

Unclassified

English - Or. English

22 September 2026

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Latin American and Caribbean Competition Forum

**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I: Competition
Law Enforcement in Informal Markets**

- Contribution from Argentina -

14-15 October 2026

This Note his 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 14-15 October 2026 in Buenos Aires, Argentina.

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JT03592945

Session I: Competition Law Enforcement in Informal Markets

- Contribution from Argentina –

1. Informality is present in markets to a greater or lesser extent depending on multiple factors; it may take different forms and has various consequences for safety, the protection of individuals and businesses, public revenue collection, among other considerations.
2. Informality may also affect competition in markets, as well as the analyses conducted by competition authorities.
3. This paper seeks to contribute to this topic through an initial conceptual exploration of the nature of informality in economic activity, a legal analysis of its potential impact on the instruments provided for under competition law, and a review of a recent case in which the Argentine competition authority sanctioned a group of companies for a concerted practice and made observations regarding the impact of informality on the market under analysis.

1. Informal activities and relationships in markets

4. A first point worth making is that informality and illegality are not necessarily equivalent categories.
5. Broadly speaking, an illegal economic activity is one whose object of production, distribution or commercialisation is unlawful. Informality, by contrast, refers to the conduct of economic activities outside, whether wholly or partially, the requirements relating to registration, taxation, licensing, labour regulation or other obligations established by the legal framework, but it does not necessarily imply that the economic activity itself, or the goods or services being exchanged, are unlawful.
6. Indeed, an economic activity may consist of the production, distribution or commercialisation of lawful goods and services while at the same time being carried out without complying with all applicable legal and administrative requirements.
7. This distinction is important because the condition of informality does not, in itself, determine whether the underlying economic activity is lawful or unlawful: an agent's operations may be conducted in a wholly informal manner while the activity itself remains lawful. It also follows that an economic agent cannot simply be categorised wholesale as either “formal” or “informal”.
8. To illustrate this perspective, one might consider a formally incorporated company engaged in a legitimate activity that, for example, relies on improperly registered employment relationships or fails to comply with certain regulatory obligations. Conversely, a small unregistered, or improperly registered, operator may participate in value chains comprising firms that do comply with the applicable formal requirements, while conducting its own operations in compliance with tax rules.
9. Consequently, rather than classifying agents dichotomously as either formal or informal, it may be more appropriate to consider the different ways and degrees in which economic activities are incorporated into the systems of regulation, registration and oversight established by the State.

10. Formalisation does not necessarily constitute a uniform condition encompassing all aspects of an economic activity; rather, it may relate to different dimensions and coexist with varying degrees of non-compliance or an absence of effective regulation.

11. This line of thinking leads us to reflect on the notion of an informal market existing separately from a formal market. The fact that certain operators conduct their activities outside some regulatory requirements does not, in itself, imply that they participate in a distinct relevant market. It is likely that two businesses engaged in the same activity within the same geographic area, one displaying a higher degree of compliance with tax and labour rules than the other, would nevertheless be regarded as valid alternatives by a large proportion of consumers demanding that good.

12. In other words, if we imagine a small local retail business exhibiting a degree of partial informality operating on a site adjacent to a branch of a chain store with a higher level of formalisation, and both sell the same type of product, consumers would be expected to perceive them as competitors, thereby placing them within the same market for analytical purposes. In Argentina, for example, this could apply to numerous activities such as butcher shops, bakeries or poultry shops, to mention just a few examples.

13. Ultimately, within a single market there may coexist fully formalised firms, operators that only partially comply with the applicable obligations, and activities carried out outside certain administrative or regulatory requirements.

14. For that reason, we consider that drawing a distinction between a supposedly formal market and an informal market may lead to incorrect conclusions if adopted as a starting point without first examining the economic relationships that exist between operators. The legal, administrative or regulatory status of a supplier does not automatically determine its inclusion in, or exclusion from, a relevant market.

15. However, informality poses a specific challenge for certain competition analysis tools. The issue is not whether informal operators should be included in or excluded from the analysis, but rather under what conditions they constitute an effective competitive alternative and how that circumstance should be incorporated into the assessment of each case.

16. The matter takes on an additional dimension when one considers that markets do not operate independently of the institutional framework within which they are embedded. The rules governing access to an activity, licensing and registration requirements, tax and labour obligations, and the mechanisms for governmental oversight and enforcement all affect the costs and conditions under which economic agents carry on their activities. The effective capacity of institutions to enforce these rules may also determine, in practice, the extent of informality and the manner in which operators subject to different regulatory requirements interact.

17. Accordingly, in certain circumstances, a case may require cooperation with other administrative authorities in order to gain a comprehensive understanding of how the market operates, while at the same time recognising that regulatory and compliance conditions form part of the economic context within which competition takes place.

2. Competition Act no. 27,442 (LDC)

18. The conceptual approach outlined above may be useful in avoiding a one-dimensional view of informal businesses or activities. In this regard, it is worth focusing specifically on how competition law interacts with informality in the Argentine market

19. The first point to note is that Article 1 of the Competition Act (LDC), which prohibits agreements between competitors, economic concentrations, and acts or conduct that have the object or effect of limiting, restricting, falsifying or distorting competition or access to the market, or that constitute an abuse of a dominant position in a market, in a manner capable of causing harm to the general economic interest, includes the following provision: "...the obtaining of significant competitive advantages through the infringement of other legal rules shall also fall within the scope of this article, provided that the conditions set out in the preceding paragraph are met."

20. In other words, the Competition Act itself expressly encompasses informal activities, provided that they fall within the acts or conduct prohibited under competition law.

21. Article 1 is complemented by Article 4 of the Competition Act, which broadens the personal scope of the legislation. It applies to all natural and legal persons, whether public or private, profit-making or non-profit, that carry out economic activities within the country, or outside the country where their conduct produces effects in the domestic market. It further clarifies that, in determining the true nature of acts, conduct or agreements, consideration shall be given to the economic relationships actually carried out. The article provides as follows: "All natural and legal persons, whether public or private, profit-making or non-profit, that carry out economic activities in all or part of the national territory, and those that carry out economic activities outside the country insofar as their acts, activities or agreements may produce effects in the domestic market, shall be subject to the provisions of this law. For the purposes of this law, in determining the true nature of acts, conduct and agreements, regard shall be had to the economic situations and relationships that are actually carried out, pursued or established."

22. Two points relevant to the present analysis emerge from this provision. First, all natural and legal persons are covered. Consequently, where a business is not formally incorporated or established as such, the law envisages that sanctions may be imposed on the natural persons who carry out the relevant acts on behalf of the purported business. Second, the provision makes clear that regard must be had to the economic relationships that are actually carried out, pursued or established. This encompasses any demonstrable economic activity, irrespective of its degree of formality.

23. A combined reading of Articles 1 and 4 suggests, in principle, that the informal nature of an economic activity does not, in itself, determine its exclusion from the scope of competition law.

24. However, the relevance and implications of informality vary depending on the type of enforcement tool being applied. For these purposes, three principal areas of competition law enforcement may be identified: (i) cartel enforcement; (ii) abuse of dominance cases; and (iii) merger control.

25. The most straightforward case is merger control.

26. The notification threshold established by the Competition Act is equivalent to a turnover of 100 million mobile units, currently corresponding to approximately USD 100 million. As in most jurisdictions, the legislation also provides for an exemption from notification. Broadly speaking, if both the transaction value and the value of the transferred

assets fall below a threshold of 20 million mobile units, the transaction is not notifiable, even where the turnover of the business groups involved exceeds the general threshold.

27. Accordingly, it may be argued that the obligation to notify a concentration transaction to the competition authority is effectively limited to medium-sized or large companies, or at least to undertakings whose level of turnover makes it reasonable to expect that any degree of informality would be limited or of little significance from a competition perspective.

28. A similar observation may be made, although with somewhat greater qualification, in relation to abuse of dominance cases. In most instances, dominance implies the presence of a sizeable market participant, making widespread informal activity unlikely, or at least unlikely to be significant for competition purposes.

29. This proposition must, however, be assessed on a case-by-case basis. In geographically limited markets, a dominant position does not necessarily imply the presence of a large undertaking. The same applies depending on the economic activity under consideration. Markets in which at least part of the activity is subject to strict regulatory compliance requirements are likely to display higher levels of formality. This may be the case, for example, in industries that export part of their production and, for that purpose, must demonstrate compliance with specific procedures regarding production methods, input procurement and the distribution of finished goods.

30. Finally, cartel enforcement is, in principle, more exposed to issues of informality than the two categories discussed above. Unlike merger control, there is no minimum turnover threshold that limits the application of competition law to undertakings of a particular size. Moreover, the existence of a concerted practice does not require, as in abuse of dominance cases, that any of the participants hold a position of individual significance in the market.

31. Accordingly, anticompetitive conduct of this nature may involve economic agents of widely differing scales and degrees of formalisation, including those that carry out all or part of their activities outside the applicable regulatory requirements. This may give rise to specific challenges for the enforcement of competition law, both in identifying the participants and obtaining evidence of the existence of an agreement, and in determining the scope of the affected market and implementing any sanctions or remedies.

3. The relationship between firm size, informality and barriers to entry

32. The correlation between the degree of informality and firm size is not merely intuitive. It is supported by an extensive body of literature on economic development.

33. La Porta and Shleifer (2008¹; 2014²) document, using cross-country comparative data, that informal firms are systematically smaller and less productive than formal firms. Ulyssea (2018)³ reaches a similar conclusion through a different approach: he models firms' decisions whether to register and whether to conceal employment and finds that

¹ La Porta, Rafael y Shleifer, Andrei, "The Unofficial Economy and Economic Development", *Brookings Papers on Economic Activity*, 2008.

² La Porta, Rafael y Shleifer, Andrei, "Informality and Development", *Journal of Economic Perspectives*, vol. 28, n.º 3, 2014.

³ Ulyssea, Thiago, "Firms, Informality, and Development: Theory and Evidence", *American Economic Review*, vol. 108, n.º 8, 2018, pp. 2015-2047.

informality declines markedly as firm size increases. Hsieh and Klenow (2014)⁴ document the same pattern in India and Mexico from the perspective of resource allocation and firm growth.

34. This relationship has direct implications for competition analysis. The OECD (2018/2019)⁵, in its note on the informal economy and competition policy in Latin America and the Caribbean, reaches a similar conclusion: lengthy registration procedures and costly licensing requirements increase the cost of entering the formal sector and, where formal and informal firms compete, the advantage enjoyed by the latter tends to derive from non-compliance with tax, labour or regulatory requirements rather than from superior efficiency or innovation. If those obligations operate as a disproportionately high fixed cost for small firms, they function as a barrier to market entry, not to formality itself. An operator unable to overcome those barriers remains smaller and less productive and, for that very reason, constitutes a weaker competitive constraint.

35. This is, fundamentally, the structural reason why both merger control and abuse of dominance cases have relatively limited exposure to issues of informality. It is not because the law excludes informal actors, but because an informal operator rarely attains the scale required by those legal frameworks, namely turnover in the case of merger control and market power in the case of abuse of dominance.

36. This assigns competition authorities a role that goes beyond the enforcement of anticompetitive conduct. The OECD itself frames the issue in this way: the principal means of addressing these distortions lies in competition advocacy, including market studies, investigations, non-binding opinions and recommendations for regulatory reform. Sturzenegger (2025)⁶, in a recent working paper on deregulation in Argentina, advances a similar argument, namely that excessive regulation may result from the capture of public policy by concentrated interests, and that competition policy should not be confined to private conduct but should also address legal barriers to entry created by the State itself, such as licensing requirements, quotas, exclusive rights and administrative obstacles. In the terminology used in this paper, these are barriers that particularly undermine the competitive capacity of smaller market participants.

4. The areneras del chaco case and the consideration of informality in competition analysis

37. One case that illustrates some of the issues arising from the different degrees of formalisation of economic activity and their treatment from the perspective of competition law enforcement is the sand producers cartel in the Province of Chaco, recently sanctioned by the Competition Tribunal (TDC).

38. The proceedings originated from a complaint filed in 2019 before the former National Commission for the Defence of Competition (CNDC). The complainant, engaged in the extraction and sale of sand, alleged that the members of the Cooperativa Minera de Productores de Arena y Piedra del Noreste Ltda. (the Cooperative) jointly agreed the sale

⁴ Hsieh, Chang-Tai y Klenow, Peter J., “The Life Cycle of Plants in India and Mexico”, *Quarterly Journal of Economics*, vol. 129, n.º 3, 2014.

⁵ OCDE, *The Informal Economy in Latin America and the Caribbean: Implications for Competition Policy*, OCDE, 2019.

⁶ Sturzenegger, Federico, “Deregulation: from Theory to Practice”, RedNIE Working Paper No. 379, December 2025. Working paper.

prices of the sand extracted. In particular, it claimed that the Cooperative set the price and that none of its members could sell at a different price.

39. The market investigated was the purchase and sale of fine sand, coarse sand and waste sand. As regards the geographic scope of the conduct under investigation, the inquiry focused on activities carried out in the city of Barranqueras, in the Province of Chaco, and within a 100-kilometre radius thereof, an area located in the north-eastern region of Argentina.

40. During the investigation, the former CNDC requested information from provincial public bodies, the undertakings under investigation and other market participants, including data on prices, sales volumes, customers, areas of influence and principal competitors.

41. Based on that investigation, in May 2024 the CNDC concluded its inquiry and issued a statement of objections against the Cooperative and various associated members for allegedly coordinating conduct aimed at restricting competition and increasing the price of sand. Following the parties' defences, the assessment of the evidence submitted and the closing arguments, the Secretariat for the Investigation of Anticompetitive Conduct (SICA) issued its opinion, which subsequently served as the basis for the TDC's decision.

42. The evidence considered included, among other materials, accounting and commercial records, VAT sales ledgers, financial statements, information on volumes and prices, minutes of the Board of Directors, the parties' own explanations regarding the operation of the Cooperative, and the Cooperative's by-laws, which provided that the Cooperative would determine the price at which members sold sand. According to the reconstruction set out in the decision, commercialisation was centralised through the Cooperative, which invoiced sales and jointly determined the price and other commercial conditions applicable to the sand produced by its members.

43. Ultimately, in July 2026, the TDC found the Cooperative and its associated members liable for engaging in a hardcore restriction of competition consisting of the implementation of an agreement to fix prices jointly and establish other commercial conditions for the sale of construction sand within the Province of Chaco between 2019 and 2024, in breach of Article 2(a) of the Competition Act. As a result, sanctions were imposed on 14 parties in the total amount of 1,230,891 Measurement Units (UMs), equivalent to approximately USD 1.23 million.

44. The case is relevant for present purposes because, during the proceedings, one of the parties challenged the former CNDC's description of the Cooperative's position in the market, specifically on the grounds that informal transactions were present in the market.

45. In particular, it argued that assessing market share on the basis of turnover would be unfair, not only because of the existence of an "unrecorded market" that was common in the commercialisation of silica, but also because the Cooperative operated in compliance with tax, fiscal and labour regulations, as well as maximum load-weight controls, all of which had an impact on the composition of the final price paid by the market. In other words, in its view, on the one hand there was a portion of market demand that was not being considered and, on the other hand, the higher price reflected the cost of complying with the applicable legal framework, namely tax and labour regulations rather than competition law.

46. Thus, according to one of the investigated parties, the formal or informal nature of an activity should be taken into account both in assessing the scale of its operations and in evaluating its position relative to other operators.

47. In its decision, the TDC referred to the presence of informal operators, but approached the issue from a different perspective. In analysing the competitive constraint exerted by other producers, it noted that, according to the submissions of the investigated parties themselves, a significant proportion of the Cooperative's customers, namely larger construction companies and builders' merchants, required invoices and operated within the formal market, whereas smaller customers or final consumers could turn to informal suppliers.

48. If that were correct, the consequence would not simply be the existence of two separate markets, one formal and one informal. Rather, it would imply that the purchasing options actually available could vary depending on the characteristics and needs of different customers. For those requiring invoicing and other conditions associated with formal commercial activity, certain informal suppliers would not necessarily constitute an equivalent competitive alternative. The TDC noted precisely that, in such circumstances, the sourcing options available to formal customers could be even more limited and, consequently, the harm caused by the conduct even greater.

5. Conclusions

49. The presence of informal activities in the economy is widespread and has multiple consequences affecting a variety of dimensions. From a competition law perspective, informality may have an impact on the markets under analysis and must therefore be assessed on the basis of a case-specific examination. The focus is on determining under what conditions informal activities and actors constitute an effective competitive alternative and how that circumstance should be incorporated into the assessment of each case. This must, moreover, be considered within a comprehensive framework that takes into account the various regulations and institutions that may exist in each particular market.

50. The Argentine Competition Act (LDC) expressly encompasses acts or conduct carried out in breach of other legal provisions where such breaches generate competitive advantages that enable conduct which, by its object or effect, is sanctionable under the provisions of the Competition Act. It has been observed, however, that the implications of informality manifest themselves with varying intensity depending on the enforcement tools provided by the legislation. Cases involving coordinated conduct are, in principle, those most likely to require this type of analysis.

51. Indeed, the recent sanction imposed on the cartel of sand extraction companies in the Province of Chaco provides an example of an integrated analysis by the Argentine competition authority of the relationship between informal economic activity and competition law enforcement.