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## Latin American and Caribbean Competition Forum

### **LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I: Competition Fintechs, and Open Banking**

**- Contribution from Argentina -**

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This attached document from Argentina is circulated to the Latin American and Caribbean Competition Forum (LACCF) FOR DISCUSSION under Session I at its forthcoming meeting to be held on 9-10 October 2024 in Santo Domingo, Dominican Republic.

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## *Session I: Competition, Fintechs and Open Banking*

### *- Contribution from Argentina -*

1. In the last two decades, a set of technological developments, generated mainly by highly innovative companies, has led to the digitalisation of retail financial services. Notably, these services include digital wallets, payment applications, lending platforms, crowdfunding platforms to access alternative investment opportunities, and robo investment advisors. More recently, the emergence of digital banks as credit card issuers has put the fintech universe and its possible regulation at the centre of the debate.

2. Although fintech is currently seen as a new connection between financial services and information technology, the links between finance and technology go back a long way. The term "fintech" refers to the use of technology to provide financial solutions, constituting a new term to describe a phenomenon that has been developing, with varying degrees of intensity, for more than 60 years.

3. In general terms, to highlight the main milestones along this road, credit cards were introduced in the 1950s to reduce the need for cash. Then, in the 1960s, automated teller machines (ATM) were introduced; during the 1970s, electronic trading of shares was programmed; during the 1980s, computers and more sophisticated information and data storage systems were implemented until the 1990s, when the Internet emerged and business models based on e-commerce consequently flourished.

4. In this regard, Arner et al.<sup>1</sup> note that, over the past 20 years, traditional financial services have been a driving force in the information technology industry, and this trend is not slowing down. In this sense, since the late 1980s, the finance industry has been based on transmitting and manipulating digital information, to the point where today the ATM is the only example for most consumers where finance moves from a purely digital experience to one that involves a physical element, such as cash.

5. Until the end of the first decade of the 2000s, the fintech sector was mainly dominated by traditional regulated service industries, such as the banking sector, which used technology to provide their financial products and services. However, from that point on, the situation changed with the emergence of new start-ups and established technology companies that began to offer financial products and services directly to other companies and the general public. This phenomenon led to the popularisation of the term "fintech" to describe these companies. This period also saw market custodians and public policy makers starting to have concerns that are still present today.

6. In this context, fintechs emerged as innovative agents capable of introducing technological advances in payment systems and challenging the dominant positions in the various markets involved, thus contributing to a wider distribution of financial services, with the potential to generate competitive pressure and in turn reduce the costs of these services.

7. The purpose of this contribution is to describe how the payment system functions in Argentina, by analysing the competition dynamics observed in the markets involved and

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<sup>1</sup> Arner, D.W. et al. (2015), "The evolution of fintech: A new post-crisis paradigm". *Geo. J. Int'l L.*, Vol. 47, p. 1,271.

the competitive pressure exerted by the entry of technology companies into these markets, focusing on the regulatory framework and competition-related issues.

8. The first section of this note describes the current context with regard to payment systems in Argentina. The second section presents the economic characteristics of electronic payment systems, considering in more depth the impact that digitalisation has had on the financial sector, and the changes made to the regulatory framework in light of this dynamic environment. The third section analyses recent cases where the National Commission for the Defence of Competition (CNDC in Spanish) or National Antitrust Commission has intervened, in terms of both promoting and enforcing Argentine Antitrust Law 27,442 (AAL), in particular the investigation of anti-competitive behaviour. Finally, the fourth section presents the final conclusions.

## 1. Current payment system environment in Argentina

9. Payment methods can be classified in different ways. In the last two decades, a set of technological developments, generated mainly by highly innovative companies, has led to the digitalisation of retail financial services. Notably, these services include digital wallets, payment applications, lending platforms, crowdfunding platforms to access alternative investment opportunities, and robo investment advisors. Another possible way of classifying them is to distinguish between a "non-electronic" payment, such as cash or cheque, and an "electronic" payment, including credit and debit cards. Given that cards are widely used and have been available for a long time, they are the most traditional form in a world where electronic payment methods are on the rise, including the alternative methods described above.

10. Payments can also be classified as "face-to-face" or "virtual" payments, depending on whether the payer is physically close to the counterparty involved in the transaction. It is normal practice to combine a virtual payment method with the use of electronic payment systems in the context of the sale of goods and services, commonly called e-commerce. In turn, the combination of a face-to-face payment method with an electronic or traditional means of payment is defined as a point of sale (POS) payment. According to a report by the company Worldpay,<sup>2</sup> there has been a growing use of alternative means of payment in Argentina in recent years, although more traditional methods (credit card, debit card, cash, etc.) still predominate, both in e-commerce and POS, as can be seen in the following tables.

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<sup>2</sup> Worldpay (2024), *The Global Payments Report: How consumer choice is changing commerce*, 9th edition.

**Table 1.1. Payments methods used in e-commerce in Argentina**

Payment method	2017	2023
Credit card	37%	35%
Digital wallets	18%	31%
A2A <sup>3</sup>	-	10%
Debit card	16%	18%
Post-payment	4%	2%
Cash	3%	3%
Bank transfer	17%	-
Prepaid cards	1%	1%
Others	4%	0%

Source: Worldpay

**Table 1.2. Point of sale (POS) payment methods in Argentina**

Method	2017	2023
Credit card	33%	25%
Digital wallets	4%	18%
Debit card	18%	25%
POS financing	-	3%
Cash	44%	27%
Prepaid cards	1%	2%

Source: Worldpay

11. As **Tables 1.1 and 1.2** show, there is a growing use of digital wallets in both e-commerce and face-to-face commerce. The increase is particularly significant in face-to-face commerce, rising from 4% in 2017 to 18% in 2023. This came at the expense of a reduction in the use of credit cards, with an 8% decrease in their share, and cash in particular, with its use falling from 44% to 27% of transactions.

12. The digital wallet market in Argentina includes Mercado Pago, the payment unit owned by Mercado Libre, Latin America's leading e-commerce platform. Several national wallets are offered by banks (*Cuenta DNI* provided by Banco Provincia and Banco de la Nación Argentina's *BNA+*), in addition to neobanks (such as Ualá) and MODO, a private company owned by the country's main banking entities.

13. As regards the acquirer market, the main acquirers for Visa and MasterCard in Argentina are currently Prisma Medios De Pago S.A. (Prisma) and Fiserv (formerly First Data Cono Sur S.R.L.) (hereafter First Data). As we will explain below, Prisma was the payment processing system used exclusively for Visa cards, while First Data was the payment processing system used exclusively for MasterCard cards. In January 2019, the US payment solutions company Fiserv acquired First Data. This coincided with the end of exclusivity agreements with card networks in Argentina and the implementation of what is

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<sup>3</sup> A2A or account-to-account payments are direct transfers of funds from one bank account to another.

known as "multi-acquiring", which allowed both acquirers to process transactions for one or other brand of card interchangeably.

14. International competitors have also entered this market sector, such as Getnet, a Brazilian company that was acquired by Grupo Santander and is the third largest acquirer in Latin America; and Worldpay, a fintech company that processes millions of transactions in 146 countries, with a business focus on e-commerce solutions.

15. However, as we explain in the next section, firms that allow merchants to open accounts through advanced systems based, fundamentally, on the Internet have also appeared. In this regard, it is worth noting that the market also includes "sub-acquirers", "aggregators", "bundlers" or "payment facilitators", i.e. entities that provide acquiring services to the merchant through a contract with an acquirer, but do not have an acquiring licence or their own processing network, which is why they must contract these services with an acquirer. The local leader in this type of service is Mercado Pago, followed by other companies such as PayU, dLocal, PPRO and TodoPago.

## 2. Economic characteristics of electronic payment systems: Features specific to Argentina

### 2.1. Impact of digitalisation on the financial sector: Emergence of payment facilitators

16. The role of payment facilitators is the latest link to be incorporated into the payment system value chain, based on recent technological developments and heavy involvement of fintechs. The role of payment facilitators is to offer efficient electronic payment solutions, making it possible for more retailers to receive this type of payment and enabling lower transaction level merchants to obtain better conditions than by individually contracting the services of traditional acquirers and other participants in the value chain.

17. In this regard, fintechs that operate as payment facilitators offer a number of advantages. First, they simplify and improve transactions by streamlining the payment process, regardless of the type of transaction, by providing the necessary technology and more payment options than traditional POS machines, which are limited to credit and debit cards. In this way, they increase the variety of payment methods and reduce the costs of implementing such methods, since the options they offer avoid fixed maintenance costs.

18. In addition, given that the objective of payment facilitators' business model is essentially to facilitate electronic payments, they develop segmentation strategies to meet the particular needs of the different types of merchants grouped in each segment, thus offering a wide range of specific services for different types of businesses. One notable example is e-commerce generated by retailers with a few occasional transactions (typical of e-commerce platforms such as Mercado Libre) that mean they cannot justify contracting directly with traditional acquirers due to the fixed costs related to contracting POS machines. In this situation, payment facilitators play a key role in enabling sales to be collected through payment cards, but without generating fixed costs for the merchant.

19. The emergence of payment facilitators has allowed a wide variety of websites to start operating as e-commerce platforms, increasing competition in the retail member segment, which was previously referred to as "acquirer activity". These websites are incorporated simply by adding a payment option on the site. After selecting the appropriate payment method, the user is transferred to the payment facilitator's system, which processes the payment and then returns the buyer to the original site, once the transaction has been completed.

20. Clearly, the impact of digitalisation in the financial sector is making the provision of payment interfaces an increasingly competitive field, since there are multiple devices that compete with the traditional system of reading magnetic stripes on cards to enable transactions, including via smartphones or other devices that connect with them. These devices not only offer an alternative to traditional interfaces, but also make it possible to replace cards, thus reducing the payment time and benefiting merchants that currently do not have devices to receive electronic payments.

21. Since 2018, QR codes have spread rapidly as a means of payment in Argentina. They allow transactions to be made through a digital wallet installed on smartphones, using the balance in the wallet or the credit and debit cards linked to it, without the need for the merchant to install a card reader machine. Mercado Pago is the leading merchant QR code account provider and has introduced significant competitive pressure in the electronic payment systems merchant account market (through card reader machines), traditionally dominated by Prisma and Fiserv (formerly First Data). These two companies were previously the respective licensees of the Visa and MasterCard brands in Argentina.

## 2.2. Regulatory framework for fintech in Argentina

22. In Argentina, one of the main bodies in charge of designing and producing regulations and standards for the ecosystem in which fintechs operate is the Central Bank of Argentina (BCRA in Spanish). Its fundamental role lies in establishing rules for developing the payment system – composed of instruments, procedures and methods for transferring funds – to enable money to circulate among the participants of the banking and financial systems and other participating organisations. There are also other actors who are responsible for implementing regulations in the financial sector. The Financial Information Unit (UIF in Spanish) has also issued regulations that impact fintechs, focusing on the prevention of money laundering and terrorist financing. Likewise, the National Securities Commission (CNV in Spanish) regulates crowdfunding platforms and other investment services linked to fintech. Finally, the CNDC has played an important role in the sector, promoting structural and behavioural changes that have had a significant positive impact on the competitive environment of various markets linked to the payment system.

23. In recent years, as a result of the emergence of new technologies, the BCRA has created various regulations aimed at guaranteeing consumer protection, privacy and data security, and fostering an efficient and competitive environment. In other words, the regulatory framework seeks to expand the range of new payment methods and, at the same time, prevent or mitigate the possibility of fraudulent actions by third parties, in order to move towards an open banking system.

24. Open banking is a system that allows the seamless, secure exchange of a user's financial information in order to offer them greater convenience. This can be achieved by improving the experience and simplifying transactions, as well as developing new services, applications and tools that integrate financial information into broader ecosystems. In contrast to the traditional system, in which each user's financial information is classified by each financial institution with which they operate, open banking enables users to obtain a more comprehensive overview of their financial situation in a single application. This facilitates decision-making and financial planning.

25. In 2022, the BCRA issued a regulation setting out guidelines to mitigate fraud in digital wallet transactions, which impacted on payment service providers and financial entities that provide services such as digital wallets. In the same year, through Communication A 7514, the BCRA stipulated that all banking and financial entities and payment service providers that offer digital wallets must allow transfers of funds from bank

accounts on demand, without the need to top up money in the app beforehand. This means users can make payment transfers through their digital wallet, using funds deposited in other accounts.

26. Current discussions on open banking are focused on the interoperability of QR codes, inflamed by a conflict between banks and Mercado Pago, Argentina's leading virtual wallet. Interoperability allows payments made using QR codes to be processed by any financial institution or payment service provider, regardless of which provider generated the code. Without it, you would have to scan a different QR code with your smartphone for each wallet you wanted to use to make a payment.

27. For consumers, QR interoperability allows them to make payments by this means using any digital wallet and all types of cards. The advantage from the merchants' perspective lies in being able to offer consumers the option to choose from a range of virtual wallets to make the payment using a single QR code. It also simplifies their transactions and improves competition among payment product acquirers and suppliers.

28. At the beginning of 2024, interoperability applied to transfer payments made using different QR codes. The conflict between banking entities and Mercado Pago arose as a result of the banking entities claiming that Mercado Pago, which promoted the use of QR codes in Argentina, was not allowing consumers to use its QR codes to make credit card payments through other virtual wallets. In this context, the BCRA sanctioned a regulation that came into force in July 2024, to end the use of exclusive QR codes and promote QR code interoperability, for all digital wallets, with all types of cards.

### 3. The CNDC's intervention in the payment system

29. In this section, we will elaborate on recent developments linked to the effects of digitalisation on CNDC's enforcement activities in the financial sector. First, we describe the case concerning the divestment of Prisma, which began with a market investigation that resulted in pro-competitive recommendations addressed to the BCRA, followed by investigations into alleged anti-competitive practices, resulting in the divestment of the company by a group of banking entities. These measures, which are the result of CNDC initiatives, had a significant impact on competition in various markets, which is now apparent in different ways.

#### 3.1. Investigation into the acquirer market: Investigation into alleged anti-competitive practices against Prisma and its subsequent divestment commitment

30. In 2016, the CNDC observed that the vertically integrated structure of a set of markets in the payment system, in coexistence with certain rules and provisions, was generating incentives to restrict and distort competition, thus creating barriers to entry in certain markets. A group of 14 banks accounted for 80% of total credit card issuance and 72% of debit card issuance. Together with Visa International Service Association, these banks were co-owners of Prisma, a company that had an exclusive licence to act as the acquirer and processor of Visa. Prisma was also present, through other companies, in downstream interface markets and in the market for supplying POS magnetic strip card readers to merchants that use face-to-face payment channels.

31. Thus, the CNDC noted that the vertically integrated structure could limit the entry of new companies into the credit card issuing market, as the banks that owned Prisma, which held an exclusive licence to issue Visa cards, had incentives to deny the licence to any potential entrant into the system.



32. In related downstream payment facilitator markets, where the presence of fintechs is more significant, barriers to market entry could take the form of vertical conduct by Prisma, in order to refuse to provide the processing service, which could be an essential facility to potential market entrants.

33. This prompted the CNDC to initiate a market investigation,<sup>4</sup> resulting in it issuing pro-competitive recommendations to the BCRA, and ex officio investigations were initiated for alleged anti-competitive practices.<sup>5,6</sup> The investigation culminated in the start of a process whereby Prisma's shareholders voluntarily offered to divest the company. This process began in 2019, when the banks and Visa International Service Association sold 51% of Prisma shares to Advent. It culminated in June 2024, after the remaining 49% was sold to the same company, and the CNDC verified compliance with a set of arbitration clauses regarding conduct.<sup>7</sup> Broadly speaking, these clauses were designed to reduce the barriers for fintechs to enter the markets for providing payment interfaces and facilitators, rather than to restrict processing services.

34. During the aforementioned investigations, hearings were held and reports were requested from participants in the different digital payment markets and other relevant players in the Argentine payment system. In addition, several informative meetings were held with the BCRA to clarify various mechanisms related to these markets. Requests for information were also sent to the BCRA, whose opinion was sought once Prisma had submitted its divestment commitment.

35. BCRA stated that this commitment was an adequate proposal that separated the banks from each other, avoiding a corporate structure that would create incentives not to compete. In this regard, it considered that by separating issuers from processors/acquirers and granting them mutual independence, this would bring an end to vertical integration between these card market participants, thus eliminating incentives to create barriers to entry for new competitors. Moreover, regarding the acquirer market, it pointed out that it was advisable for Prisma to operate in a multiple acquirer scenario, thus avoiding incentives to promote exclusivity. Finally, it also stressed the need to minimise entry barriers for new providers of integrated payment services and to allow them to operate products for immediate transfers, among other things.

36. We can conclude by stating that the emergence of fintechs and their dynamic participation in the interface and merchant account markets have made retail merchant accounts significantly more competitive for e-commerce and face-to-face payment channels alike. Prior to Prisma's divestment commitment, the vertical configuration between issuing banks and the processor meant that the electronic payments market in Argentina was linked to banking activity, although there were no technological reasons for this. International experience showed that the conditions were in place for independent companies offering various services at different stages of the value chain to operate in the payment systems market.

37. In this way, the measures implemented by the CNDC substantially increased competition and the number of fintechs operating in the payment systems market, thus reducing barriers to entry for potential competitors.

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<sup>4</sup> See <http://cndc.produccion.gob.ar/node/2479>.

<sup>5</sup> See <http://cndc.produccion.gob.ar/node/4075>.

<sup>6</sup> See <http://cndc.produccion.gob.ar/node/2888>.

<sup>7</sup> See <http://cndc.produccion.gob.ar/node/2326>.



## 3.2. Current investigations related to fintech and open banking

### *3.2.1. Investigation into alleged abuse of dominance, and interim measure against Visa*

38. In October 2021, the Argentine Fintech Chamber denounced before the CNDC the implementation of the Payment Intermediary Foreign Exchange Operators (PIFO) scheme and the Expanded Merchant Location Pilot Program (EMLP) by the companies that manage MasterCard and Visa credit cards, respectively. It stated that this caused potential competition problems, since they implied, on the one hand, an increase in the fees applicable to processing cross-border transactions and, on the other hand, the use of commercially sensitive information of potential competitors for anti-competitive purposes.

39. As part of the investigation, the CNDC found that MasterCard never implemented the PIFO programme, nor did it modify its commercial and/or contractual conditions. Furthermore, it had not changed its conduct since the complaint was filed with the authority. With regard to Visa, the CNDC identified that the credit card brand enters into contracts with acquirers and merchants that are presumed to establish territorial exclusivity clauses. These practices could be operating as a vertical restraint, typical of contracts between suppliers and customers of a good or service, where one (or both) party(ies) agree(s) not to trade with the other party's competitors.

40. In November 2023, on the recommendation of the CNDC, the then Secretary of Trade decided to issue an interim protection measure, ordering companies linked to Visa credit cards to suspend the execution or implementation of any contractual clause that prevents a payment facilitator in Argentina from processing transactions from merchants abroad for purchases made by consumers in Argentina, until the CNDC issues a decision on the merits of the matter. These companies were also ordered to refrain from implementing any commercial policy that limits the number of sub-merchants in cross-border transactions and to remove from the register any overseas merchants that are affiliated with local payment facilitators, and to block access to the Visa network for cross-border transactions involving such merchants. The CNDC's investigation into the alleged anti-competitive conduct described above is still ongoing.

41. The CNDC recommended the injunction on the basis that Visa holds a dominant position in card network markets and would be in a position to determine the economic viability of sub-acquiring firms carrying out transactions between overseas merchants and local cardholders. The problem presented in the current proceedings is that credit card brands enter into contracts with local acquirers (not with payment facilitators directly), under the terms of which they would be establishing territorial exclusivity clauses.

42. In the CNDC's opinion, a potential abuse of dominant position exists because of discriminatory behaviour by Visa, under the threat of denying access to its own network and, specifically, due to initial evidence of: (i) an excessive and unjustified increase in fees for cross-border transactions, by applying the clauses established in the trademark contract; (ii) discrimination between local and foreign acquirers that allows the use of rates that are not regulated by the BCRA; and (iii) coercion to accept business terms that do not benefit the general economic interest.

43. Although the companies that own the network claim that territorial clauses reduce the risk of fraud or illicit transactions, when requesting the transfer of money abroad, payment facilitators notify the country to which the recipients' data relates. It is nevertheless appropriate for credit card companies to have details of the names and activities of the merchants in question in order to dispel any doubts they may have (since credit card companies are interested in the outcome of transactions). This provides security and

information to credit card holders when requesting information from the brands or issuers themselves.

44. Furthermore, the CNDC considered that Visa's actions could constitute a possible abuse of exclusionary dominance, since the threat of exclusion from access to the network creates sufficient incentives for payment facilitators to have no choice but to accept territorial rules or those that prohibit cross-border transactions. In this regard, the territorial restrictions imposed could be aimed at: (i) excluding payment aggregators, thus reducing their turnover; and (ii) discouraging the entry of any other potential competitor.

### ***3.2.2. Investigation carried out following a complaint by MODO against Mercado Pago***

45. As previously mentioned, from 2018, the firm Mercado Pago (Mercado Libre's payment system), began to extend its QR code network in the retail commercial sector. This led to a significant number of merchants signing up to this payment mechanism which enables various means of payment (money in an account, debit or credit cards, or transfers) via digital wallets that are activated by scanning a code.

46. At the same time, a group of public and private banks launched MODO, a payment aggregator platform designed to compete with Mercado Pago for face-to-face payments.

47. This year, in the context of the debate around implementing QR code interoperability, in which the BCRA launched a regulation for this purpose, MODO filed a complaint before the CNDC against Mercado Pago for several anti-competitive actions, in particular for refusing to implement interoperable QR codes.

48. The complaint alleges anti-competitive behaviour that falls under the exclusionary abuse of dominant position, which would violate the AAL based on the refusal to incorporate digital wallet competitors into Mercado Libre, thereby denying access to those who apply to be third-party providers on the platform. Furthermore, MODO denounced the fact that Mercado Libre would not allow other aggregators and competitors of Mercado Pago to provide payment collection services (hence tying merchant sales to its own payment services) and its refusal to use interoperable QR codes, among other things.

49. We should point out that MODO filed this complaint in the first half of 2024, so the investigation is still in its initial stages. Therefore, the information contained in this note regarding this complaint comes from publicly available media in order to keep the information related to the investigation confidential. Furthermore, the conduct denounced by MODO is described in hypothetical terms, in order to avoid any type of bias regarding the practices in question.

## **4. Concluding remarks**

50. In conclusion, the evolution of the fintech sector from the end of the first decade of the 2000s to the present has significantly transformed the financial services landscape in Argentina. Initially dominated by the traditional regulated services industries, the sector has seen a shift with the emergence of new start-ups and technology companies offering financial products and services directly to businesses and the general public.

51. The emergence of fintechs as innovative players has introduced technological advances in payment systems, challenging dominant positions in different markets and contributing to a wider distribution of financial services. This dynamic has created competitive pressure that has the potential to reduce costs and increase the quality of financial services, thus benefiting consumers. In Argentina, digitalisation has had a

significant impact on the financial system, and regulatory responses have been crucial in adapting to this ever-changing context.