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Regulatory reform policies for developing market process: The ecuadorian case

Políticas de reforma regulatoria para el desarrollo del proceso de mercado: El caso ecuatoriano

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Abstract

Market processes suggest legal figures that are applied effectively and efficiently. In the Ecuadorian case, it is essential for legal institutions to be strong, which implies formality and stability. However, for this to happen, it is necessary to implement legal reforms to improve market regulation. For this reason, this article aims to examine, utilizing the analytical-conceptual, economic, and normative method, certain legal structures with their rules of the game, highlighting those barriers in the rules of entry, permanence and exit from the market.

Keywords: financial market, business, economic system, legal reform, law enforcement.

Resumen

Los procesos de mercado sugieren figuras legales que se apliquen de forma efectiva y eficaz. En el caso ecuatoriano, es imprescindible que las instituciones jurídicas tengan fortaleza que implica formalidad y estabilidad. Sin embargo, para esto es necesario implementar reformas legales que permitan mejorar normativamente la regulación del mercado. Por esto, este artículo pretende examinar, mediante el método analítico-conceptual, económico y normativo, ciertas estructuras jurídicas con sus las reglas de juego, destacando aquellas barreras en las reglas de entrada, permanencia y salida del mercado.

Palabras clave: mercado financiero, empresa, sistema económico, reforma jurídica, aplicación de la ley.

Introduction

In Ecuador, countless administrative regulations and legal norms have been introduced, which have varied according to how they were enacted, the customs, the political orientation of the government in power, and the social conceptions that society was living and experiencing at that time.

Therefore, this article roughly alludes to the policies that have remained in force until the present date, which, from the legal analysis, reveal and reflect the guidelines and orientations that previous governments had, given that, throughout this contribution, the normative reality that governs, directs, and establishes the rules of the game of the Ecuadorian market is reflected. For Giler and Méndez (2018):

> It is essential to revive developing countries' economies by taking advantage of existing advantages and overcoming fears of commercial dynamics. It is necessary to intelligently identify and take advantage of the potential of internal resources: for example, natural resources and geographical location. (p. 70)

Moreover, it is first necessary to determine what is understood by the market; the market is the ideal framework in which the interaction between supply and demand of a product or product line takes place, in which suppliers and demanders are related, regardless of the legal framework governing a specific market (Méndez, 2017; 2019).

Thus, the development of this article begins with the study of the "merger control regime in Ecuador" and involves revising the "right to freedom of association and competition" as a right recognized by the Constitution of the Republic of Ecuador. Later, the question of whether concentrations effectively violate the right of competition and the different types of concentrations established in the Organic Law of Regulation and Control of Market Power is based. Also, it is analyzed from the normative point of view regarding the efficiency of applying the norm, the competence of the Superintendence of Control of Market Power to know and resolve issues of control of concentrations.

Like this, after the analysis of the existing regulations, as well as the competencies of the Superintendence for the Control of Market Power, it is concluded that economic concentrations are a danger when the economic agent restricts the competition of others in the market so that other economic agents are harmed; however, concentrations can be defined as positive, because they contribute to the growth of the country's economy (Botello y Guerrero, 2019).

However, due to the inevitable business crisis caused by the COVID-19 pandemic, it is necessary to analyze those legal tools of business rescue that allow a company to remain in the market or exit it in an orderly manner through an agreement with its stakeholders. Therefore, the second section highlights those general aspects of the Ecuadorian reorganization proceeding and the potential obligation to strengthen the procedure through the Economic Analysis of Law parameters.

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The third section developed in this article has been called "The shareholders' agreement as a mechanism to position family businesses in Ecuador." This section reviews the shareholders' agreement and good corporate governance as efficient tools/instruments to improve the organic structure of the company and its positioning in the market. The study focused explicitly on family-owned corporations, defining share ownership as a problem because it restricts access to secondary markets.

Accordingly, we focus on the last section of this paper called "Challenges for a strategic plan for Regulatory Improvement in Ecuador" since we believe in regulatory reform as the generation of clear rules, simplified procedures and services, and effective institutions for creating and applying all the above-mentioned aspects (rules, laws, policies, entities in charge, among others). In this sense, Glass and Newig (2019) pointed that:

> Such adaptive governance arrangements can be decisive when dealing with highly dynamic and long-term sustainability problems. This in turn requires reflexivity of institutions and procedures, a governance characteristic that often seems to contradict traditional rationalist problem-solving approaches. (p. 100)

As mentioned in the previous sections, regulatory reform is considered necessary due to the constant institutional problems in Ecuador derived from the erroneous manifestation to provide solutions to issues, the drafting of extensive regulations in force, but little application (Olivares and Medina, 2020).

Methodology: qualitative, normative, and doctrinal analysis

First, based on a qualitative methodological approach, it can be argued that the legal and administrative standards that regulate the market have undergone the most significant number of changes and transformations. It is explained because legal and administrative measures have generally been adapted to the political ideology of the government in power; a possible example is an ideological and political change that Ecuador will surely experience with the positioning in the "executive power" of a character who claims to break with the ideology that has remained in power for more than ten years (Méndez, 2019).

Second, the article proposes the conceptual and theoretical ius-economic analysis following previous contributions of authors such as the Argentinian professor Juan Carlos Cassagne (2001) to strengthen future studies of the contemporary processes of market reform and regulatory improvement for Ecuador.

> However, as has been pointed out, both motivations (ideological and practical) are often intertwined. On the other hand, there is a legal significance that lies in the technique of transferring large parts of the public sector of the economy to the private sector. (Cassagne, 2001, p. 443)

Third, due to the objective of this contribution, the qualitative and theoretical approaches present the ideal framework that allows, on the one hand, to investigate deeper into the existing theory concerning the topic in question and, on the other hand, to review the Ecuadorian

framework concerning legal-economic regulation, since, as Korstjens and Moser (2017, p. 275) state, qualitative research studies reality from its natural context. Furthermore, the use of qualitative research through the proposed techniques responds to the need to investigate social and organizational behaviours that explain the effects of the interaction of the different economic, legal, and political agents involved in the regulatory procedures, hence the importance of using tools that allow greater freedom during the information gathering process. In Carrigan and Coglianese (2011) words:

> Although the existence of industry pressure on regulatory policy is undeniable, such pressure may well explain only a limited set of decisions by regulatory agencies. Likely, industry influence fluctuates over time, especially across different administrations. (p. 110)

Therefore, the methodology proposed for this article has been applied and replicated for legal research to determine a) relevance and b) importance and c) ensure its originality. The qualitative (theoretical and conceptual) research proposed in this article focus on defining the discussion topics is the legal analysis of market reform and regulatory improvement for Ecuador and searching for legal information that can be classified as “recognized,” “current," and "pertinent," mainly for Latin America and Ecuador. We have rejected proposals focused mainly on advocacy (dissemination of ideas) and without scientific significance (low impact on academia), primarily showing an ideological bias or a partisan approach.

The right to associate and business concentration regime

In the Constitution of the Republic of Ecuador, freedom is attributed as one of the personal rights. Article 66, paragraph 13 states, "The right to associate, assemble and demonstrate freely and voluntarily" (CRE, 2008). Its main objective is to guarantee the freedom of association and competition of natural and legal persons.

As an example of this principle, business concentrations arise as operations carried out by economic agents within the market, intending to unify their assets or absorb the support of another economic agent and operating under the figure of a single legal entity (Lara and Méndez, 2020). These control operations can occur in two ways: vertically and horizontally. As "Acts of economic concentration" in Ecuador, they are regulated by the Superintendence of Control of Market Power.

Some authors state that the concentration of companies arises when an economic agent loses its independence by concentrating through the structural modification of its assets (Cevallos, 2005). Thus, the practice of engagements in the economic system may violate the rules established through competition law. That is the institutional framework that governs the free competition of suppliers or consumers themselves. In this sense, Jenny (2016):

> The scope of what one should consider being the institutional design of a competition authority is extremely wide as it covers every aspect of the governance of the authority,

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> of its internal organization and its relationship with the outside (be it the government, parliament, the business community). (p. 2)

There are different types of concentration, such as total or partial; temporary or irreversible; horizontal (at the same level of activity) or vertical (within the same sector of economic activity), at different levels: production, distribution, marketing, and other subsectors. (Lizana and Pávic, 2002, pp. 509-510; Cevallos, 2005, pp. 18-20).

Competition law in recent years has had a significant impact on society, and one of its objectives has been to encourage economic agents to carry out concentration operations to obtain greater participation in the market (Galvez and Galvéz, 2020). These concentration operations have been established in the Organic Law of Regulation and Control of Market Power and are regulated by the Superintendence of Control of Market Power.

Regulation of economic concentrations in Ecuador - Superintendence for the Control of Market Power (SCPM)

The Organic Law on Regulation and Control of Market Power, enacted in 2011, is the first competition regime in Ecuador. It has application in five areas: 1) conducts considered abuse of dominant position; 2) restrictive agreements and practices; 3) unfair competition; 4) control of economic concentrations; 5) public aid. (Pérez, Marín and Navarrete, 2018, p. 72).

The regulatory body for controlling concentrations in Ecuador is the Superintendence of Control of Market Power. This institution is the Intendancy of Investigation and Control of Economic Concentrations (ICC), which will resolve the notifications of economic concentration submitted by economic operators.

Then, the merger control model will involve an analysis from the regulatory point of view regarding the efficiency of applying the regulation and the competence of the Superintendency for the Control of Market Power to know and resolve merger control issues. In this sense, OECD (2020) says that:

> Market performance refers to how well a market achieves a certain public policy objective, such as an efficient and equitable outcome. Within competition policy, market performance is usually understood in a consumer welfare sense, that is, a market performs well if it provides good outcomes for consumers. In jurisdictions with a total welfare standard, performance refers instead to how well a market promotes efficiency in terms of resource allocation, production scale and cost technology. (p. 12)

Economic concentrations mainly contribute to the growth of the country's economy so that they are beneficial to the market. “Competition is necessary and healthy in any market and sector in the world, as it generates several advantages, among which we can mention, that it allows self-regulation of prices in the market and encourages the productivity of the sector” (Trujillo et al., 2017, p. 70) However, these concentrations represent a danger when the activities being carried

out by the economic agent restrict competition through the entry and exit barriers, collusive agreements in such a way that they generate damage to other economic agents.

Insolvency proceedings: An ius-economic approach

The consequences of the global health crisis caused by the COVID-19 pandemic have been incalculable. In Ecuador, economic agents have been severely affected, particularly companies that had to adapt their business model to the use of platforms and logistic channels based on new technological developments that, in some cases, gave results but, in others, did not allow them to overcome the decrease in production and the provision of services. Across the OECD (2021):

> Small and medium-sized enterprises (SMEs) account for 99% of all businesses and between 50% and 60% of value-added. SMEs are particularly vulnerable during the crisis. In addition to SMEs, the self-employed represent a considerable share of total employment in a few OECD countries. Amounting to slightly less than 15% on average, self-employment is particularly prevalent in Greece, Italy, and Turkey where it exceeds 20%. The self-employed are often less protected by unemployment benefits compared with standard workers. (p. 49)

It is due to the number of contractual, legal, and economic obligations pending with *stakeholders* or other agents with a direct or indirect legal-economic relationship with the company, among other impediments that only aggravate a business economic crisis into a systemic and structural one.

Based on these considerations and in the face of a significant economic crisis, companies must have a range of options to adequately determine the probability of exiting or remaining in the market in an orderly manner. In any of these cases, it is essential that there is an effective procedure for restructuring and reconversion of assets, for which we must consider a proactive state intervention to establish an efficient specialized agency that allows the *enforcement* (compliance) of the *rules of the game* (North, 1990) necessary to generate a cordial environment between the debtor company and its creditors. This institutional solution is known in the legal field as *reorganization proceedings*, which an economic point of view allows facing—high *transaction costs* and *agency costs* Typical of the ups and downs of the market process.

A Preventive Bankruptcy Law (2006) aimed explicitly at Ecuador's commercial companies with certain regulatory limitations. However, this has been scarcely applied so that subsequently, the Organic Law of Entrepreneurship and Innovation (2020) was issued. This law provides for a restructuring procedure for enterprises open to the microenterprise sector. Finally, due to the pandemic, the Organic Law of Humanitarian Support (2020) was published to combat the health crisis derived from the COVID-19 in June 2020, which provides for an

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exceptional preventive concordat with two legal sub-institutions that provide for speed and efficiency, with comprehensive coverage of subjects who may avail themselves of such concordat.

Considering that only some companies could keep operating during the confinement and that others did not find a way to continue their commercial activities, the latter generated obligations that are not faced with resources due to "ordinary" management. Moreover, considering that creditors may have incurred debts. They had planned to pay to fulfil the company's obligations, which leads to a more significant conflict (Fushimi, 2020).

Furthermore, due to the current business crisis, it is necessary to consider a legal alternative for business rescue, such as the reorganization proceeding, which is a mechanism that "proposes a legal solution for those companies that are going through economic difficulties and need to pay off and respond to their creditors" (Mendoza and Méndez, 2020, p. 371), this tool also has the purpose that the creditor waives the right to demand the company's bankruptcy, and the latter can overcome its debts (Mendoza and Méndez, 2020).

The Ecuadorian Concurso Preventivo Law does not meet the objective of allowing the companies that request it to remain and exit the market in an orderly and efficient manner. Therefore, the reformulation of this legal mechanism must entail establishing a solid and institutionally competitive regulatory framework.

In addition, the new Organic Law on Entrepreneurship and Innovation and the Organic Law on Humanitarian Support to Combat, the Health Crisis, Derived from Covid-19 should unify the bankruptcy procedure. An alternative would be their legal integration to implement a consolidated and easily discernible framework so that companies organized through "conventional schemes" and entrepreneurs and SMEs can access their trusteeship, facing lower transaction costs. It also implies the introduction of a package of regulatory improvements to eliminate bureaucratic and legal barriers. This is because:

> The challenge for governments is, on one hand, to balance their need to use administrative procedures as a source of information and as a tool for implementing public policies, and on the other, to minimize the interferences implied by these requirements in terms of the resources demanded to comply with them. (OECD, 2009, p. 6)

There is a unique need for facilitators to handle negotiations between the debtor company and the *stakeholder*s not to overburden the Judiciary. For this, it is necessary to create alternative administrative or private channels, for example, avoiding the meaningless recognition of credits that is merely a formality, a step that can be simplified if this body hires qualified companies to evaluate this situation quickly and at lower costs, so that the specialized body would have more time to supervise. For this it's necessary to explain that:

> Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and

> conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement. Arbitration systems authorize a third party to decide how a dispute should be resolved. (Center for Democracy and Governance, 1998, p. 4)

The regulatory unification and the implementation of high-status organizations will be able to configure a legal figure with strength, carrying out an economic analysis of costs and benefits. It is relevant since the comprehensive services obtained for the debtor company and its creditors have been demonstrated that, with adequate parameters, can fit the national reality and, even more, the financial consequences caused by the COVID-19 pandemic.

Shareholders' agreements and family-owned companies

In Ecuador, commercial legal entities are traditionally managed by family structures that link their existence to descendants' participation in their administration. However, Ecuadorian corporate legislation provides for five types of commercial legal entities, among which is the corporation, which according to the Companies Law, is characterized as a type of company whose capital is divided into negotiable shares made up of the contributions of the shareholders (LC, 1999, Art. 143).

In this country, family structures also manage corporations, which also concentrate the ownership of their shares. The prevalence of the family character in Ecuadorian closely held corporations limits their possibilities of diversifying funds, and this scenario restricts their growth and access to national and international secondary markets. As an alternative source of financing, corporate law makes available to commercial companies the establishment of shareholder agreements called shareholders *agreements for addressing these restrictions*.

> Shareholder agreements are contracts that govern the relationships among multiple shareholders in privately held and publicly traded companies, specifying details such as the circumstances under which each shareholder may sell, buy, transfer, pledge or encumber shares. As a contract, they create an obligation to action (or inaction) in the future and are based on mutual acceptance of the contract parties. (Binz et al., 2021, p. 395)

These are contractual instruments that seek to regulate relations between shareholders or between shareholders and the management body of the companies, and good corporate governance, which are rules and principles whose purpose is to control the economic activity of companies through the transparent publication of financial non-financial information.
The family structure present in closed stock companies seeking financing limits their possibilities of diversifying funds since they cannot access secondary markets such as stock

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exchanges, and this scenario restricts their growth. Furthermore, it occurs to the extent that to list their securities on the stock exchange, they must offer them to a market that will be new company shareholders after acquiring the shares circulating on the stock exchange. This scenario implies that the family structure will divest itself of all the company's shares, discouraging them from making this decision.

As mentioned above, for family-owned corporations to face these financing restrictions, international and Ecuadorian corporate law propose the establishment of contracts between shareholders called "parasocial pacts" prescribed at the national level in the Companies Law; and norms and principles of regulation of the economic activity of companies, known as good corporate governance, contemplated in the Ecuadorian Norms for Good Corporate Governance, issued in Resolution SCVS-INC-DNCDN-2020-0013 of the Superintendence of Companies, Securities and Insurance, published on September 1, 2020.

> In terms of legislative policy, a trend towards recognition of the validity of this type of agreement could be expected when it comes to agreements that are part of the social contract. On the other hand, since it was not, the logical thing would be to hope that the appropriation of some shareholders of the role of administrators would be outlawed. This is what is observed in the regulation of two foreign legal systems with different legal traditions, as explained below. (Lagos, 2019, pp. 10-11)

Although Ecuadorian law has developed a first legal framework for shareholders' agreements, it does not contemplate aspects such as their constitutive elements and the effects of their enforceability.

The entry of new shareholders into family-owned companies is a direct consequence of shares on the stock exchanges. This scenario causes the companies' difficulty of decision-making within the companies since more shareholders must agree, which implies that their interests must converge. However, applying a contractual model in which shareholders delegate company control to a manager or administrator (agency model) to simplify the decision-making process will allow them to manage effectively. Moreover:

> The incremental approach to strategic decision making is characterized by the instinctive process of choosing alternatives, built based on learning and experimentation; by the problem analyzed not being fully clear; by the generation of alternatives as the objectives are clarified for all; by the search for the creation of a stable environment aiming at the exchange of knowledge; by the decisions to be made inside the organizational subsystems. (Lamb, Vieira, and Pereira, 2017, p. 80)

Even in a successful application of the agency model, problems arise due to information asymmetries and conflicts of interest between the companies' management (management) and ownership (shareholders). Shareholders' agreements regulating relations between shareholders and between shareholders and management can be used to deal with these problems.

Besides, essential reflections can be highlighted, such as the opinion of Bonmatí (2011), who -in summary- argues that shareholder agreements, being part of an extra-statutory -or parasocial- contract, allow optimizing the regulation of relations between partners since through this instrument it is possible to establish commercial legal guidelines that the subscribing parties must obligatorily comply and fulfil.
The above conceptualizations of the shareholders' agreement allow us to identify - in general terms - functional regulatory realities for the establishment of future complementation of the national corporate regulations in which the shareholders' agreements establish efficient rules for access to the stock market within family-owned corporations and these companies achieve financing with lower agency and capital costs.

For shareholders' agreements for facilitating the entry of companies into the stock market and for paving the way for the complementation of the existing regulations on shareholders' agreements, it is necessary to include elements to improve them as an instrument to help family-owned companies diversify their financing possibilities and consequently enhance their competitiveness in the market.

Based on the revision of the Argentine, Colombian and Spanish doctrine on shareholders' agreements, we propose integrating three elements in the Ecuadorian regulation: the objective coincidence, the subscription of the arrangement using a public instrument, and the corporate interest.

The objective coincidence, an element extracted from the Argentine jurisdiction, according to Adad (2012), states that the obligations of the shareholders' agreement cannot contravene those that the shareholders have previously subscribed with the company. Therefore, including this element in the Ecuadorian legislation will make it possible to control those shareholders who do not subscribe through shareholders' agreements obligations contrary to those they have with the corporation. Therefore, compliance with this instrument is practical and not detrimental to closed family corporations.

The element extracted from the Colombian jurisdiction is the social interest. According to Córdoba (2014), this element should be understood as the convergence of the interests of the shareholders, those of the company represented by the management body and those of interested third parties, which may be: a) the State, through control entities or, b) investors, in the stock market. Therefore, implementing the social interest as a constitutive element of the shareholders' agreements in the Ecuadorian regulations will make it possible to integrate the interests of family corporations' control and management bodies and ensure correct decision-making to enter the stock market.

Finally, from the review of the Spanish jurisdiction and as mentioned by Maldonado (2017), the execution of the shareholders' agreement through a public instrument makes necessary its

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annexation to the deeds of the company (bylaws or articles of incorporation), and it is needed because it enables the exercise of control over its content. Thus, in the Ecuadorian case, both the Superintendence of Companies, Securities and Insurance and investors (interested third parties) may exercise control over the agreement's content. The latter will especially know its content and formulate an offer based on that information.

Good corporate governance is a corporate instrument that originated in companies listed on stock exchanges, whose mismanagement has caused their bankruptcy and has harmed their shareholders and investors. The default of listed companies such as Enron, Worldcom in the United States, and Polly Peck in England led to the creation of rules and principles for controlling the economic activity of companies and providing financial and non-financial information relevant to the stock market.

Also, good corporate governance has become an essential element when attracting investors and maximizing the economic value of listed companies. Its objective is to increase transparency in the information related to their economic activity, which serves as a decisive element when carrying out a stock exchange operation. (Vásquez-Palma and Vidal-Olivares, 2016, pp. 391-392).

The *Cadbury* Code, one of the first codes of good corporate governance globally, implemented a rule that enacted optional compliance with its laws and principles and the obligation to explain the cases in which compliance was partial or null. This rule allowed a flexible application of good corporate governance, and it could be adapted to the circumstances of each of the public limited companies that listed their securities.

> The main contributions of agency theory to thinking about and reforming corporate governance are the ideas of risk, the uncertainty of results, incentives, and information systems. The study of conjectures that applies agency theory to corporate governance issues continues to grow because it frequently tries to explain real events that occur in the world. (Garzón, 2021, p. 183)

It also supports the stock market's control of compliance with suitable corporate governance measures since, according to the level of compliance, i.e., the amount of information available on the issuing company, the stock market would invest in one or other companies. This rule would later be known as the "comply or explain rule". Duh (2017) says:

> Several formal regulations and informal guidelines, recommendations, codes, and standards of corporate governance have been established or improved to determine good corporate governance. These efforts to improve corporate governance practices have raised an important dilemma within the corporate governance field, whether to develop hard law (i.e., mandatory requirements, hard regulations, and regulatory approach) or soft law (i.e., voluntary recommendations, soft regulations, and market-based approach) to improve corporate governance across countries. (n. d.)

At the national level, good corporate governance has been included in Resolution No. SCVS-INC-DNCDN-2020-0013 of September 1, 2020, contains the Ecuadorian Standards for Good Corporate Governance, issued by the Superintendency of Companies, Securities and Insurance,

the regulatory body for companies in Ecuador. This instrument compiles the rules and principles of good governance applied by closed family-owned corporations whose objective is to open to the stock market as an alternative financing mechanism to improve their position in the market.

Like the *Cadbury* Code, this instrument recognizes volunteer application as one of its principles, aims to regulate relations within the controlling body (shareholders) and between the latter and the management body of the companies. Hence, it allows the formulation of measures aimed at solving agency problems within its structure to guarantee the efficient investor management of its line of business.

> The Cadbury Code and Report was the starting point for this new direction. It combined a set of principles of good governance that served as a how-to guide for listed companies. It established a regulatory framework that guided equity capital markets and proposed ways that shareholders – principally institutional investors – should relate to the companies in which they invest. (Nordberg, 2020, p. 1)

Afterwards, those family-owned closed stock companies that adopt the Ecuadorian Standards for Good Corporate Governance will be able to access the stock market with a mechanism that allows them to face future agency problems. These companies will also enter the market with an incentive to receive investment since compliance with the rules, structures, and procedures established by this instrument ensure that investors obtain a profit and that managers do not misuse the funds that investors receive in return from investors (Kaen, n.d., cited by Tsagas, 2020, p.14).

The suitable corporate governance measures they adopt should enable them to position themselves in the market by making it easier for them to face greater competition and strengthen their competitiveness strategies by improving their institutional framework. And that's because "institutional investors search for companies with good governance practice since they need assurance for their investment to be protected" (Duh, 2017, p. 75). Therefore, companies should be encouraged to adopt the good corporate governance standards issued by the Superintendency of Companies, Securities, and Insurance.

Likewise, the complementation of the regulations ruling shareholders' agreements is necessary for this instrument to make it easier for the partners of a company to enter private contracts to agree on the management and control of the company and thus reduce the problems (costs) of agency within a family corporation and ensure that the family structure remains in the controlling body of the company.

> Instead of traditional principal-agent conflicts espoused in most research dealing with developed economies, principal–principal conflicts have been identified as a major concern of corporate governance in emerging economies. Principal–principal conflicts between controlling shareholders and minority shareholders result from concentrated

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> ownership, extensive family ownership and control, business group structures, and weak legal protection of minority shareholders. (Young et al., 2008, p. 39)

Therefore, the harmonization of the two corporate instruments in the Ecuadorian corporate regulations and the management practice of the companies will allow them to strengthen their internal structure and the relations between their management and control bodies. Furthermore, this will enable them to have alternative access to the stock market as a financing mechanism to enhance their competitiveness in the market.

Thoughts about regulatory improvement

In Latin America and Ecuador, state or bureaucratic bodies have constantly been subjected to the service of private interests. Because of this issue, the governments of the time have not been able to give a clear and effective response to the malfunctioning of these bodies and the service they provide (Lepage, 1980) since it is intended to solve these problems by drafting new regulations, which can be found in force, but not in compliance. (Polga-Hecimovich, and Trelles, 2016).

This "normative nature" problem has generated an overproduction of norms within Ecuador; therefore, it also generates antinomies, anomalies, and other types of normative conflicts. These norms are formulated without the proper legislative technique (for example, the legal "amalgam" is not considered, so antinomies arise). In addition, this problem affects the population at all levels of government in the country since there is no proper guarantee of legal security due to the high probability of change in the legal framework, especially in economic matters (Ghersi, 1991).

Consequently, regulatory improvement is a tool for regulatory review of an economic nature that promotes market development. Accordingly, the OECD strongly encouraged this public policy to help emerging countries in various aspects of development. In addition, the OECD continually generates new tools for member and non-member countries wishing to adopt such public policies that improve both the economic and social scenario.
It was not until 2013 that the "Plan Nacional del Buen Vivir del año 2013-2017" (National Plan for Good Living 2013-2017), which includes to some extent regulatory reform, was established within Objective 1.4, which revolves around improving the regulatory and control power of the state, where several steps are determined to achieve the effective fulfilment of this objective (SENPLADES, 2013).

Within Axis 2 and 3, it is indicated that regulation should be improved at the level of all governments to attract Foreign Direct Investment to grant better conditions, as well as facilitating access to the state market while reducing red tape such as administrative costs and encouraging the population for the development of economic activities. (SENPLADES, 2017).

Following the National Plan, revised in 2018, the "Law for the Optimization and Efficiency of Administrative Procedures" was issued. This law seeks to eliminate and reduce the paperwork system of state agencies to promote administrative simplification, which is understood as a public policy that aims to reduce bureaucracy in state institutions by reducing the burdens placed on them in the exercise of their functions (López and Ariño, 2003). However, there are no clear procedures or mechanisms to be followed for effectively enforcing the law in all public organizations at all levels of government. Furthermore:

> The problem in Ecuador concerning this principle is the excessive regulation that limits freedoms and, on the other hand, the lack of efficient regulation when there are situations that warrant it. Moreover, an example will be presented that demonstrates how, in certain situations, state intervention is not necessary since, if excessive regulation were started, the free and correct functioning of the market would be restricted, as the same as if the deregulation was implemented, it would cause a chain of negative impacts. (Heredia et al., 2020, p. 125)

Instead, regulatory improvement also aims to identify and eliminate bureaucratic barriers, defined as the set of demands, requirements, limitations, or prohibitions established by public administration entities materialized in regulations or ordinances (Pacharres, 2014). In addition, it can be understood as the result of rigid or unrealistic rules by state administrations. These barriers hinder and restrict market access within an economic scenario by directly affecting economic agents, divided into three groups: families, companies, and governments.

The Ecuadorian State must establish a more solvent regulatory policy that allows monitoring the regulatory improvement of its regulated entities to eliminate contradictory norms that slow down the access or performance of activities by economic agents. Without the need to generate excessive public expenditure within this policy, since, as has been demonstrated in other legislations, such as the Mexican one, it is not necessary to have many state agents in charge of overseeing regulatory policies—only a small group in charge of coordinating specific actions for the established purpose.

Conclusions

Ecuador has gone through a highly controversial political history, which has impacted the economic models adopted, then it is challenging to keep up with the changing trends that emerge.

From a review of this, it is possible to conclude that, upon analyzing Ecuadorian regulations regarding competition law and its conceptual and operational determination, it is necessary to adopt policies that contribute to economic growth in the State. Regarding economic concentrations, it is required to ensure that competition is not restricted by specific economic agents, as seen in the analysis carried out, which specifies the terms of reference to achieve the desired goal.

Subsequently, reorganization proceedings require a new regulation, which should seek to allocate resources to better uses since access channels to expeditious ways to remain in and

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exit the market should be facilitated. It should also focus on advertising a reliable and transparent mechanism to promote the dynamism characteristic of the market. Then, for properly implementing these mechanisms, a comparative study of legislation containing insolvency structures with positive results and, in other cases, certain shortcomings that can be considered for a correct Economic Analysis of the Preventive Insolvency Law in Ecuador should be carried out.

The government and private actors have identified the need to identify mechanisms that allow positioning family businesses in Ecuador, and this support could be provided through the agreements between shareholders. It is possible to consolidate the organic structure of a company from its doctrinal verification, as well as making visible a tool for this type of associations, which constitute a large part of the Ecuadorian market, to emerge in their positioning in the market and have the possibility of entering secondary markets through improvements in the implementation of good corporate governance standards.

Finally, based on the points discussed throughout this study, it is evident that the Ecuadorian legal scenario requires an adequate approximation of institutions that, although they have been briefly incorporated into the legal system, have not been developed in such a way that the normative configuration and the spirit of the law applicable to the matter are tools for those who venture into the market.

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Jennifer Lara Alvear	Investigación; análisis e interpretación
José Portilla Ruiz	Adquisición de datos, análisis e interpretación
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