mexican government was committed to implement a more comprehensive competition program, but it was difficult because the lack of experience in the field mined the protection and vulnerability of national companies (Avalos 2006).

However, in spite of these difficulties, the Federal Law of Economic Competence was issued on December 24, 1992 and the Federal Commission of Competence was established as a de-concentrated agency from the Ministry of Economy with technical and operational autonomy. Since then, the Commission has been in charge of implementing the Federal Competition Act aimed at protecting: "the process of competition and free access to markets, through the prevention and elimination of monopolistic practices and other restrictions to market efficiency, in order to contribute to societal welfare". The legal nature of the commission is similar to other regulatory agencies like the Energy Regulatory Commission and the Federal Commission of Telecommunications attached to a different Ministry.

**Table 3: De-concentrated agencies of the Ministry of Economy**

Regulatory Agency	Name	Object
CFC	Federal Commission of Competition	Economic Competition
COFEMER	Federal Commission of Regulatory Improvement	Regulatory Improvement.
CGPNAES	General Coordination for the National Program to Support Small Companies.	Support Small Enterprises.

Source: Own elaboration.

### INSTITUTIONAL DESIGN

In order to fulfil this objective, CFC is entitled to regulate concentrations and anticompetitive practices (both absolute and relative); it is for example entitled:

(...) to approve mergers and acquisitions, to investigate and to impose penalties for monopolistic behaviours, to authorize firms that wish to participate in privatizations and public tenders for the granting of concessions and permits in regulated sectors, and to foster the competition activities.

In terms of regulated sectors, the CFC has the authority to regulate all economic agents whether individuals or corporations, agencies or entities of the federal, state or local administration, private associations, professional groups, trusts or any other form of participation in economic activities. However, similar to other deconcentrated agencies, the annual budget is approved by the Secretary of Treasury, and the surveillance and control is in charge of an internal comptroller headed by a public servant appointed by the Ministry of Public Function.

In accordance with their annual reports and legislation, the commission has the following competences: (i) Investigation: to perform the necessary inquiries to the economic agents involved in some kind of legal prosecution; (ii) resolution: to impose fines and sanctions and; (iii) collaboration: to establish national and international agreements to combat and to prevent prohibited practices.

On the other hand, an element that is different to other commissions, is that in the case of CFCs, the institutional framework has granted the Commission an institutional capacity not only to regulate and promote competition, but also to impose sanctions and administrative fines; for instance, it is entitled to suspend or eliminate concentration practices, to order the partial or total deconcentration, to fine up for having falsely declared or submitted false information, for having incurred in monopolistic practices or concentrations.

As many other public organizations in the federal public administration, the organizational structure of the commission tends to be hierarchical with a high level of rigidity. This structure has four main components, (1) the Board of Government, (2) the Presidency, (3) the Executive Secretary, and (4) the General Offices. The most important decisions of the CFC as well as its governance remains in the Board of government comprised of one chairman and four commissioners, appointed by the Executive Branch for a 10-year non-renewable term, and can only be removed for serious reasons. Decisions are reached by majority vote of the Board of Government. This form of appointment and formal independence has several implications; on the one hand, it allows the commissioners to be more independent and autonomous in their performing, it tries to avoid the agency to political times, and it becomes a mechanism of insulation and depolitization of its activities and, on the other hand, the commission is not responsible before the attached Secretary of Economy. Nevertheless, the annual budget is tied to the Ministry of Finance and Legislative Branch.

The Chairman acts as the representative of the Commission and conducts the plenum of the board, and has the obligation to presents the annual reports. In terms of the organization of the agency, the chairman has the authority to appoint and remove personnel, to implement the policies issued by the Board; decisions of the Board are reached by majority, but the Chairman shall have the casting vote. Meanwhile, the Executive Secretary is responsible for the administrative and operational issues and certify the Board decisions. Finally, the General Office is responsible of specialized areas: legal affairs, economic studies, concentrations, investigations, privatizations, regional operations, international affairs, administration and public information

#### ACCOUNTABILITY AND TRANSPARENCY MECHANISMS

Accountability and transparency have been a common concern in the functioning of regulatory agencies. In the case of the Mexican agency, there are various instruments to promote transparency; the most important mechanism refers to the Federal Law on Transparency and Access to Public Government Information; in accordance with this act, all public entities are compelled to establish a special unit to provide public information to citizens and establishes procedures to request information from governmental public agencies such as the Competition Agency. However, the Act also points out some limitations to the obligation to supply data, such as the prohibition to disclose information related to current investigations. In addition, there have been several cases in which the Commission has refused to deliver specific information to the Federal Institute for Access to Public Information based on the legal framework.

Furthermore, even though the legislative framework establishes some criteria to evaluate anticompetitive practices, the Commission does not publish any in-

formation related to these practices but only its final resolutions; in addition, there is no competence law which requires the Agency to report. Other transparency instruments are found in the diffusion of information through its web-site, such as some of the resolutions of the Board of Government, legislation, programs etc.

In the same manner as transparency, accountability is also reflected upon the institutional framework and is characterized by the absence of clear mechanisms that guarantee horizontal and vertical accountability, which makes the agency vulnerable to the capture of the regulated sectors. According with the legislation, perhaps the only instrument of accountability consists on the obligation of the Chairman to issue the annual reports in which the president explains some of the most outstanding cases solved during the year. Although the agency possesses an internal comptroller, it lacks effective accountability with other actors such as the Congress, consumers and the judiciary, as well as public participation and public consultations.

## **THE NORWEIGIAN COMPETITION AGENCY**

### **GENERAL BACKGROUND**

The competition policy in Norway has some features that make it different from other countries, even from those that share similar traditions such as the Nordic Nations. Norway has been characterized as a country which has a strong tradition of social welfare, where the Government has had a leading role in the development of the economy and social aspects. For instance, a number of markets in Norway are characterized by historically established and natural monopolies (OECD 2000b, 2001b, 2003b). Another interesting element is its degree of integration with the European Community and the network of Nordic Competition; in fact, many of its policies and transformations have been the result of commitments to international agencies. For example, by 1998, three out of four Nordic neighbours have become members of the European Union and have adopted new competition laws adapted to European competition law (OECD1998, 2000b, 2001b).

As in the case of Mexico and Brazil, the policy of promoting competition has not been a recent issue. The first law on competition in Norway was adopted just a few years from its independence from Sweden in 1926, but it was until 1993 when the Norwegian Comptition Authority (NCA) was created as the public agency responsible for implementing the new competition act, aimed at promote a healthy competition. This law worked for over 10 years until 2004, when the new legal system came into force. However, during these years of competition policy and the same authority suffered some adjustments. For example, for 2001 a new centre-right government initiated a 5-point program to strengthen competition policy. These points were:

1. To place greater emphasis on competition policy and strengthen the Norwegian Competition Authority
2. To review public regulations and institutions that may restrict competition
3. To ensure that government/public procurement initiatives enhance competition and access to the market
4. To ensure that privatization of public companies does not contribute to restricting competition or to the formation of monopolies
5. To ensure that the public sector is organized and run in a manner that promotes competition (OECD 2003b, 2004)

Finally, in year 2003 a Committee was established to review competition policy and the functioning of the NCA in proposing a new law which was passed by the Parliament in 2004. By means of this law, NCA acquired more powers to investigate and strengthen the institutional capacity; yet, one of the most important elements in the new law was the change of its purpose: under the previous law, the purpose was the efficient allocation of resources to provide the necessary conditions for competition, while under the new law, the main objective is to promote competition as a means to achieve the well-being of society (OECD 2002b).

Until today the NCA has had two important changes: the first one, in 2001, when the NCA was established as a central unit based in Oslo and closed its regional offices because of budget reductions and the need for a greater centralization of activities; the next change occurred in 2003, when the headquarters of the NCA were transferred to the city of Bergen where its current changes started (OECD 2003b). The reasons for this change were a set of presumptions of the parliament that NCA should operate efficiently during the relocation period and that a new, efficient organization should be systematically built up (OECD2003b).

### INSTITUTIONAL DESIGN

In accordance to the Norwegian law of competition, the system of promoting competition is composed by the King, the Ministry, and the Competition Authority. By this law, the NCA obtained a higher degree of independence from the central administration although it is still linked to the Ministry of Government and Administrative Reform. However, it becomes able to carry out its own resolutions without any intervention from that Ministry. The NCA also acquired more faculties to prevent monopoly practices and to monitor competition in different markets, which include to ensure adherence to the prohibitions and norms derived from the competition Act, as well as to intervene against concentrations, and to implement measures to promote market transparency.

Under the new Act, the NCA obtained more independence from the government; however, the Minister has the power to intervene in some decisions to the extent that they could be declared as not valid, whether the economic actors have appealed or not. The reason is that the decisions of the NCA may affect a greater interest. Concerning its organizational structure, the NCA is divided into several layers that include three general offices, which attend 6 markets, and is led by a General Director appointed by the Ministry.

The transparency and accountability mechanisms in the NCA have been changing, and currently the agency publishes the most important cases, either through its web page or through its annual reports; on the other hand, most of the access to information is regulated by the laws on transparency in Norway, although there are certain limits when it comes to any investigation process. Apart from that, in the Act there are no special accountability dispositions.

## **DISCUSSION IN TERMS OF TRANSPARENCY AND ACCOUNTABILITY**

The intention of this article has been to explore the institutional design of the regulatory agencies –particularly, those related to the promotion of competition in different countries– in order to extract some lessons related to the transparency and the accountability instruments. Among other things, this is the result of the possible deficits of transparency and accountability that these agencies present, especially when they must answer to another type of criteria as for example the search of the efficiency and the best performance of the markets in terms of a healthy competition and prohibition of monopolistic practices.

One of the most important premises upon which the article is based is that the different historical-institutional contexts of each one of the countries had had a great influence not only on the institutional design of the regulatory agencies of competition, but also on their functioning, performance and on their transparency and account surrender mechanisms . In this sense, one of the elements which can be seen in the development of the IRAS set out above is that it seems that, on the one hand, its institutional design expresses the need of established agencies who need a high level of autonomy and independence, but at the same time there is a concern about establishing mechanisms to promote transparency and accountability.

In addition, one of the elements that seem to appear in the design and evolution of the IRAS is that they seemed to strengthen the thesis of convergence / divergence. That is to say, in each of them, a certain institutional isomorphism is observed in so far as the institutional mechanisms of transparency are almost the same. These are: the publication of annual reports, a web page where they place their decisions, regulations and their functioning and, from a state level, all of them are subordinated to legislation for transparency. On the other hand, the

reasons behind the creation of these agencies are also very similar, in the sense that they were born with the intention of regulating markets that were created as part of the implementation of the NPM.

In terms of divergent processes, it is noticeable that in Brazil the regulatory agency of the competition is part of a wider system where different Ministries intervene and with a function closer to the judicial branch, whereas in case of Norway it belongs to a Ministry and Directorate, although more related to the international arenas, while in the case of Mexico it is linked to a secretary of State without being part of the Secretary. Hereby, what turns out to be divergent is the institutional model under which this type of agencies functions and that can be the result of the political administrative context as well as their history and relations with the exterior. The above mentioned model might have diverse implications in terms of transparency and accountability, since on the one hand it influences their degree of autonomy, but on the other hand can lead to a major fragmentation and the danger of duplicity of functions.

Finally, whether we face the divergent or convergent thesis, what seems to be clear is the existence of a concern for the need to promote and to establish better transparency and accountability instruments, among other things, to overcome certain democratic deficit and the legitimization of these agencies. As it was mentioned previously, the present article forms a part of a much larger project on the institutional design of regulatory agencies; therefore, it is expected that the current results could serve to nourish the above mentioned project, not only penetrating into these cases, but into other sectors such as telecommunications and energy.

## REFERENCES

- Avalos, M. (2006). *Condiciones Generales de Competencia. El Caso de México*. México: CEPAL.
- Baldwin, R. (2005). Regulatory Legitimacy in the European Context: The British Health and Safety Executive. In Majone, G. (Ed.), *Regulating Europe*. New York: Routledge.
- Baldwin, R. and Cave, M. (1999). *Understanding Regulation: Theory, Strategy and Practice*. Oxford: Oxford University Press.
- Bouckaert, G., Peters, G. and Verhoest, K. (2006). Janus Faced Re-Organisation: Specialisation and Coordination in Four Countries in the Period 1985-2005. Paper prepared for the EGPA Permanent Study Group on Governance of Public Sector Organisations, September, Milan.
- Christensen, T. et. al. (2007). *Organization Theory and the Public Sector: Instrument, Culture and Myth*. London: Routledge.
- Christensen, T. and Læg Reid, P. (2005). Reforma Regulatoria y Agencificación del Estado. In Romo, G. and Culebro, J. (Comp.), *Confianza, Liderazgo y Agencificación*. Guadalajara: Universidad de Guadalajara.
- (Eds.). (2006). *Autonomy and Regulation. Coping with Agencies in the Modern State*. Cheltenham: Edward Elgar Publishing.
- Flinders, M. and Buller, J. (2006). Depoliticization, Democracy and Arena Shifting. In Christensen, T. and Laeg Reid, P. (Eds.), *Autonomy and Regulation. Coping with Agencies in the Modern State*. Cheltenham. UK: Edward Elgar Publishing.
- Gilardi, F., Jordana, J. and Levi-Faur, D. (2006). *Regulation in the Age of Globalization: The Diffusion of Regulatory Agencies Across Europe and Latin America*. Barcelona: Institut Barcelona D'Estudis Internacionals.
- Greeve, C. (2008). *Contracting for Public Services*. New York: Routledge.
- Hall, P. and Taylor, R. (1996). Political Science and the Three New Institutionalisms. *Political Studies*, XLIV, 936-957.
- Kettl F. D. (2000). *The Global Public Management Revolution. A Report on the Transformation of Governance*. Washington: Brooking Institution Press
- Jordana, J. and Levi-Faur, D. (2004). The Politics of Regulation in the Age of Governance. In Jordana, J. and Levi-Faur, D. (Eds.), *The Politics of Regulation: Institutions and Regulatory Reform in the Age of Governance*. Cheltenham: Edward Elgar.
- Majone, G. (Ed.) (1996). *Regulating Europe*. Routledge: London.



March, J. and Olsen, J. (1983). Organizing Political Life: What Administrative Reorganization Tells Us About Government. *The American Political Science Review*, 77 (2), 281-296.

Organisation for Economic Co-operation and Development (OECD) 1998. *Annual Report on Competition Policy Developments in Norway*. Paris: OECD

-----, 2000a. *Annual Report on Competition Policy Developments In Brazil*. Paris: OECD.

-----, 2000b. *Annual Report on Competition Policy Developments in Norway*. Paris: OECD.

-----, 2001a. *Annual Report on Competition Policy Developments In Brazil*. Paris: OECD.

-----, 2001b. *Annual Report on Competition Policy Developments in Norway*. Paris: OECD.

-----, 2002. *Annual Report on Competition Policy Developments in Norway*. Paris: OECD.

-----, 2003a *Annual Report on Competition Policy Developments in Brazil*. Paris: OECD.

-----, 2003b. *Annual Report on Competition Policy Developments in Norway*. Paris: OECD.

-----, 2004. *Annual Report on Competition Policy Developments in Norway*. Paris: OECD.

-----, 2005a. *Brazil. Peer Review of Competition Law Policy*. Paris: OECD.

-----, 2005b. *Designing Independent and Accountable Regulatory Agencies for High Quality Regulation. Proceedings of an expert meeting in London, UK. 10-11 January*. Paris: OECD.

Schedler, A. et. al. (Eds.). (1999). *The Self Restraining State. Power and Accountability in New Democracies*. London: Linne Ryener Publishers.

Verschuere, B. et. al. (2006). Accountability and Accountability Arrangements in Public Agencies. In Christensen, T. and Læg Reid, P. (Eds.), *Autonomy and Regulation. Coping with Agencies in the Modern State*. Cheltenham: Edward Elgar.

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