



COMPETITION LAW

YEAR IN REVIEW | 2023

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CNDC NEWS AND PUBLICATIONS

REGULATORY AND LEGISLATIVE DEVELOPMENTS

NEW REPORTING THRESHOLDS AND FINES IN 2023

Resolution 63/2023 of the Secretariat of Trade ("ST"), published on February 7, 2023, in the Official Gazette and effective February 8, 2023, modified the value of the mobile unit ("MU") defined in Article 85 of Competition Defense Law No. 27,442 on the Defense of Competition (the "Competition Law").



The MU value is the "unit of account", used to define a series of values set in the Competition Law. It is of particular importance in determining whether an economic concentration is notifiable.

Resolution ST 63/2023 updated the value of the MU to ARS 162.55, almost 95% higher than the one in force in 2022.

Consequently, economic concentration transactions are currently notifiable if the turnover in Argentina of the acquiring group and the target company in the last financial year exceed ARS 16.255 billion. Also, the exemption from notification of Article 11 of the Competition Law will be applicable when the amount of the transaction and the value of the assets located in Argentina that are absorbed, acquired, transferred, or controlled do not exceed, each of them, the amount of ARS 3.251 billion to the extent that no transactions have been carried out in the last 12 months over said value, or that of ARS 9.753 billion in the last 36 months.

On the other hand, the ceiling of fines for prohibited conduct when it is not possible to determine the turnover of the companies involved (Article 55 of the Competition Law) has been increased to ARS 32.51 billion.

Finally, the increase in the value of the MU also increased the amount of the fines of the unfair trade regime approved by Decree No. 274/2019 (Article 57) to ARS 1.625 billion.

For the resolution, see: [Link](#)

NEW REGULATION FOR NOTIFICATION OF MERGER CONTROL

Through Resolution 905/2023 published in the Official Gazette on May 18, 2023, the ST approved the new Regulation for the Notification of Economic Concentrations Transactions that replaced the regime in force since 2001. The new regime entered into force on July 6, 2023.

In general terms, the Resolution:

- | updates and turns information requirements for the different stages of notification more complex, mainly based on the experience gathered by the Antitrust Commission (CNDC) in the more than 20 years of merger control.
- | creates a new abbreviated procedure (Form 0) for transactions of minor competitive impact, in accordance with criteria to be defined by the CNDC within 15 days (these criteria have not yet been disclosed as of the time of this report).
- | adopts a stricter stance regarding the opportunity in which the notifying parties may provide the information that the agency may consider incomplete, establishing more severe sanctions in cases of non-compliance, without limiting the events enabling the CNDC to suspend or interrupt legal deadlines.
- | incorporates the possibility for the parties to argue novel issues in the analysis of complex economic concentrations, of uncertain application.
- | provides for the possibility of holding preliminary meetings with the CNDC to clarify doubts on the filing.

The Resolution completely modifies the existing Forms 1 and 2, eliminates Form 3 (rarely used and with specific content for each transaction) and creates a new Form 0, to be optionally used in the framework of a Fast Track procedure.

The new Fast Track procedure implemented by Form 0 has the following main features:

- | Requires the parties to submit two mandatory market definitions: (i) one that maximizes the concentration in the relevant market, that is, that there is no alternative market definition where the level of concentration generated by the transaction could be higher; and (ii) another one based on the precedents of the CNDC for the same or similar product and the same geographic scope (if any). The parties may even submit a third market definition, different from the two previous ones.
- | Eliminates the requirement for the parties to submit arguments in favor of the approval of the transaction.

- | Includes the obligation to report the existence of joint ventures between the parties to the concentration and other market players.
- | Incorporates the requirement to report the existence of general and antitrust-specific compliance programs of the acquiring and target companies.
- | Within 45 business days of the filing of the new form/s the CNDC must issue a request for information (RFI) requesting the parties to adequate the filing as directed by the agency, for which purpose the parties will have 20 business days (as opposed to the current 30 days) to fully reply the RFI. The CNDC reserves the right to issue additional RFIs -which suspend the review period-and/or consider that the transaction requires the filing of a Form 1 and/or 2, which interrupts the notification period and resets the notification period entirely.
- | If the CNDC considers that the transaction only requires the filing of Form 0, the opinion issued by the CNDC to the ST recommending the approval of the transaction without conditions will attach a "publishable version" of the notification, prepared by the parties in a format to be provided by the CNDC, presumably to avoid the CNDC from issuing lengthy opinion reports on the transaction and speed up the issuance of the final resolution by the ST.

The new Ordinary Procedure represented by Forms 1 and 2 has the following main features:

- | The submission of these forms will be required by the CNDC, although nothing prevents the parties from voluntarily deciding to submit a Form 1, or Forms 1 and 2. In any case, they must also submit Form 0.
- | If the information contained in forms F1 and/or F2 is incomplete and the justifications provided by the parties in this respect are insufficient, the CNDC will require them to adapt the corresponding forms within 30 business days. In the event that the parties do not comply with what is required within the term indicated, or that the information submitted in response to such requirement is incomplete or defective, the CNDC will summon them to provide the missing or incomplete information within a maximum term of five business days. Once this term has elapsed, and after the CNDC has issued its opinion, the ST may consider that the transaction has not been notified, which will give rise to the application of fines for late notification.
- | If the transaction has been notified in other jurisdictions, the parties may, within the framework of Form 1, attach the corresponding authorizations for the CNDC to exchange information with the competition authorities of such jurisdictions.

- | The requirement by the CNDC to file Form F2 must be complied with within 30 business days.
- | In Form 2, under the heading "Benefits of the transaction to the general economic interest" not only efficiency gains are included, but also "those benefits that the operation could have on aggregate variables such as generation of employment, income, import substitution, investments, protection of the environment, gender policies, among others", significantly broadening the scope traditionally granted to the concept of "general economic interest" (ultimate value legally protected by the competition law and encompassing total and/or consumer welfare) and consequently generating uncertainty as to the direction that the CNDC will adopt in cases where the traditional and new concepts collide.

As a new feature, the Resolution contemplates an optional "Pre-notification" procedure, in which the parties may contact the CNDC prior to the notification of their transaction in order to prepare the information to be submitted and to raise doubts regarding the notification procedures.

Finally, it should be noted that the Resolution does not modify the current ex post notification regime of Law 27,442; however, to the extent that it improves the timing of merger control procedures, it may pave the way for an efficient transition to the ex-ante notification regime, whenever the same is finally adopted, as foreseen in the Competition Law.

For the resolution, see: [Link](#)

For more information, see: [Link 1](#) | [Link 2](#)

CNDC SETS INCLUSION AND EXCLUSION CRITERIA FOR THE SUMMARY PROCEDURE FOR THE NOTIFICATION OF MERGER CONTROL

On August 28, 2023, Provision No. 62/2023 of the CNDC was published in the Official Gazette. The Provision establishes the inclusion and exclusion criteria for economic concentrations to be processed under the Summary Procedure ("PROSUM") provided for in Article 10 of the Antitrust Law.



The creation of PROSUM as an expedited review procedure was one of the main changes implemented by Resolution 905/2023 to the merger control regime. Notifying parties that qualify to use PROSUM may choose to initiate this procedure by filing the corresponding Form F0 ("F0"), also approved by the Resolution.

The Provision establishes that an economic concentration may be processed under PROSUM in the case of:

- | Conglomerate concentrations.
- | Changes in the nature of control over the target company from joint control to exclusive control and where the acquirer has pre-existing control.
- | Horizontal concentrations, if the combined market share in each of the relevant markets affected by the notified transaction is less than 20%.
- | Horizontal concentrations, if the combined market share in each of the relevant markets affected by the notified transaction is less than 35% and the increase in the Herfindahl-Hirschman index is less than 150 points.
- | Vertical concentrations if the individual shares in each vertically related market are less than 30%.

Furthermore, the Provision also established several cases in which the notifications of economic concentrations will be excluded from the PROSUM, which are listed below:

- | Those in which, at the time of initiating the procedure, the parties are not in a position to provide all the information and documentation established by the FO.
- | Those in which the post-transaction Herfindahl-Hirschman index in an affected relevant market is higher than 2,500 points.
- | When the merger eliminates a powerful and effective competitor.
- | Where the merger combines two major innovative players.
- | When there are indications that the merger would prevent the expansion of competitors in a relevant affected market.
- | When a company already established in the market acquires a small and highly innovative company, even if it has not yet reached its technological peak, either to use its technology or to deactivate it ("killer acquisitions").

- | When the transaction could significantly increase the market power of the parties due to the combination of technological, financial, or other resources, even if the combining entities do not operate in the same market.
- | When the transaction generates "portfolio effects".
- | When the transaction involves the creation of a joint venture by independent companies, which will operate independently from the rest of their business units.
- | When, in a change from joint control to exclusive control, any of the following situations arise: (i) the company acquiring exclusive control is itself a direct competitor of the acquired entity, provided that the market share is substantially high according to the criteria of the Resolution; and (ii) the CNDC and the SC had not examined the previous transaction of acquisition of joint control with respect to the target entity by the company acquiring control that ceases to be controlling by virtue of the notified transaction.
- | When, contemporaneously with the notified transaction, the acquirer and/or the target company (or its related parties) held equity interests exceeding 5% of the capital stock or votes in competing companies.
- | In cases in which a CNDC is required to issue an opinion pursuant to Article 17 of the Antitrust Law, unless the notified companies can prove that the CNDC has no objections to the transaction.
- | When the CNDC considers that more information is required to analyze the effects of the operation.

For the resolution, see: [Link](#).



CNDC MOVES FORWARD IN THE DIGITALIZATION OF INVESTIGATIONS FOR ANTICOMPETITIVE CONDUCTS



On July 7, 2023, the Secretary of Commerce issued Resolution No. 1046/2023, by which it provided that all filings related to the allegation of anticompetitive conducts be made and processed through the "Trámites a Distancia" (TAD) platform approved by Decree No. 1063/2016 as the official digital platform for administrative proceedings of the National Administration. The Resolution was issued in compliance with the provisions of Article 34 of the Antitrust Law - which instructed the authority to provide the mechanisms "so that all formalities, filings and stages of the procedure are carried out by electronic means"- and is effective as of September 7.

Consequently, on September 7, 2023, the CNDC regulated the Resolution through the publication of a User Manual, mainly providing that, from now on (i) the complaint for anticompetitive practices will be filed digitally through the TAD platform; (ii) the notification of the complaint will henceforth be made electronically at the electronic address of the respondent, replacing personal notifications on paper and considering the user of the platform notified on the first business day following the date of entry of the notification to its account; and (iii) all additional filings related to the administrative file may be made electronically, in person at the headquarters of the CNDC or via e-mail, but in any case the hearing and access to the file will only be in person at the CNDC.

Notwithstanding the fact that the CNDC has unofficially informed that the first notification to the denounced company will continue to be made in person in paper format, according to the provisions of the User's Manual and until the issue is clarified, we suggest incorporating as a practice the daily consultation of the company's TAD platform to be aware of possible notifications from the CNDC.

For the resolution, see: [Link](#)

For the User Manual, see: [Link](#)

NEW COMPETITION LAW BILL.

On December 27, 2023, the Executive Branch submitted to the House of Representatives a bill named "Law of Bases and Starting Points for the Freedom of Argentines". The bill provides for the repeal of the current Antitrust Law and its

replacement with a new law. The following is a summary of the main differences between the current law and the bill, highlighting that until the bill is approved, in the current wording or any other that may be agreed, Law No. 27,442 and the powers of its enforcement authority, the Secretary of Trade with the assistance of the CNDC, will continue to be in force.



Definition of Prohibited Conducts

- | Under the bill, a substantial modification is proposed to Article 1, which currently includes agreement between competitors, economic concentrations, acts or conduct manifested in any form, and abuses of dominant position. In the new version, it is limited to contracts between competitors and unilateral acts or "practices". Similarly, Section 3, which currently contains an indicative list of potentially prohibited conduct, most of which is unilateral, is transformed in the draft to present specific examples of abuses of a dominant position. In concrete terms, under Article 1, abuses of dominance would be categorized as a "unilateral practice restrictive of competition".
- | The reference to the trading of confidential information between competitors, considered as horizontal anticompetitive conduct and excluded from the list of "hard" collusive conducts in Article 2 of the Antitrust Law, is deleted from Article 3 in the draft. Despite this omission, it can be inferred that this conduct is still implicitly included in the scope of Article 1.
- | In relation to Article 3, the conduct of "imposing discriminatory conditions" is now conditioned on the requirement that it "limits entry or competition in the market", apparently excluding the possibility of discriminatory exploitative acts directed towards end-customers.

- | "Sham petitioning", defined as the abuse of judicial, administrative or disciplinary proceedings with negative consequences for competition, is incorporated into the indicative list of Article 3, despite having been previously recognized in case law.

Merger control

- | The "company" (the subject of a change of control) is defined as "any entity or part thereof that is capable of offering or demanding goods or services, regardless of its legal organization and even if it lacks legal personality" (Article 7). This raises doubts about whether the project intends to cover the formation of new companies that, although capable of offering or demanding goods, may not have started operations and consequently may not have identified business volume in the market. Under the current law, only companies with an identifiable turnover are subject to the economic concentrations regime.
- | The substantive test for prohibited economic concentrations is modified, shifting from requiring that they restrict competition with potential harm to the general economic interest to constituting, protecting, or strengthening a dominant position (Article 8). This could lead to a different analysis than that conducted by the authority to date in concentration assessments.
- | A pre-closing notification regime is established, with immediate effect (Article 9).
- | The notification threshold is increased from 100 to 500 million mobile units (MU) (Article 9). The MU is a value updated annually based on inflation. The last value set in early 2023 for the MU is \$162.55, so presumably in 2024, it will be set at approximately three times that amount, bringing the new threshold for that year to the equivalent of over US\$200 million in turnover (of the target company and the acquiring group).
- | Article 9 simplifies the definition of "affected companies" (those to be considered for turnover purposes regarding the threshold) by referring to the subsidiaries of both the target and acquiring companies, apparently excluding companies where the latter exert substantial influence but are not subsidiaries.
- | A voluntary notification regime is established, pre- or post-closing (in the latter case, within 15 business days after closing) for economic concentrations that do not exceed the threshold. Additionally, the new competition authority may compel the notification of such operations, either before or within 180 business days from their implementation, when it determines that there are reasonable grounds to believe that the economic concentration in question may constitute,

protect, or strengthen a dominant position. After this period, the operation cannot be challenged (Articles 10 and 16 in fine).

- | Regarding the list of economic concentrations that, even if exceeding the threshold, are exempt from notification (Article 11): (i) the restructuring of financial entities decided by the Central Bank is added; and (ii) concerning the de minimis exemption related to the amount of the operation and the value of the acquired assets, the value applicable to operations conducted in the last 36 months is reduced from 60 to 45 million MU.
- | The confidential nature of economic concentration notification procedures for third parties is reaffirmed (Article 12).
- | The deadline for resolving concentration matters is extended from 45 to 60 business days, always counted from the submission of complete and correct information. The longer period of 120 business days is maintained for cases where the authority has issued an objection report (Article 14)

New agencies

- | Two new decentralized and autonomous authorities are created to operate within the scope of the National Executive Power: the Market and Competition Agency (AMC) and the Competition Defense Tribunal (TDC) (Chapters III and IV of the project). The AMC will be headed by a single Secretary, appointed by the National Executive Power. The TDC will be a collegiate body with five members and 15 external members, distinguished academics at the national and international levels, who will act as associated members of the TDC. The appointment process for the Secretary of the AMC and TDC members involves three members appointed by the National Executive Power and two by the President of the Senate, proposed by the first minority. Designations will be made through publications in the Official Gazette, receiving third-party observations, and evaluating them in a public hearing. Both the Secretary of the AMC and TDC members will serve a term of five years and may be re-elected once.
- | The AMC will assume exclusive jurisdiction in relation to economic concentrations, although notifying parties will retain the right to request the TDC to review AMC decisions that have conditioned or prohibited a transaction, or that have determined that a specific concentration should have been notified. With respect to prohibited practices, the AMC will be responsible for investigating and prosecuting cases, although it will lack decision-making powers, which are reserved for the TDC. The current enforcement authorities, the CNDC and the Secretariat of Trade, will continue to operate until the AMC and the TDC are constituted and become operational (Article 71).

- | Fees are established for the filing of economic concentration notification procedures and requests for advisory opinions before the CMA. These fees will vary between 5,000 and 20,000 MU.

Procedures for investigation of Prohibited Conduct and Sanctions

- | The confidentiality of prohibited conduct analysis procedures for third parties is reaffirmed (Article 39).
- | The deadline for answering complaints is extended from 15 to 25 working days (Article 42), as well as the period for submitting allegations in the final phase of the defense, from 20 to 25 working days (Article 45). In addition, the period for making allegations on the evidence submitted is extended from 5 to 15 working days (Article 47).
- | The decision to initiate the investigation is established as irreversible (Article 43).
- | Regarding penalties, a reduction of fines is proposed, which in the current legislation are determined as the greater of two amounts: (i) twice the economic benefit obtained by the prohibited conduct or (ii) up to 30% of the turnover related to the products or services involved during the last fiscal year, multiplied by the years in which the conduct occurred, with a ceiling of 30% of the consolidated national turnover of the economic group of the offenders during the last fiscal year. The reform proposes to limit fines to 30% of the turnover associated with the products or services involved during the last fiscal year, without multiplying by the years of the conduct and without considering the turnover of the economic group (Article 54).
- | Additionally, the duplication of fines in cases of recidivism is eliminated and the penalty of disqualification from practicing commerce is excluded for both companies and individuals.

Actions for Damages

- | The power of the injured party to request the competent judge to impose a civil fine on the offender, in addition to the resolution, is eliminated (Article 63).
- | The scope of the benefits of the leniency program for cartel cases is redefined, specifically in relation to damages. Under existing law, these benefits, which include exemption from or reduction of fines, extend to purchasers, direct and indirect suppliers and other injured parties, in addition to the whistleblower. The bill proposes that the beneficiaries of these programs be liable for damages in any case, but exclusively to their direct purchasers or suppliers (Article 64).

Appeals

- | It is established that resolutions of the TDC that cause irreparable harm to the appellant will be considered appealable before the judiciary, an issue that has already been accepted by case law (Section 65).
- | The AMC is authorized to appeal before the judiciary the resolutions of the TDC that absolve from the application of sanctions (Section 66).
- | In the City of Buenos Aires, appeals will be processed before the National Court of Appeals in Civil and Commercial Federal Matters, eliminating the creation of a specialized antitrust chamber in that jurisdiction, as provided by the existing law (Section 67).
- | The requirement to obtain a surety bond as a condition to appeal fines is eliminated, which will have a suspensive effect in the process.

The draft law is available (only in Spanish) through the following: [Link](#)

INTERNATIONAL COOPERATION

CNDC SIGNS COOPERATION AGREEMENT WITH DOMINICAN REPUBLIC'S PROCOMPETENCIA



The Board of Directors of the National Commission for the Defense of Competition of the Dominican Republic and the CNDC signed a cooperation agreement with the objective of establishing the bases for institutional strengthening and development in their respective jurisdictions, committing themselves to collaborate in the exchange of public order information on activities

of application of antitrust rules and to carry out technical assistance activities such as conferences, internships and seminars.

The full text of the agreement can be found here: [Link](#)

CNDC SIGNS COOPERATION AGREEMENT WITH CHILE'S FNE

The CNDC and the National Economic Prosecutor's Office of the Republic of Chile signed a technical cooperation agreement between the two agencies with the objective of establishing the bases for institutional strengthening and development in their respective jurisdictions.

The full text of the agreement can be found here: [Link](#)

CNDC PARTICIPATES IN THE MEETING OF MERCOSUR TRADE COMMISSION'S TECHNICAL COMPETITION DEFENSE COMMITTEE

On April 25, a meeting of Mercosur's Technical Committee No. 5 for Competition Defense was held, in which the authorities of the CNDC participated together with their counterparts from Brazil (CADE), Paraguay (CONACOM) and Uruguay (CPDC) with the objective of resuming and advancing a joint work agenda.



During the meeting, the antitrust authorities approved the "2023 Work Program" that was submitted before the Mercosur Trade Commission for consideration. In addition, initiatives related to regional cooperation were discussed. These include the establishment of joint databases, guidelines for inter-agency information exchange, the design of performance indicators to assess the impact of competition policy in each jurisdiction, and a joint periodic review program.

For more information, see: [Link](#)

CNDC PARTICIPATES IN THE MEETING OF THE OECD COMPETITION COMMITTEE

During the week of June 12-16, the CNDC attended the meeting of the OECD Competition Committee in Paris. On this occasion, CNDC participated in two round tables on best practices and made two contributions. The first one was on the evaluation and communication of the benefits of enforcement actions in competition matters, recognizing the importance of transparency, periodic evaluation, and active communication that agencies must carry out to build trust. The second contribution was on the advantages and disadvantages of the welfare standard of the general economic interest included in the Competition Law and its broad and flexible interpretation by the CNDC, allowing adaptation to less direct objectives but also affecting the consumer (see in this respect our comments above on the new Regulation for the Notification of Economic Concentrations).

For more information, see: [Link](#)

CNDC MEETS WITH CHINESE COMPETITION AUTHORITY REPRESENTATIVES

On August 14, the CNDC received representatives from the Shanghai and Pudong Administrations for Market Regulation. During the meeting, similarities and differences between the competition regimes of Argentina and China were highlighted, emphasizing the existence of provincial authorities in the Chinese system. Recent cases sanctioned by both parties were discussed, promoting an exchange of knowledge and laying the groundwork for closer cooperation between the agencies of both countries in the field of antitrust.

For more information, see: [Link](#)

CNDC ADDRESSES THE XI MEETING OF THE WORKING GROUP ON TRADE AND COMPETITION IN LATIN AMERICA AND THE CARIBBEAN

The Latin American and Caribbean Working Group on Trade and Competition, established in 2010 as a regional forum for cooperation in common areas, met on November 2-3 in Santo Domingo, Dominican Republic. The event was entitled "Competition, trade and regulatory issues in financial technology markets (Fintech)" and was attended by authorities and experts from the region. Representatives of the CNDC exposed relevant cases in Argentina related to fintech and digital payment services.

For more information, see: [Link](#)

CNDC ATTENDS THE ANNUAL CONFERENCE OF THE INTERNATIONAL COMPETITION NETWORK (ICN)

The CNDC participated in the 2023 ICN Annual Conference, held from October 18 to 20. The ICN is the world's largest network of competition agencies with more than 140 competition authorities from 132 jurisdictions. The conference was focused on highlighting the work of competition authorities at the international level and promoting collaboration among those facing similar global challenges.

For more information, see: [Link](#)

CNDC ATTENDS MERCOSUR COMPETITION AUTHORITIES MEETING

On November 20, 2023, the CNDC participated in the meeting of the Mercosur Antitrust Technical Committee N°5. During the meeting, regional cooperation initiatives were discussed, including the possibility of creating a regional joint publication, a program for exchanges and internships, as well as the establishment of standardized databases among the agencies. In addition, the four Mercosur competition authorities launched the second edition of the Competition Yearbook 2023, coordinated by the CPDC of Uruguay, which includes articles by the CNDC on the control of economic concentrations in Argentina and sanctions for anticompetitive conduct in the period June 2022 - June 2023.



For more information, see: [Link 1](#)

For the yearbook, see: [Link 2](#)



WORKING PAPERS

CNDC CREATES A WORKING AND RESEARCH GROUP DEDICATED TO DIGITAL MARKETS



On October 9, the CNDC announced the creation of a Digital Markets Working and Research Group. The Group will organize biweekly meetings to discuss and share useful literature and related case law. Its objective, however, seems more practical than academic, as the CNDC has been involved in several investigations on this matter, against companies such

as Google (online search and advertising), Meta (use of Big Data as a way of abuse dominant position) and Fintech companies, to name a few.

For more information, see: [Link](#)

CNDC PUBLISHES A WORKING PAPER ON THE IMPLEMENTATION OF BEHAVIORAL AND STRUCTURAL SOLUTIONS IN THE CONTEXT OF MERGER CONTROL

In November 2023, the CNDC published a working document on the implementation of behavioral and structural remedies in the context of merger control cases. Pursuant to the provisions of the Antitrust Law and until the National Competition Authority is established, the CNDC has the power to recommend to the Secretary of Trade to order remedies and apply corrective measures in cases where it considers that the notified transaction has the potential to restrict or distort competition, so that it may result in harm to the general economic interest. The document sets out in detail these remedies, their regulatory framework, the stages of application through a jurisprudential analysis and the economic sectors in which the CNDC has recommended their application to the Secretary of Trade. In addition, it published a thematic search engine of Secretary of Trade resolutions and CNDC decisions on behavioral and structural remedies from 1999 to 2023, which will be kept up to date.

For more information, see: [Link](#)

CNDC PUBLISHES WORKING PAPER ON THE CONCEPT OF CONTROL IN THE FIELD OF COMPETITION LAW

In December 2023, the CNDC published a document analyzing the notion of control and its interpretation in competition law. The concept of control plays a crucial role in the identification of economic concentrations and in the attribution of liability for anticompetitive conducts. Unlike other areas of law, such as corporate law or bankruptcy law, the definition of control in the field of competition is based on economic reality and is constantly evolving. Its central focus is the ability to influence a company's competitive strategy. The document seeks to clarify the definition of control developed by the CNDC through multiple precedents, with the aim of providing guidance on concrete applications in the proceedings.

For more information, see: [Link](#)





COMPETITION LAW ON THE LOCAL MEDIA

NEW COMPLAINT AGAINST MOLINO CAÑUELAS FOR ALLEGED ANTICOMPETITIVE CONDUCT



In January, the NGO Industrias Medianas y Pequeñas Unidas Locales Sociedad Argentina (IMPULSAR) filed a complaint against Molino Cañuelas (MOLCA) for alleged anti-competitive behavior in violation of the LDC. IMPULSAR had previously denounced MOLCA together with the Argentine Federation of the Milling Industry (FAIM), the Chamber of Industrial Millers (CIM) and the Association of Small and Medium Milling

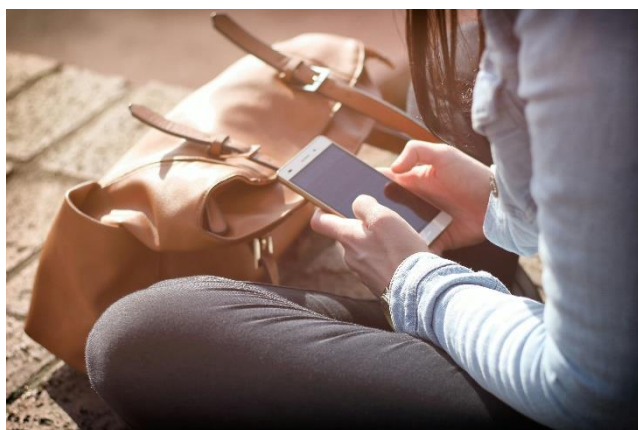
Industries of the Argentine Republic (APYMIMRA) for cartelization in the wheat flour market and whose investigation concluded in April 2022 with the imposition of fines to the denounced companies.

Specifically, IMPULSAR filed a complaint against MOLCA for abuse of dominance of an exclusive type through the integration and manipulation of the Argentine Wheat Stabilizing Fund (FETA), to the detriment of milling SMEs.

For more information, see: [Link 1](#) | [Link 2](#) | [Link 3](#) | [Link 4](#)

MOBILE TELEPHONY COMPANIES CHALLENGE THE APPROVAL OF MEDIA MERGER, FIVE YEARS AFTER ITS AUTHORIZATION

Five years after the authorization of the Cablevisión/Telecom merger, mobile phone companies filed a complaint alleging a conflict of interest between the then president of the CNDC (who signed the report of said agency to the SC, recommending the approval of the transaction) and the merged companies, claiming that the Anti-Corruption Office has its obligation to "undo the agreement" and declare the "annulment of the merger" for alleged violation of public ethics rules.



For more information, see: [Link](#)

CONSUMER ASSOCIATIONS ALLEGE CARTELIZATION OF MEDICAL FEES



In October 2023, the "Asociación de Defensa de Derechos de Usuarios y Consumidores" (ADDUC) denounced before the CNDC different associations, chambers, colleges, federations, and societies that group health professionals for an alleged horizontal fixing of prices for medical consultations linked to social security and prepaid medicine. The origin of the complaint corresponds to the

implementation of the "minimum ethical medical fee" or "co-pago". This is a minimum fee that patients treated by social security and prepaid medicine must pay for any type of medical consultation. The system was promoted by more than 30 medical associations from all over the country, but it has not been endorsed by the Ministry of Health.

The CNDC has not expressed its opinion on the issue and the different sectors are reacting in different ways. Some private medical companies have submitted forms to denounce extra charges and the associations pointed out the requirement of the voluntary nature of the co-payment, since it cannot be demanded from those who cannot pay it. Unions and trade unions demonstrated against the implementation of the bonus. Prior to the change of government, the intervention of the Ministry of Health and the Superintendency of Health Services was also expected.

For more information, see: [Link 1](#) | [Link 2](#)

THREE FORMER CNDC PRESIDENTS FILE COMPLAINT AGAINST THE MAIN BANKS IN THE COUNTRY AND VIRTUAL WALLET FOR PRACTICES VIOLATING THE ANTITRUST LAW

Three former presidents of the CNDC filed a complaint before the CNDC against the main public and private banks in the country and the company that operates the virtual wallet "Modo", formed by these banks.

One of the axes of the complaint focuses on the incorporation of the company that operates the virtual wallet, which in the opinion of the complainants constitutes an economic concentration that should have been notified to the CNDC, which -they argue- would have blocked the operation.



The complainants also point out that, instead of competing with each other, the shareholder banks and associates in Modo jointly agree and define the promotional and commercial actions of the platform.

Finally, the complaint also points out certain alleged collusive and discriminatory practices of an exclusionary nature for digital wallets of Fintech companies.

For more information, see: [Link 1](#) | [Link 2](#) | [Link 3](#)





MERGER CONTROL

CNDC OBJECTS TO ACQUISITION BY GEORGALOS OF CANDY ASSETS FROM MONDELEZ



On May 23, 2023, the ST objected the acquisition by Georgalos -an Argentine confectionary company- (“Georgalos”) of certain assets previously owned by Mondelez, following a Statement of Objections (“SOO”) issued by the CNDC and the ST.

The asset purchase agreement entered into between Georgalos and

Mondelez involved the acquisition of a number of assets and confectionary product brands. Among the acquired brands was “Mantecol”, a popular Argentine peanut dessert.

“Mantecol” was created in the ‘20s by Greek immigrant Miguel Georgalos (the founder of Georgalos) to emulate Halawa, a sesame paste dessert made in Southeastern Europe and the Middle East since the early Christian era. In 2001 Georgalos sold Mantecol to Cadbury Schweppes (later acquired by Mondelez) and the transaction was approved by the CNDC and ST without undertakings. On that occasion, the CNDC concluded that the “Mantecol” type peanut dessert, due to its special characteristics, was a relevant market in itself, outside the usual segments into which the markets for sugary candies or desserts are divided into. Indeed, at that time “Mantecol” itself represented 99% of such market, but there was no horizontal concentration with Cadbury Schweppes. After selling “Mantecol” Georgalos continued developing peanut desserts under a new brand called “Nucrem”, which reached up to a 14% market share in 2022, below “Mantecol”, which now has a 59% market share.

On the merger file, Georgalos and Mondelez argued for a new and broader relevant product market named “Indulgent Snacks and Tablets”, stating that peanut desserts would integrate it along with chocolates, wafers, and nougats since they all have similar prices and share the same exhibition spaces in drugstores and supermarkets.

In the SOO, the CNDC rejected this new definition of the relevant product market, after concluding that the parties did not provide actual proof that consumers had changed their knowledge of peanut desserts by assimilating them with chocolates, wafers or nougats. Consequently, since after the transaction Georgalos would concentrate 73% of the peanut dessert market, the CNDC and ST concluded that the transaction would lead to the introduction of significant barriers of entry that would facilitate the exercise of market power. The CNDC and ST also ordered an interim injunction instructing the companies to maintain their activities separate until a decision on the merits of the case has been issued.

For more information, see: [Link](#)

FINES FOR LATE NOTIFICATION OF ACQUISITION OF LOCAL TOUR OPERATOR IN BARILOCHE



On June 7, 2023 the ST, following the opinion of the CNDC, ordered the shareholders of Vía Bariloche (a bus operator, specialized in high school graduate trips) to notify the economic concentration consisting of the indirect acquisition -as far back as 2011, through companies Heket and Desimsur- of the control of Catedral Alta Patagonia, the company engaged in the exploitation, promotion and

development of the Cerro Catedral Complex in the city of Bariloche ("CAPSA", Cerro Catedral being a popular ski destination). In addition, they were jointly and severally fined in the amount of ARS 25,000 per day as from the date of the alleged acquisition of control on December 22, 2011 (which as of June 2023 amounted to approximately USD 415,000).

The decision is similar to a 2017 decision of the ST on the same case, which was later annulled by the courts as the fine for late filing had been imposed on the buyers and target company but not on the sellers, which under the Competition Law in force at the time were also obliged to notify. The new decision does not enforce the fine against the sellers, given that the current Competition Law does not require sellers to notify and that, due to procedural law principles, the most benign legal regime must apply.

However, it is worth noting that the Court of Appeals was of the view that the obligation to notify an economic concentration is a "continuous conduct", meaning that insofar as the relevant parties fail to notify, the applicable statute of limitations will not start to run. This means that the agencies would not be time-barred to enforce fines for late filing, potentially reaching acquisitions of control that took place many years in the past.

For more information, see: [Link](#)

LINDE-PRAXAIR MERGER APPROVED WITH CONDITIONS, FIVE YEARS LATER



On May 19 the CNDC issued its final opinion on the merger between Linde and Praxair, two of the world's leading suppliers of medical and industrial gases.

In September 2021 the CNDC issued an SOO in which it stated that, if the notified concentration were to be approved, the number of undertakings capable of producing and/or distributing gases on a national scale would be reduced in 22 of the 33 gas markets defined by the CNDC, and that in several of these markets –such as bulk oxygen, bulk nitrogen and bottled gases for medical use, as well as bottled carbon dioxide– the parties would have a combined market share of more than 55%. In turn, it considered that the concentration would also have a vertical impact on the respiratory care

services market, implying a possible closure of the supply of medical oxygen.

For their part, Linde and Praxair argued that Argentina's medical gas market was dynamic and that companies regularly lost customers to competitors. In addition, they pointed to case-by-case arguments in support of the hypothesis that the merger did not give rise to competition concerns, which ultimately convinced the CNDC that the concentration merited the application of structural and behavioral remedies, but only in the oxygen market.

During and after the hearing held under Section 14 of the Competition Law the parties successively submitted three divestment proposals. The first two were rejected by the CNDC, while the third was complemented by adding requirements regarding deadlines, methodology of the sale process and behavioral measures, which according to the CNDC are intended to deter the potential unilateral effects that the operation can generate at the national level, as well as generate a bidder that can compete with the merged companies, therefore restoring the competition that existed in the gas market prior to the transaction.

The structural remedies include deconcentrations in all links of the liquid oxygen chain to ensure the entry of a competitor with a 9.5% share. The measures consist of:

- | a five-year supply contract, with two renewal options for additional five years each, to ensure the supply of 75 tons of liquid oxygen per day at production cost;
- | the sale of three liquid oxygen fractionating plants and two tanker trucks, and
- | The assignment of oxygen supply contracts with clients of public and private hospitals in different areas of the country.

Concerning the behavioral measure, the CNDC ordered the parties to regularly submit sales data, and prohibited them from denying sales or unreasonably discriminating against the purchase of gases by other companies.

For more information, see: [Link 1](#) | [Link 2](#)





ANTICOMPETITIVE CONDUCTS

SECRETARIAT OF TRADE IMPOSES FINE ON TELECOM AND ARTEAR FOR ABUSE OF DOMINANCE IN THE PAY-TV MARKET



The decision was adopted on January 11 by the SC, following the opinion of the CNDC, and consisted of a fine of ARS 150 million imposed on Telecom Argentina and Arte Radiotelevisivo Argentino (both companies part of the Clarín media group) for alleged abuse of dominance in the pay television market.

The investigation was initiated in 2018 after a complaint by AMX

Argentina (a company that operates under the Claro brand) of anticompetitive conduct consisting of the discretionary imposition of minimum subscriber amounts for the acquisition by plaintiff of transmission rights of television signals Canal 13 and TN.

The CNDC verified the commission of such conduct by the defendants from December 2017 to July 2021 in the Buenos Aires region and the cities of Córdoba and Rosario, preventing AMX from competitively replicating the "quadruple play" services only offered by Telecom Argentina after its merger with Cablevisión. This imposition generated for plaintiff an artificial barrier to entry to the geographic markets where the defendants have a participation of more than 50% of the subscriber base, compared to AMX's 1%.

In relation to the guaranteed minimum subscribers clauses the CNDC concluded that, although they are a commercial tool used by some programming companies as an estimate of the number of subscribers to the cable service and in order to avoid the need for continuous monitoring pay-TV operators, they are not essential since there are companies that do not apply them, and could generate anticompetitive effects in some cases.

Finally, considering that the conduct complained of took place partly during the time when the previous Competition Law 25,156 was still in force, the CNDC determined that such should be the applicable law for the purposes of determining the fine, by application of the principle of the most benign criminal law.

For more information, see: [Link 1](#) | [Link 2](#) | [Link 3](#) | [Link 4](#) | [Link 5](#)

SECRETARIAT OF TRADE FINES QUILMES FOR ALLEGED BREACH OF ENFORCEMENT DECISION IN AN ABUSE OF DOMINANCE CASE



The decision was adopted on February 23 by the ST, following the opinion of the CNDC, and consisted on an ARS 389.5 million fine imposed to Cervecería y Maltería Quilmes (“CMQ” an AB InBev subsidiary, commercializing beers under the “Quilmes”, “Stella Artois”, “Budweiser” and “Corona” brands, among others) for alleged breach of the conduct undertakings imposed in a decision issued by the agencies in 2021, in the context of an investigation for abuse of dominant position in the Argentine beer market.

The investigation commenced in 2016, after Compañía Industrial Cervecera and Compañía Cervecerías Unidas Argentina S.A. (both partly owned by Heineken) filed a complaint against CMQ for alleged abuse of dominance in the Argentine beer market. In August 2021 the agencies

ultimately imposed defendant a fine and prohibited the same from entering into a series of vertical agreements leading to sale exclusivities. In December 2021 plaintiffs filed a complaint against CMQ for non-compliance of these corrective obligations, alleging that defendant continued and increased its exclusionary policy, preventing plaintiff’s products from having a presence on different points of sale.

For more information, see: [Link 1](#) | [Link 2](#)

SECRETARY OF TRADE AND CNDC CLOSE INVESTIGATION INTO ALLEGED COORDINATION IN PUBLIC WORKS BIDS, THE LARGEST CARTELIZATION CASE IN ARGENTINE HISTORY

On August 19, 2023, the ST decided to close a five-year investigation into alleged collusion in public road works tenders that allegedly took place between 2003 and 2015, the largest cartelization case investigated under the Antitrust Law. The decision was adopted in a 571-page opinion issued by the CNDC on June 29, 2023.

The CNDC opened the investigation in 2018 following a series of high-profile corruption scandals involving numerous construction businessmen and public officials.

The investigation, which included 52 construction companies and two trade associations that brought them together, focused on whether between the years 2003 and 2015 some or all of such companies coordinated their bids in public tenders for national public works construction (mainly road infrastructure), and whether the chambers facilitated the alleged collusion.



Despite the great expectation in the outcome of the investigation, the CNDC finally recommended to the ST -who issued the final resolution accordingly- the closure of the investigation mainly for the following reasons: (i) the constituent elements of the existence of a collusive agreement were not verified in the analysis of the evidence; (ii) the creation and survival of such an agreement was implausible, given the structure and functioning of the public road works market, as well as the large number of competitors not included in the alleged agreement; (iii) a pattern of overpricing in the bids was not found in the economic analysis; (iv) there were multiple contradictions and inconsistencies in the statements and documentary evidence of journalists and businessmen included in the criminal proceedings, which were incorporated into the administrative file; and (v) there was no evidence of a system of rewards for participating in the bids, nor of a control system applied by the Chambers.

However, the CNDC recommended to one of the trade associations the implementation of a series of pro-competitive measures, such as reporting any practice that limits, restricts or distorts competition or market access or constitutes abuse of dominant position, not exchanging commercially sensitive information, and establishing internal policies and compliance programs to promote such conducts.

For more information, see: [Link](#)

CNDC ISSUES INJUNCTION AGAINST VISA AND MASTERCARD FOR ALLEGED ABUSE OF DOMINANT POSITION IN THE ELECTRONIC PAYMENT MARKET

On October 7, 2021, the Argentine Fintech Chamber informed the CNDC about different aspects of the implementation of the MasterCard and Visa programs called "Payments Intermediary Foreign Exchange Operators" (PIFO) and "Expanded



Merchand Location Pilot Program" (EMLP). The Chamber's presentation highlighted the competition issues arising from the implementation of the respective programs.

Months later, payment facilitators (DLOCAL, EBANX, PAYU, PPRO,) filed a complaint against Visa, MasterCard, Prisma and Fiserv for allegedly exploitative and exclusionary abuse of dominant position in the electronic

payments market. The complainants argue that the implementation of the aforementioned programs generates an arbitrary and significant increase in cross-border transaction processing fees and the prohibition to process cross-border transactions from European Economic Area merchants.

Given the dominant position of Visa and MasterCard in the electronic payments market and considering the international experience, on November 17, the CNDC issued an injunction ordering Visa and MasterCard to:

- | Suspend until the pronouncement of a substantive decision the execution and/or implementation of any contractual clause that prevents a payment facilitator or similar company operating in Argentina from processing foreign merchant transactions for purchases made by consumers located in Argentina.
- | Refrain from deregistering merchants outside Argentina that have been affiliated by local payment facilitators, and refrain from blocking access to the Visa network for cross-border transactions.
- | Order sub-acquirers to make available to acquirers all the information related to the traceability of the transactions in order to make the transaction adequately visible.

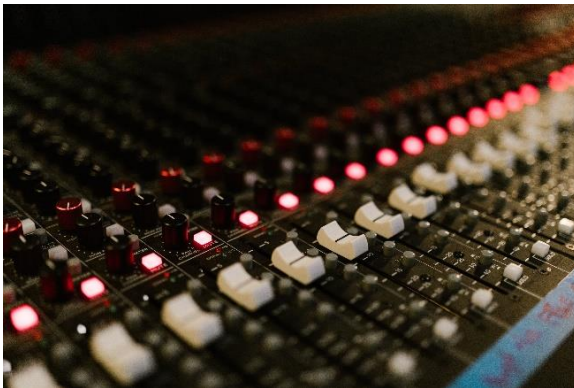
A similar injunction against Visa was previously admitted by Federal Civil and Commercial Court No. 10 on October 6, following a request by DLocal's Argentine subsidiary to mitigate the effects of the implementation of the EMLP. In contrast to the injunction ordered by the CNDC, the court urged Visa to refrain from terminating contracts entered into with DLocal through Prisma or Fiserv and prohibited the application and/or transfer of fines related to cross-border transactions. However, the provision of information by the sub-acquirers had been omitted.

For more information, see: [Link](#).



JUDICIAL RULINGS

SUPREME COURT UPHOLDS RULING THAT STRUCK DOWN FINE FOR EXCESSIVE PRICING



On February 23 the Argentine Supreme Court of Justice declined to hear on extraordinary appeal, and thus confirmed, a judicial ruling that struck down the first and only sanction imposed by the ST on excessive pricing, in a case against a collective rights association (Argentine Association of Authors and Music Composers, “SADAIC” by its acronym in Spanish).

The probe began in 2010 after a hotel association filed a complaint against SADAIC on excessive pricing grounds, alleging that the collective rights association was charging hotels unjustifiably high and discriminatory prices to play music in rooms. The CNDC verified the accusations, and the Secretariat imposed an ARS 42.7 million fine against SADAIC, who appealed the resolution before the Federal Civil and Commercial Court of Buenos Aires.

The court revoked in full the administrative decision, as it did not find SADAIC’s rates discriminatory. Most importantly, however, was the court’s holding that the Argentine competition law does not contemplate excessive pricing cases, in a blow to the CNDC’s policy interests in that line of cases.

For more information, see: [Link](#)

COURT CONFIRMS FINE AGAINST QUILMES IN AN ABUSE OF DOMINANCE CASE IN THE BEER MARKET



On April 11 the Argentine National Court of Appeals in Federal Civil and Commercial Matters (the “Court”) decided to reject the appeal filed by CMQ against a fine imposed in August 2021 in the context of an investigation for exclusionary abuse of dominance in the Argentine beer market.

The investigation commenced in 2016, after Compañía Industrial Cervecera

and CCU filed a complaint against CMQ for alleged abuse of dominance in the Argentine beer market.

The decision appealed by CMQ consisted of an ARS 150 million fine (high under the competition law in force at the time the conduct took place, currently the Competition Law allows for the imposition of much higher fines) and the prohibition from entering into a series of vertical agreements leading to sale exclusivities. The CNDC was of the view that CMQ abused its dominant position in the beer production and distribution market by means of loyalty policies in the "On Premise" channel, with the execution of written and/or verbal agreements for exclusive advertising and promotion in bars and restaurants, as well as in the "Off Premise" channel, with the imposition of allocation of space in gondola and refrigerators for its products to supermarkets and self-service stores' points of sale, as well as the implementation of several loyalty programs with discounts and retroactive bonuses that could not be replicated by competitors.

In December 2021 plaintiffs filed a new claim against CMQ for non-compliance of the corrective obligations imposed by the ST, alleging that CMQ had continued and increased its exclusionary policy in spite of the prohibition imposed in the August 2021 decision, preventing their products from having a presence on different points of sale. This resulted in the issuance of a second fine by the ST in February 2023 (see page 10), which was appealed by CMQ and pending resolution by the courts.

The most recent decision of the Court on the initial sanction imposed to CMQ can be summarized in the following items:

- | The relevant product market subject to abuse of dominance was correctly defined by the CNDC as the domestic production and distribution of beer in its different varieties, excluding from it other types of alcoholic beverages, since beer does not hold a high degree of substitutability with the latter.
- | The vertical, horizontal, and geographic integration of CMQ in the Argentine beer market (with a 75% market share by sales) was held to condition its competitors' economic viability, one of the legal requisites for a finding of dominance.
- | The abuse of dominance was demonstrated by the fact that CMQ's market supply is not replicable by its competitors. To arrive to this conclusion the Court considered that the CNDC had proven that CMQ's entire product portfolio (which also includes waters, soft drinks, energizers and wines), when jointly commercialized with CMQ's beer line, gave it a privileged market positioning.
- | Notwithstanding the fact that holding a dominant position is neither prohibited nor punishable per se under the Competition Law, the CNDC duly proved that CMQ deployed an anticompetitive strategy against its competitors, both in the on and off premise channels, through aggressive loyalty policies aimed at obtaining exclusive commercialization and allocation of shelf and refrigerator

space for its products, all of which increased barriers to entry and generated a vertical market foreclosure for current and potential competitors.

| With respect to CMQ's complaint regarding the application to the case of the Competition Law and not the former Competition Law No. 25,156 (under which part of the anticompetitive conducts of CMQ took place, and which fines were much lower than the current ones), the Court was of the view that (i) CMQ's actions constituted a "continuous" or "permanent" action, not an "instantaneous" one; (ii) according to relevant case law of the Argentine Supreme Court, the principle of the most benign criminal law alleged by CMQ is not expressly contemplated for permanent crimes; (iii) criminal law principles apply to the Competition Law; and (iv) the application of the Competition Law to determine the fine does not undermine CMQ's constitutional guarantees. It is worth noting that the CNDC and Secretariat of Trade, as stated above, imposed the fine against CMQ under the former Law No. 25,156 and that the Court, while being of the view that the Competition Law (which increased the maximum fines imposed by its predecessor to up to 30% of the turnover of the corporate group of the infringer in Argentina in the previous fiscal year or double the amount of the profits derived from the infringement) could be applied, did not change the amount of the fine originally imposed. However, this opinion will surely influence the view of the CNDC in cases to come, where as in this case the alleged conduct occurred while different competition laws were in force.

For more information, see: [Link](#)

FEDERAL COURTS DECLINE JURISDICTION OVER APPEAL TO REVIEW INJUNCTION IN DOW CASE

The case goes back to 2021, after a labor union filed a complaint against Dow for the announced closing and dismantling of one of Dow's facilities located in the province of Santa Fe, based on a company-wide restructuring plan. The production of the local plant was to be replaced by imports made by Dow from



Brazil. Dow's plans were halted by an October 7, 2021 injunction issued by the Secretariat of Trade which stated that Dow, allegedly dominant, by deciding to shut down and dismantle the plant (instead of selling it to a third party), was attempting to consolidate its dominant position. What made the decision striking, however, was the

broad interpretation of the term “general economic interest” followed by the Secretariat.

Dow appealed the injunction before the National Civil and Commercial Federal Court in Buenos Aires, which declined jurisdiction in favor of the Federal Court of Rosario, province of Santa Fe, reasoning that Santa Fe was the place where the injunction would produce its effects.

On April 17, 2023 the Federal Court of Rosario also declined jurisdiction, based on the fact that the decision adopted by the company had effects all throughout the country and Dow’s corporate headquarters were in Buenos Aires.

According to procedural rules the Supreme Court should decide on the aforementioned conflict of jurisdiction. However, on May 9 the CNDC decided to close the probe after Dow announced it had reverted its commercial decision to shut down the plant, as a consequence of which the injunction will likely be considered as no longer having effects, therefore the courts not being obliged to decide on the basis under which it was issued.

For more information, see: [Link](#)

THE APPEALS CHAMBER CONFIRMED THE EXTENSION OF THE INJUNCTION IN WHATSAPP CASE UNTIL THE CNDC INVESTIGATION IS COMPLETED

On August 11, the Chamber II of the Federal Civil and Commercial Court unanimously decided to dismiss the judicial motions filed by WhatsApp, Facebook and Meta against the Secretary of Trade Resolution of March 13, 2022. Such resolution had ordered a tutelary measure requesting WhatsApp to refrain from implementing or suspending the update of the terms of service and



privacy policy announced in May 2021, in the sense that such update would strengthen the position of Facebook Group (now Meta) in the online advertising market, making it possible to obtain new data (such as battery charge level, the signal strength or the version of the application on the device) or to maintain an excessive or unjustified level of data collection, affecting the principle of informational self-determination of the millions of users of such application in Argentina. The measure also ordered WhatsApp to abstain from sharing data, metadata and any other type of user information with

other companies of the Facebook Group (now Meta Platforms) or third parties, and to communicate the decision to the users.

WhatsApp and Facebook claimed that the measure lacked verisimilitude and danger in delay. Regarding the lack of verisimilitude, they claimed that the Secretary of Trade had failed to precisely determine the allegedly abusive conduct, had failed to properly define the affected markets and had also failed to explain how the update of the terms and conditions would affect the general economic interest. Regarding the danger of delay, they argued that the update did not expand WhatsApp's ability to collect and share information and there was no imminent danger for the issuance of the injunction.

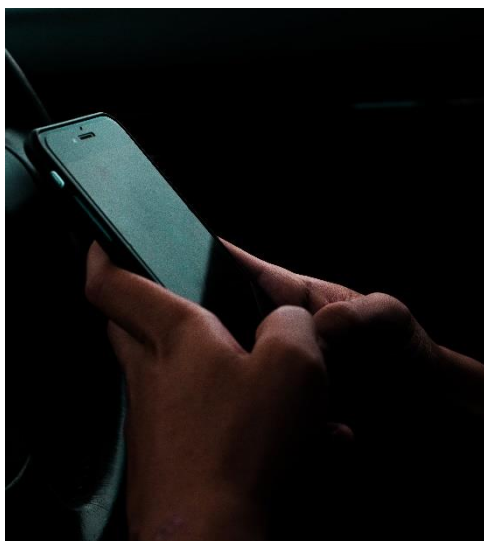
The Chamber dismissed WhatsApp's and Facebook's arguments under the following considerations. Firstly, it established that the merits of the injunctions do not depend on an exhaustive examination of the conducts but on the mere likelihood of their existence. The mere fact of the existence of a possible unreasonable exchange of information between WhatsApp and Facebook constituted sufficient evidence to prove the threat to the general economic interest. Second, the Chamber was not convinced that the update did not expand WhatsApp's data collection capabilities. Therefore, it considered that the risk posed by the provision of personal data by consumers to WhatsApp and Facebook constituted a practice that was complex to remedy ex post. Consequently, the danger of delay lay in the difficulty of reversing a possible delivery of consumer data to the companies.

Although the court decision confirmed the injunction, the administrative proceedings related to the alleged anticompetitive conduct are still ongoing before the CNDC.

For more information, see: [Link](#)



CABLEVISION AND TELECOM MERGER CHALLENGED



On August 13, 2018, the CNDC received a complaint by two employees of Telecom consisting in the challenge of the economic concentration consisting in the merger between Cablevisión and Telecom (approved by Resolution 374/18 of the Secretary of Trade), who also sued it before the National Judicial Branch. According to the complaint, the authorization granted by the Secretary of Trade and CNDC to the mentioned merger would be null and void for the following reasons: (i) it would have granted significant competitive advantages to Telecom,

consolidating its dominant position in the information and communication market; (ii) the alleged incompatibility of certain officers of the CNDC involved in the merger file due to alleged prior professional ties with Cablevisión; and (iii) that the merged companies would have provided biased information in the notification of the economic merger to ensure that the CNDC granted its approval (which was sustained by the minority vote of a member in the authorization resolution).

In August 2023, the Secretary of Trade -following a ruling of the CNDC- rejected the injunctive measures requested, dismissed the claim and dismissed the case. It was based on the fact that the only cause that would justify a possible review of the approval would have been the falsity or imperfection of the information. However, since the complainants did not provide sufficient evidence to prove such falsehood, it is not possible for them to allege it by referring only to the position of a minority vote of the CNDC in the opinion approving the merger.

The plaintiffs appealed this decision before the Federal Civil and Commercial Court, whose file is currently pending resolution. At the same time, the House of Representatives filed a request for a report to the Executive Branch regarding the actions of the Anti-Corruption Office in the merger, alleging an alleged violation of the Public Ethics Law and the supposed conflict of interest by the officers who approved the merger.

For more information, see: [Link 1](#) | [Link 2](#) | [Link 3](#)

FEDERAL COURT ORDERED INJUNCTION AGAINST VISA

On October 6, the Federal Civil and Commercial Court N°10 admitted an injunction against Visa requested by DLocal's Argentine subsidiary to mitigate the effects of Visa's implementation of the "Expanded Merchant Location Program" (EMLP) for cross-border transaction processing.



DLocal is a company specialized in processing cross-border transactions and intermediation between international service companies (such as Netflix, HBO Max, Prime Video, etc.) and their local customers. With the argument of improving transparency and fraud prevention, Visa made it mandatory to adhere to the EMLP to process its transactions. The implementation of the EMLP implied a significant increase in the fees applicable to cross-border transactions and, consequently, in the operating costs for companies

such as DLocal, which implied -in the opinion of the court- a risk of exclusion from the market.

At the contractual level, DLocal has links with the acquirers (Prisma and Fiserv), which are responsible for processing the transactions, and these, in turn, have a contractual relationship with Visa. DLocal argued that the mandatory imposition of the EMLP by Visa could be considered an abuse of a dominant position, for which reason, in parallel to the request for the preventive measure in court, it filed a complaint with the CNDC, whose file is currently being processed.

In the request, DLocal demanded: (i) the immediate revocation of the prohibition imposed by Visa, through Prisma and Fiserv, to process transactions originated at merchants outside Argentina, and (ii) that the injunction remain in force until the CNDC resolves the matter.

The court decided: (i) to admit the requested injunction, (ii) to order Visa to immediately revoke the prohibition to process cross-border transactions from merchants located outside Argentina, (iii) to urge Visa to refrain from directly or indirectly terminating the agreements entered into with DLocal through Prisma or Fiserv, and (iv) to prohibit Visa from transferring or applying to DLocal any fine or sanction related to the prohibition to process cross-border transactions until the CNDC's investigation is concluded.



MARKET INVESTIGATIONS

NEW GUIDELINES FOR THE DEVELOPMENT OF MARKET INVESTIGATIONS



On January 13 the CNDC approved the "Guidelines for the Conducting Market Investigations." Market Investigations ("MIs") are a procedure carried out by the CNDC with the objective of identifying the conditions of competition under which certain markets and sectors of the economy operate. MIs can be effective in identifying regulatory restrictions on competition, as a means of targeting

market players to change existing practices or to prevent the emergence of potentially harmful practices, and in improving the agency's knowledge of a specific sector that may be useful for the analysis of future cases. In addition, they can be used to make pro-competitive recommendations, prompt the opening of new MIs or commission market studies to external consultants.

The Guidelines describe the general procedure followed by the CNDC to carry out MIs. For its preparation, the authority can resort to public information, its background, as well as request information from agents operating in investigated markets. Once the investigation is concluded, a report is published setting out the results of the analysis, the conclusions of the investigation and the proposed recommendations.

For more information, see: [Link](#)

MARKET INVESTIGATION ON BEEF

On June 30 the CNDC issued its final report on an investigation into the beef market opened in 2020 at the request of the ST, after a steep increase in prices which took place at the beginning of the lockdown period in 2020.



Not surprisingly, given the prevalence of beef in the daily diet of Argentine citizens, resulting in an abundance of economic agents across the value chain, the report concluded that the market was competitive at all levels, and that price increases were not due to conducts restrictive of competition.

However, the agency observed that there was information asymmetry vis-à-vis the final consumer, as the different qualities of beef available in the market, regulated at the slaughtering stage, are not made evident at the retail level, as a consequence of which a recommendation was issued to the ST and Secretariat of Agriculture, Cattle Raising and Fishing to that effect.

For more information, see: [Link](#)

MARKET INVESTIGATION ON MEDICAL OXYGEN

The report was issued as closure of an investigation opened in 2017. The medical oxygen market has been under the spotlight for some time, including several cartel investigations and mergers being reported (the most recent one the Linde/Praxair merger, approved with undertakings in July).



The report goes into detail to describe the market concentration at both the national and regional level; the stability in the market shares of the companies participating in it, the low switching rate of customers (hospitals and other health facilities) and high costs associated with such change of provider, and the existence of high barriers to entry.

The CNDC verified that there are only three large oxygen-producing companies in the country, which account for almost 90% of medical oxygen production: the recently merged Linde/Praxair, Air Liquide and Indura (a local subsidiary of Air Products).

As to the topic of barriers to entry, the report points out that the prevailing cryogenic technology requires a high initial investment to produce the goods, which effectively acts as a barrier to the entry of future competitors, and that almost all clinics and hospitals do not have their own cryogenic tanks and instead opt for a "full-service" contract, which includes transportation, oxygen supply and tank rental. The other alternative for those clients would be to have a PSA (Pressure Swing Adsorption) system. However, the CNDC observed that the current Argentine regulation sets purity requirements for oxygen obtained through PSA technology that may render its production unfeasible based on available technology. In this connection, the agency pointed out that current Argentine regulation requires a purity level of no less than 98%, while international pharmacopeias establish a minimum of 90% and a maximum of 96%, with an average purity level of 93%.

Therefore, the report concluded with a recommendation to national health authorities to reassess whether the purity requirements for medical oxygen established by current regulations should be adjusted according to internationally recognized pharmacopeias and WHO guidelines. If this were to happen, the CNDC followed, a healthcare center could compare the price of medical oxygen provided by a company using the cryogenic method with the cost of installing a PSA oxygen generation system in its own facility. In such a case, the entry of the PSA method could have a positive impact in terms of competition.

For more information, see: [Link](#)





ANTITRUST EVENTS

ICC ARGENTINA'S COMPETITION COMMISSION

In August, the Antitrust Commission of the Argentine chapter of the International Chamber of Commerce (ICC) organized a conference at the Argentine Chamber of Commerce and Services (CAC) where the developments for the first half of 2023 in antitrust matters were presented. Marcelo den Toom, partner and head of the Antitrust Department of our firm, explained the new Regulation for the Notification of Economic Concentrations that entered into force on July 6, 2023 and explained the differences with the previous regulation and the modifications that were incorporated.



For more information, see: [Link](#)

COMMEMORATION EVENT FOR THE 100TH ANNIVERSARY OF THE DEFENSE OF COMPETITION IN ARGENTINA, ORGANIZED BY THE CNDC

On September 8, the CNDC organized a commemorative event to mark the 100th anniversary of the first antitrust law in Argentina. The event brought together the Argentine antitrust community (lawyers, economists, civil servants and former civil servants) to commemorate the historical highlights in the field, new developments and the institutional future of antitrust in Argentina. Marcelo den Toom and Godofredo Ortiz participated in the event on behalf of Bomchil. For more information, see: [Link](#).





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