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**INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATOR –
Contribution from Argentina**

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More documentation related to this discussion can be found at: oe.cd/icar.

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Interactions between Competition Authorities and Sector Regulator

- Contribution from Argentina –

1. In Argentina, the competition authority in charge of implementing Act No. 27.442, also called the Competition Defence Act (LDC, for its acronym in Spanish) is currently the National Commission for the Defence of Competition (CNDC, for its acronym in Spanish) in conjunction with the Secretary of Commerce.
2. The LDC is a federal act, and its application reaches all natural or legal persons, whether public or private, for-profit or non-profit, that carry out economic activities in Argentina or outside the country insofar as their acts may produce effects on the national market.
3. The CNDC's purpose is therefore to ensure competition in all markets, including regulated markets, notwithstanding sectoral regulators may also be mandated to maintain and promote competitive conditions in the markets in which they intervene.
4. There are several kinds of interactions between the CNDC and the different entities in charge of regulating and supervising the markets governed by state regulation that organises their functioning in the country —such as the banking, energy and telecommunications sectors, to mention a few. In some cases, these are procedural collaborations established by either the LDC or the different sectoral regulations governing the markets in which the specific regulatory authority intervenes. In other cases, cooperation between the competition agency and the sectoral regulator arises as a result of a case carried out by the CNDC— mostly as a consequence of a market study or an investigation for alleged anticompetitive behaviour.
5. To consider the different instances of interaction that the CNDC may have with various sectoral regulators, this note is structured as follows. The first section briefly reviews the procedural requirements stipulated by the LDC in merger control analysis, that may involve the interaction of the authority with sectoral regulators. The second part examines specific processes in which regulators may require the CNDC to study competition conditions in regulated markets. The third section analyses when and how CNDC can make pro-competitive recommendations to regulators about the markets they oversee. The fourth section presents some conclusions on the subject.

1. Merger control proceedings and sectoral regulators

6. The LDC stipulates a notification and control procedure for certain mergers and acquisitions. Such transactions require the competition authority's analysis and subsequent approval—with or without conditions— for their completion.
7. Section 17 of the LDC establishes that:

When the economic concentration involves services that are subject to economic regulation by the National State through a regulatory agency, the National Competition Authority shall require the respective regulatory agency to provide a reasoned opinion on the proposed economic concentration, indicating: (i) the possible impact on competition in the respective market or (ii) compliance with the

respective regulatory framework. The opinion shall be required within three (3) days of notification of the concentration, even if it is incomplete, but the essential elements of the operation are known. The respective regulatory body shall issue its decision within fifteen (15) days, after which it shall be understood that it does not object to the transaction. The request shall not suspend the term provided for in Section 14 of this law.

8. The section clarifies that the regulator's pronouncement is not binding for the competition authority. In other words, for all mergers notified to the CNDC that involve companies operating in regulated markets, the regulator's opinion on the effects of the operation on competition in that market and on compliance with the regulatory framework must be required. This provision was also present in Act No. 25.156, the predecessor of the LDC.

9. The regulators' opinions are usually not divergent from the conclusions reached by the CNDC on how the transaction affects the markets involved, so this request is usually a routine step in the merger analysis and control procedure.

10. The CNDC is currently working on implementing and regulating a summary procedure for transactions that, according to specific quantitative and qualitative parameters, are presumed not to raise concerns from a competitive point of view. The sectoral regulator's objection to a transaction is expected to be among the causes for exclusion from this simplified procedure.

11. Regarding anticompetitive conduct investigation procedures, if the reported practice occurs in a regulated market and involves an infringement to the sectoral regulation, the CNDC usually requests the regulator to confirm whether it has already been notified of the alleged violation and to ratify the facts stated in the complaint—if the enquiry began as a result of one.

2. The CNDC and regulated markets

12. While the LDC provides for the competition authority to reach all economic activities, some sectoral regulators also have the mandate to—within their functions—promote a productive and commercial environment that preserves the competitive process in the markets they intervene.

13. The legal framework that directs the activity of the National Communications Authority (ENACOM, for its acronym in Spanish) is a remarkable case in this sense. It explicitly states that the enabled *enforcement* actions and the regulatory rules it may issue must be aimed at increasing (or preserving) effective competition in the markets that could be affected.

14. ENACOM was created in 2015 from the merger of the Federal Authority of Audiovisual Communication Services (AFSCA, for its acronym in Spanish) and the Federal Authority of Information and Communications Technologies (AFTIC, for its acronym in Spanish). The agency is in charge of implementing Act No. 27.078 on Information and Communications Technologies, which regulates all telecommunications market.

15. Indeed, the aforementioned act goes as far as to establish a definition for what can be considered "significant market power" for licensees or providers of information and communications technology (ICT) services in Section 7(h).

16. Also, Section 46 provides an obligation to identify licensees with significant market power, which must comply with a precise set of commitments, aimed to guarantee — through asymmetric regulatory measures— the development of regional markets, the participation of local licensees and the continuity in the provision of ICT services.

17. Section 95 establishes a special regime for those providers who wish to enter the audiovisual communication services market. This section stipulates that ENACOM is the body in charge of determining the conditions for entry into the audiovisual communication services market for providers and licensees of information and communication technologies. It also states that, in the case of licences required for the provision of pay TV services, if there is another provider in the same service area, ENACOM must carry out a comprehensive assessment that considers community interests. In this context, the regulator must request a binding opinion from the CNDC, who must establish the conditions of provision that must be included in the licence granting.

18. In these cases, according to the procedure stipulated by the act that regulates the telecommunications market, the CNDC must receive from ENACOM the application for the corresponding subscription television service licence originally filed with the regulator. It must then request information from the applicant, but also from whoever in the file is configured as the opponent, i.e., the applicant's competitor that has asked ENACOM to deny the entry of a new player into the market. Based on the information gathered on the structure and competitive dynamics of the specific geographic markets for which the new licence is requested, the CNDC issues an opinion that is sent to ENACOM so that, finally, the regulator can issue a decision and grant or deny the corresponding licence.

3. Pro-competitive recommendations to regulators

19. Section 28(h) of the LDC establishes that the competition authority can issue, when it deems it appropriate, an opinion on competition matters concerning laws, regulations, circulars and administrative acts, without such statements having a binding effect. Subsection (i) of the same section establishes the prerogative to issue pro-competitive recommendations of a general or sectoral nature regarding business practices in a market.

20. In this sense, an interaction between the CNDC and regulators may arise from these pro-competitive recommendations.

21. Pro-competitive recommendations may also appear as a corollary to anticompetitive conduct investigations if the CNDC finds them suitable to enhance the concerned market's competitive conditions.

22. In the case of market studies, they may conclude with a recommendation to open an investigation for an alleged anticompetitive practice—if there is any indication of unlawful conduct—or with the issuance of pro-competitive recommendations to one or several agents concerning the market under investigation.

23. When dealing with regulated markets, these recommendations may propose modifications to the current regulation, or its implementation, which is why the recipient may be the authority in charge of regulating the market under investigation.

24. In 2021, the CNDC published a market study on cargo storage and logistics services at airport terminals. In the report, the CNDC recommended the National Airport System Regulatory Agency (ORSNA) to consider implementing specific measures at Ezeiza International Airport in Buenos Aires. Among the main recommendations were: to allow multiple competing cargo terminals and to establish a clear and explicit scheme for the regulation of services, to including the process of setting, modifying and approving tariffs

charged for air cargo and bonded services, the definition and control of service quality standards, and the functions and obligations of ORSNA.

25. Another remarkable case in this regard is a series of pro-competitive recommendations made by the CNDC during the market study on credit cards, debit cards and electronic means of payment in 2016. On that occasion, the authority analysed the electronic payment instruments issuing market, the electronic payment instruments acquiring market, the electronic payments processing market, and the terminals or interfaces for electronic payments provision market. In addition to recommending the opening of an *ex officio* investigation for alleged anti-competitive conduct against Prisma Medios de Pago S.A. (hereinafter, Prisma)—up to that moment, the firm had been the only processor and acquirer¹ authorised in Argentina of Visa-branded payment instruments—, the CNDC made a series of recommendations to the Central Bank of Argentina (BCRA, for its acronym in Spanish) to increase competition in the acquiring and payment processing markets.

26. In general terms, the recommendations sought a comprehensive review of the regulation of electronic means of payment. Specifically, the CNDC proposed:

1. to create the conditions necessary to generate the entry of new acquirers;
2. to promote multi-brand acquiring, so that all acquirers can access licences for all cards they wish to represent;
3. to establish regulatory conditions to ensure that a non-vertically integrated entrant in the acquiring market can procure processing services from an existing processor on equal terms with the vertically integrated acquirer;
4. to promote mechanisms to reduce barriers to entry to alternative electronic means of payment;
5. to promote competition and transparency in consumer finance by providing measures so that businesses and consumers may choose among different providers that offer competitive financing options in terms of interest rates and other financial conditions for consumer credit.

27. These recommendations led to collaborative work between the CNDC and the BCRA to rethink on electronic means of payment capabilities, which eventually led to a series of modifications that, as a tangible consequence, allowed the proliferation of alternative electronic payment solutions for businesses and consumers. The regulatory modernisation, the entry of new players into the payment sector and the sale of Prisma to Advent (a non-integrated player in the sector), as part of a commitment made in the context of the anticompetitive conduct investigation, were significant changes that prepared the ground for the growth of fintech in this sector.

4. Final remarks

28. In Argentina, many interactions between the competition authority and sectoral regulators respond to routine procedural instances stipulated either in the LDC or in the in sectoral regulations. However, there are specific interactions, for example, those resulting from the issuance of pro-competitive recommendations by the CNDC, which may lead to

¹ Acquirer is an entity licensed to offer (and sell) retailers the possibility to use a credit card brand as a means of payment.

a cooperative effort with the regulator to reform sectoral regulations to enhance competition conditions or to promote a more competitive environment in that market.

29. Finally, it is worth remembering that the CNDC is currently investigating the Meta Group for an alleged abuse of dominant position. This investigation began in mid-2021 when the update to the terms of service and privacy policy of WhatsApp was announced. The agency is investigating a possible abuse of dominant position over the app users, in the basis of preliminary evidence that indicates that users may not be able to exercise reasonable control over how the company uses their data. These cases, which involve digital platforms and pose potential harm to consumers not only due to the impact on competition but also because of the damage that could cause to user data privacy, will necessarily entail close collaboration between the competition authority and other agencies. It is not surprising that this cooperation might result in the proposal of new antitrust regulations for digital markets, but perhaps, eventually, also in sector-specific laws for this type of markets.