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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS –
Contribution from Paraguay**

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Interactions between Competition Authorities and Sector Regulators in enforcement cases in Paraguay

– Contribution from Paraguay –

1. Introduction

1. This contribution covers the manners in which the national competition authority of Paraguay, the National Competition Commission (CONACOM, for its acronym in Spanish), interacts with sector regulators in cases of competition enforcement, covering the basis for those interactions and the practical cooperation. It includes examples from publicly available information in CONACOM's website, cited whenever possible.

2. Regulatory and institutional framework

2.1. On competition

2.1.1. Law and authority

2. Paraguay's 1992 Constitution sets out the guarantee for competition in the market¹.

3. Paraguay's competition law was enacted in 2013 under No. 4956 and the name of *Ley de Defensa de la Competencia* (LDC for its acronym in Spanish)². In addition to setting the first legal framework in the country on matters of mergers and anticompetitive practices (abuse of dominance and anticompetitive agreements or cartels), it established a national competition authority for the first time: CONACOM. There was no prior institution or office that filled the role of a competition authority in the country.

2.1.2. Institutional framework

4. CONACOM is the sole competition authority of Paraguay³ and its only field of action is competition law, so matters pertaining to consumer protection, intellectual property and market regulation are assigned to other institutions, unlike what is seen in other countries that have integrated multi-purpose agencies.

5. CONACOM is an autonomous and autarkic institution within the Paraguayan State⁴. It relates to the Executive Branch through the Ministry of Industry and Trade which serves as the government's policymaker on commercial matters.

¹ Constitution of the Republic of Paraguay, article 107.

² The LDC is available in Spanish at <https://www.bacn.gov.py/leyes-paraguayas/4775/ley-n-4956-defensa-de-la-competencia> (Accessed 25 Oct 2022).

³ LDC, article 61.

⁴ LDC, article 15.

6. CONACOM operates through two main bodies. The Board of Directors, composed of three members, leads the institution on administrative matters, performs the role of competition advocacy and makes the decision on all enforcement cases⁵.
7. The enforcement cases, which could pertain to merger control, abuse of dominance or anticompetitive agreements, are all brought to the attention of the Board of Directors by the Directorate for Investigation, which has functional autonomy⁶.
8. On merger control, the Directorate for Investigation studies merger operations and issues technical opinions.
9. When it comes to anticompetitive practices, the Directorate is in charge of investigating and filing charges against the alleged infringers of the LDC before the Board of Directors.
10. The Members of the Board of Directors and the Director of Investigation are appointed by the President of the Republic after competitive processes result in shortlists with three candidates for each position. The candidates are chosen after a voluntary application and an assessment of their academic background, experience and ideas for the future of CONACOM. The Members of the Board and the Director of Investigation cannot be freely removed from office by the President of the Republic, they can only be removed through a legal process established in the LDC.

2.1.3. History

11. Although the LDC was enacted in 2013, it would take two more years for CONACOM to receive the basic funds to operate and appoint its first Board of Directors, and one additional year to appoint its first Director of Investigation.
12. To this day, CONACOM is still incorporating staffers as it receives more funds from the national government while both, its institutional standing and the public awareness on competition law, improve.
13. The first resolutions on merger control cases were issued in 2017⁷, with the first (and currently only) refusal of authorisation for a merger being issued in 2020⁸ out of a total of 40 as of October 2022.
14. The first cases on anticompetitive practices were resolved in 2021, although it was not until 2022 that the first sanctions were issued. Prior to that, some penalties were imposed on cases of infringement of merger conditions⁹.

⁵ LDC, article 17.

⁶ LDC, article 30.

⁷ CONACOM, *Record of Merger Control Cases*, <https://www.conacom.gov.py/ambitos-de-actuacion/concentraciones/historial-de-expedientes>, in Spanish (Accessed 25 Oct 2022).

⁸ CONACOM, *CONACOM decided to refuse the authorisation for the merger between Frigomerc S.A. and Frigorífico Norte S.A.*, <https://www.conacom.gov.py/noticias/la-conacom-resolvio-denegar-la-autorizacion-la-operacion-de-concentracion-economica-entre-las-empresas-frigomerc-s-y-frigorifico>, in Spanish (Accessed 25 Oct 2022).

⁹ CONACOM, *Record of Anticompetitive Practices Cases*, <https://www.conacom.gov.py/ambitos-de-actuacion/practicas-restrictivas/historial-de-expedientes>, in Spanish (Accessed 25 Oct 2022).

15. On the matter of advocacy, CONACOM staffed its Advocacy Unit in 2021, though there were some efforts on raising awareness on the benefits of competition and issuing legal opinions in previous years¹⁰.

2.2. Regulators

16. Paraguay has an institutional framework with several types of entities. Regulators fall under many of these categories, depending on the field.

17. Some ministries and secretaries of state are also regulators on sectors including metropolitan transport, mining and oil exploration, agriculture, tourism, industry and trade.

18. Some regulators are autonomous and autarkic, including those from the fields of telecommunications, sanitation, securities, national transport, cooperatives, livestock, health products, bank and insurance, among others. Unlike CONACOM, however, their authorities are usually directly appointed by the President of the Republic and can be removed freely at his discretion. It should also be noted that some of these regulators sprung out of ministries or secretaries of state. For example, the authority on health products was a part of the Ministry of Public Health and Social Welfare before it became independent, so they had staff and resources from day one.

19. This scenario, coupled with the recent enactment of the first competition law and the recent establishment of CONACOM as the country's first ever competition authority, means that the more grounded and experienced regulators suddenly find themselves forced to admit the intervention of CONACOM in the markets that they had been overseeing, with the addition that CONACOM's main focus on competition might occasionally be at odds with the regulator's policymaking decisions and existing regulations.

3. Framework for the interactions between CONACOM and sector regulators

20. The separation of the institutional structures devoted to competition and regulation means that Paraguay has a specialised competition authority and specialised regulatory bodies. The interaction between them is essential for their purposes. The focus on competition means that the competition authority lacks technical knowledge on markets as it delves into the specifics when working on the respective cases. In addition, the regulator might need CONACOM's involvement to solve competition issues through non-regulatory solutions to avoid government-caused market distortion.

21. Now, there is no rule of precedence and there are no joint proceedings if an authorisation for a merger operation is required from CONACOM and a regulator. The companies must deal with the competition authority and the regulator separately as the proceedings are independent from each other, with CONACOM studying the competition concerns and the regulator focusing on the specific reasons for which the authorisation may be needed.

22. There are several provisions set in law and agreements that provide for the cooperation between CONACOM and sector regulators, but none that would allow for a single point of contact for the merging companies.

¹⁰ CONACOM, *Record of Opinions*, <https://www.conacom.gov.py/ambitos-de-actuacion/abogacia/historial-de-opiniones>, in Spanish (Accessed 25 Oct 2022).

3.1. Legal provisions

23. The LDC and its regulatory decree¹¹ set out the basis for the interactions between CONACOM and regulators. They state the duty to collaborate by providing information and the duty to report alleged infringements.

3.1.1. Duty to collaborate by providing information

24. This means that any individual, public institution or private company, upon CONACOM's request, is bound to collaborate by providing any type of data and information[1] required, including, but not limited to, the company's or institution annual turnover, market share[2] and other types of data or information, which may be needed for the enforcement of the LDC.

25. If they do not provide the information, the regulator's staffers, including the head of the institution, are exposed to penalties. These penalties do not release them from the obligation to provide the information and such penalties can be reimposed as long as the noncompliance remains.

3.1.2. Duty to report alleged infringements

26. If regulators become aware of any case that might be an alleged infringement of the LDC, they shall report it to CONACOM and submit the information they have¹².

3.2. Agreements

27. CONACOM has signed agreements for technical cooperation with several regulators, including the authorities on tax, telecommunications, livestock, public procurement, securities and banks and insurance¹³.

28. All the aforementioned agreements include clauses pertaining to the exchange of information that may be useful for the enforcement of their respective laws and the duty to report on activities that may have been detected and which may infringe the other party's legislation. Although these clauses repeat the provisions of the LDC, they provide additional means for the more established regulator to share information with CONACOM, recognising the novel competition authority's jurisdiction and expressing a will to collaborate with its legal mandate. They also balance the scale as to the burden to act, as technically CONACOM is also bound to provide information and report on activities that may have been detected by it which may be of interest for the regulator, so the exchange of information can benefit both parties.

29. In addition to the substantial provisions for the exchange of information and the report of detected alleged infringements, the agreements usually contain a clause that affirms the confidentiality of the information exchanged. The regulatory framework on

¹¹ Decree No. 1490/2014 is the regulatory decree of the LDC. It was amended by Decree No. 3488/2020. Decree No. 1490/2014 is available in Spanish at https://www.presidencia.gov.py/url-sistema-visor-decretos/index.php/ver_decreto/21135 (Accessed 25 Oct 2022). Decree No. 3488/2020 is available in Spanish at https://drive.google.com/open?id=1KXu6SFBgJCZcUoQmhvW8GgJL1oUyx_FE (Accessed 25 Oct 2022).

¹² LDC, article 61.

¹³ CONACOM, *Agreements*, <https://www.conacom.gov.py/institucion/convenios>, in Spanish (Accessed 25 Oct 2022).

competition has procedures and standards in place to guarantee the confidentiality of information. However, due to the public information law in Paraguay¹⁴, to process some information as confidential, CONACOM's counterparty must request for the information to be deemed as such and CONACOM must study and accept that condition¹⁵. Therefore, the clauses on confidentiality on agreements do not automatically confer the information exchanged with that protection.

4. Practical cooperation

4.1. Provision of information upon request

4.1.1. General experience

30. The most usual form of cooperation occurs from the provision of information upon CONACOM's request. As mentioned above, the provision of information upon request is a legal obligation backed by the threat of penalty in the event of noncompliance within a specified term. The penalty is to be imposed to staffers from the entity that has not complied with the request on time.

31. Sometimes, cooperation is fluid, exemplified by the time the Directorate for Investigation requested the livestock regulator information for a merger control case and communication was maintained by e-mail¹⁶. It should be noted that, at the time, the livestock regulator, the National Service for Animal Quality and Health, had not yet signed a formal agreement with CONACOM, showing the positive predisposition of the regulator towards working together with another governmental institution.

32. However, cooperation is not guaranteed even when there is a written agreement in place. For example, when the Directorate for Investigation studied in 2021 the merger of some non-banking credit institutions regulated by the Central Bank of Paraguay, with whom CONACOM entered into an agreement in 2017¹⁷, there was no response from the regulator. Nevertheless, this did not prevent the Directorate for Investigation from

¹⁴ Law No. 5282/2014 *Free Citizen Access to Public Information and Government Transparency*, <https://www.bacn.gov.py/leyes-paraguayas/3013/libre-acceso-ciudadano-a-la-informacion-publica-y-transparencia-gubernamental>, in Spanish (Accessed 25 Oct 2022).

¹⁵ CONACOM, *The Board of Directors approves the instructions for the declaration of confidentiality of documents filed before CONACOM*, <https://www.conacom.gov.py/noticias/el-directorio-aprueba-el-instructivo-para-la-declaracion-de-confidencialidad-de-los-documentos-presentados-ante-la-conacom>, in Spanish (Accessed 25 Oct 2022).

¹⁶ CONACOM, *Opinion/DI No. 03/2020 "Frigomerc S.A. and Frigorífico Norte S.A. on Merger Notice - File No. 190/2020"*, in Spanish (Accessed 26 Oct 2022). https://drive.google.com/file/d/1ijaKbF3SyVqsWSOdWJ_IJRWDdSZ5GMzl/view, in Spanish (Accessed 25 Oct 2022).

¹⁷ *Framework Agreement of Technical Cooperation and Institutional Strengthening between the National Competition Commission and the Central Bank of Paraguay*, <https://drive.google.com/file/d/1nkKNBh85MwKdqjN522YTLqVPJT9-Jocl/view>, in Spanish (Accessed 25 Oct 2022).

completing its analysis and issuing an opinion on time¹⁸. The Central Bank has subsequently renewed the agreement in 2022 under the same terms¹⁹.

33. Occasionally, requests have to be followed-up with calls and meetings and even reiterated in writing²⁰ for the answer to be provided by some reluctant regulators. A direct approach allows for the open and frank discussion of their concerns and to raise awareness on the provisions of the competition law and their significance.

34. As of October 2022, CONACOM has not imposed penalties on staffers from sector regulators, in recognition that the implementation of competition law has been at its initial stages in the country, but this fact does not rule out adopting that measure in the future.

4.1.2. Tax regulator

35. In the case of the tax regulator, there have been meetings to talk about how information can be shared, considering the enactment in 2020 of a law that restricts which authorities can have access to tax information in a bid to safeguard the privacy of taxpayers. This restriction carries the threat of dismissal and criminal prosecution for staffers that infringe its provisions²¹. This law does not include CONACOM in the list of entities which may have free access to the data. Still, it sets out that the tax authority can execute agreements for cooperation, prompting the execution of a framework agreement in July 2022. However, the framework of the agreement requires further discussions for its implementation. A working group including staffers from the tax regulator and CONACOM has been called for to analyse the ways to ensure a level of cooperation that can be compliant with existing tax laws and effective for the competition authority.

4.2. Cases opened due to reports of regulators

36. As mentioned above, all agreements with regulators incorporate a clause providing for a party to report the detection of activities that may be of concern to the other party. However, as of October 2022, no enforcement cases (merger and anticompetitive practices) have been opened due to reports from regulators.

¹⁸ CONACOM, *Opinion/DI No. 04/2022 “Credicentro S.A.E.C.A., Pasfin S.A.E.C.A. and LC RISK S.A.E.C.A. on Merger Notice - File No. 365/2020”*, https://drive.google.com/file/d/1Sua9wETQRvW_pssdQns2h1sPlnmhrosy/view, in Spanish (Accessed 25 Oct 2022).

¹⁹ *Addendum No. 1 to the Framework Agreement of Technical Cooperation and Institutional Strengthening between the National Competition Commission and the Central Bank of Paraguay* https://drive.google.com/file/d/1plz7oZJ6zM-Ide_YAAb5MFbIIZ-KRnnc/view, in Spanish (Accessed 25 Oct 2022).

²⁰ CONACOM, *Opinion/DI No. 08/2022* https://drive.google.com/file/d/1X62JeFMLplq2k3Up_lek-I8xd8ZR_uIH/view, in Spanish (Accessed 25 Oct 2022).

²¹ Law No. 6657/2020 Promoting the implementation of international standards on fiscal transparency, available in Spanish at: <https://www.bacn.gov.py/leyes-paraguayas/9451/ley-n-6657-promueve-la-implementacion-de-estandares-internacionales-sobre-transparencia-fiscal> (Accessed 25 Oct 2022).

37. Talks have started with the telecommunications regulator to set out a protocol that would provide for the notice by the regulator to CONACOM of changes in the ownership of licences, which may indicate that a merger operation has occurred.

5. Conclusion

38. CONACOM is a novel competition authority in a country that has just enacted its first competition law less than 10 years ago.

39. Its relationships with regulators are governed by the competition law, which provides for the basis of the regulator's duties to collaborate with the provision of information upon request and to report alleged infringements detected in their activities. Subsequent agreements have followed-up the provisions of the law.

40. Despite the regulatory framework and the agreements, cooperation in terms of enforcement requires raising awareness on competition.

41. When it comes to the provision of information, results of requests have historically been mixed and there have been no cases opened due to a notice from the regulator.

42. Although CONACOM can impose penalties on staffers from regulators for the noncompliance with the requests of information, the competition authority has adopted a softer approach in this initial stage in the implementation of competition law. So, it has promoted the execution of agreements, approached regulators with meetings and training and patiently reiterated requests for information. This advocacy work with regulators has started and will require time and resources.