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

- Contribution from Paraguay -

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This Note his attached document from Paraguay 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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Session I: Competition Law Enforcement in Informal Markets

- Contribution from Paraguay –

1. Introduction

1. The purpose of this paper is to present the case in which the National Competition Commission of Paraguay (CONACOM) examined issues related to the informal market in the concentration operation GRUPO VIERCI and SUPERMERCADO NUEVO SUPER (CAACUPÉ) / NOTIFICATION OF A CONCENTRATION TRANSACTION¹.

2. Law and authority

2. The 1992 Constitution of Paraguay establishes the guarantee of competition in the market.²

3. Paraguay's competition law was enacted in 2013 as Law No. 4956 on the Defence of Competition (LDC)³. In addition to establishing the country's first legal framework governing mergers and anticompetitive practices, including abuse of dominance and anticompetitive agreements or cartels, it also created Paraguay's first national competition authority: CONACOM. Prior to its creation, there was no institution or government body in Paraguay responsible for performing the functions of a competition authority.

4. CONACOM operates through two principal bodies. The Board of Directors of CONACOM, composed of three members, oversees the institution's administrative affairs, performs the competition advocacy function, and takes decisions in all cases involving the enforcement of the law⁴.

5. Cases involving the enforcement of the law, whether relating to merger control, abuse of a dominant position, or anticompetitive agreements, are all submitted to the Board of Directors by the Directorate for Investigations, which enjoys functional autonomy⁵.

6. In the area of merger control, the Directorate for Investigations reviews merger transactions and issues technical opinions. The merger assessment focuses on determining whether the transaction would significantly restrict competition through the creation or strengthening of a dominant position in the market.

7. Following the technical opinion issued by the Directorate for Investigations concerning the concentration transaction, the Board of Directors of CONACOM adopts a decision approving, prohibiting, or approving the concentration subject to conditions. A

¹ Resolution D/AL No. 75/2022, dated 21 September 2022. Available at:

https://drive.google.com/file/d/1MvwypVeFRrQ_oZNDn3BSiowHp8CXTpfv/view

² Constitution of the Republic of Paraguay, Article 107.

³ The LDC is available in Spanish at <https://www.bacn.gov.py/leyes-paraguayas/4775/ley-n-4956-defensa-de-la-competencia> (Accessed 21 Oct 2025).

⁴ LDC, art. 17.

⁵ LDC, art. 30.

concentration transaction may only be prohibited or made subject to conditions where it can be established that the transaction would create or strengthen a dominant position in a defined relevant market⁶.

3. Details of the concentration transaction

8. The concentration transaction consisted of the sale, purchase and partial transfer of a business as a going concern between Kennedy & Company S.A. (as seller) and Retail S.A. (as purchaser), the latter belonging to the Vierci Group⁷. The transaction was executed through an agreement signed on 24 November 2021⁸.

9. Pursuant to this agreement, Retail S.A. acquired the assets corresponding to three supermarket outlets operating under the “Nuevo Super” brand, all of which were located in the city of Caacupé, in the Department of Cordillera.⁹

10. The partial transfer of the business as a going concern included both tangible and intangible assets, namely: real estate, inventories, licences, trademarks and representations, furniture, motor vehicles, rights, and existing contracts with suppliers.¹⁰

4. Definition of the relevant markets

11. For the purposes of defining the two relevant markets under analysis, the impact was assessed both at the retail level (downstream), namely the sale of products to final consumers, and at the procurement level (upstream), namely the commercial purchasing relationship with suppliers.¹¹

12. On this point, CONACOM has previously stated that, although the usual approach to defining relevant markets for the analysis of a horizontal concentration transaction is to consider the products and/or services sold or supplied by the merging parties and their competitors, in certain specific circumstances it may also be appropriate to analyse other related markets that could be affected by the concentration¹²:

13. The first market defined was the market for the retail sale of fast-moving consumer goods in Caacupé (modern retail channel – downstream). Its product definition comprised the retail sale of food and non-food household consumer goods through hypermarkets, supermarkets, minimarkets and any similar establishments operating under a self-service system, equipped with at least two checkout counters and using scanner technology for payment processing.

⁶ LDC, art. 13 & 14.

⁷ Available: <https://www.grupovierci.com/>

⁸ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 24.

⁹ Ibid

¹⁰ Opinion of the Directorate for Investigations, paras. 36 and 37.

¹¹ Retrieved from CNDC (2019), op. cit., p. 5; Resolution D/AL No. 75/2022, dated 21 September 2022, p. 37.

¹² Resolution D/AL No. 18/2020, issued in Case No. 190/2020, Frigomerc S.A. and Frigorífico Norte S.A. / Notification of a Concentration Transaction, p. 4.

14. In light of the considerations set out in the preceding paragraph, the traditional channel (small neighbourhood shops, municipal markets and wholesale sales) was excluded from the relevant market identified, owing to key differences in infrastructure, product variety, personalised service format, and levels of formality.¹³

15. With regard to the geographic dimension of this market, it was determined that it is limited to the District of Caacupé. In this respect, it was found that, for the final consumer, the market is fundamentally local, since purchasing options are constrained by travel costs and journey time.¹⁴

16. The next market defined was the market for the procurement of fast-moving consumer goods at the national level (upstream supply market). Its product definition consisted of the purchase or procurement of fast-moving consumer goods by modern retail channel outlets (i.e. establishments operating on a self-service basis, with at least two checkout counters and scanner technology) for subsequent retail resale.

17. Geographic dimension of the market referred to in the preceding paragraph: It was defined as having a national scope, since the Vieri Group operates the largest supermarket chain in Paraguay and centralises its commercial negotiations for all of its branches throughout the country, while its principal suppliers also operate on a nationwide basis.¹⁵

18. With regard to the information used for the market analysis, it should be noted that the Directorate for Investigations stated that, since this is an unregulated sector, it is not feasible to obtain complete information on all the economic agents participating in it. In that context, and in the absence of public data from official sources, the identification of the principal market participants was carried out by cross-checking the information provided by suppliers in the case file with data supplied by the Paraguayan Chamber of Supermarkets (CAPASU), the trade association representing companies operating in the modern retail channel.¹⁶

19. In this regard, the size of the modern retail channel supply market was estimated by taking as a starting point the share attributed to that channel within national private consumption, according to sectoral information provided by CAPASU. On that basis, Gross Domestic Product (GDP) data were used to determine the size of the market during the reference period. Subsequently, the estimate was updated by applying the projected growth rates of turnover in the supermarket sector published by the Central Bank of Paraguay.¹⁷

20. With regard to the definition of other relevant markets, it was not considered necessary to formally delineate conglomerate markets or other related markets connected through additional vertical links. Nevertheless, an assessment was conducted of the impact of the existing vertical integration within the Vieri Group, in its capacity as a supplier of several of the brands it markets, as well as of the potential risks that such integration could pose to competitive conditions in the relevant markets.¹⁸

¹³ Resolution D/AL No. 75/2022, dated 21 September 2022, pp. 34–35.

¹⁴ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 41.

¹⁵ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 41.

¹⁶ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 48.

¹⁷ Directorate for Investigations' Opinion, p. 32, in Resolution D/AL No. 75/2022, dated 21 September 2022, p. 48.

¹⁸ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 39.

5. Analysis of the agents participating in the traditional channel

21. At this point, it should be noted that, during the analysis of the relevant markets defined above, informal operators were assessed as part of the “traditional distribution channel”, which consists of: (i) municipal markets; (ii) wholesale sales; and (iii) neighbourhood grocery stores (despensas), all of which form part of a highly fragmented market structure. With respect to these operators, it was concluded that this channel, characterised by high levels of informality, does not constitute an effective substitute for the Modern Channel, which is made up of supermarkets and hypermarkets.¹⁹ Accordingly, as explained above, informal operators were excluded both from the definition of the market for retail sales to final consumers (downstream) and from the market for procurement from suppliers (upstream), on the basis that the Traditional Channel is not regarded as a substitute for the Modern Channel.²⁰

22. In the same vein, the Directorate for Investigations noted that this informal sector typically serves lower-income segments of the population. In this regard, it referred to neighbourhood grocery stores (despensas) as examples of such operators, highlighting that they offer a more limited range of products and brands, provide personalised service (as opposed to self-service), and are located in residential areas or in locations with lower levels of foot traffic.²¹

23. With regard to entry barriers, the Directorate for Investigations found that, unlike formal supermarkets, which require substantial investment in infrastructure, advertising and brand development, entry into the traditional channel is significantly less costly.²²

24. Impact of smuggling: The Paraguayan Chamber of Supermarkets (CAPASU) pointed to the continued existence of high levels of informality in the sector, as well as the inflow of smuggled products. In this regard, it considered that this situation represents an opportunity for expansion, insofar as a potential shift of consumers from traditional and informal channels to the modern retail channel could result in greater customer acquisition.²³

6. Conditions imposed on retail in the context of the concentration transaction:

25. Following its analysis of the available data, the authority concluded that, through the concentration transaction, the Vierci Group would acquire a dominant position in the relevant market for the retail sale of fast-moving consumer goods through modern retail channel establishments in the District of Caacupé. This position would be further reinforced by the group's purchasing power vis-à-vis its suppliers in the relevant market for the purchase or procurement of fast-moving consumer goods for retail sale through modern retail channel establishments, a position that would also be strengthened as a result of the concentration transaction.

¹⁹ Opinion of the Directorate for Investigations, para. 80, drawing on conclusions from the Market Study conducted by the Superintendency of Competition of El Salvador, Retail Distribution of Frequently Purchased Consumer Goods.

²⁰ Opinion of the Directorate for Investigations, para. 94.

²¹ Opinion of the Directorate for Investigations, paras. 81, 82, 83 and 84.

²² Opinion of the Directorate for Investigations, para. 85.

²³ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 22.

26. As a result of the concerns described in the preceding paragraph, both structural and behavioural remedies were imposed. Among those most relevant to the subject matter of this paper are the following:

6.1. With respect to its commercial agreements with suppliers.²⁴

- Retail S.A. shall formalise in writing the commercial agreements, together with their respective operating conditions, with all its current and future suppliers, and shall keep such agreements in force, except in the case of suppliers that have been delisted and are no longer active.
 - The commercial agreements shall clearly set out the commercial, logistical, operational and financial terms applicable to the relationship with suppliers, defining precisely the payment terms and method of payment.
 - Establish a category of small-scale suppliers, effective from 2023, which shall include those suppliers whose turnover did not exceed PYG 1,000,000,000 during 2022 (equivalent, at the average exchange rate for 2022, to approximately USD 143,266.48)²⁵. This category shall be updated annually on a rolling basis. The following conditions shall apply to suppliers falling within this category:
 - i. Payment for products actually sold within a maximum period of thirty (30) days from the date of receipt of the invoice.
 - ii. In the event of any outstanding balance, payment for products not yet paid for shall be made in accordance with the same procedure described above (namely, payment within 30 days for products actually sold), or before the expiry of the payment period agreed with the supplier, where that period is shorter.
27. Within twelve (12) months from the date on which this decision becomes final at the administrative level, Retail S.A. shall:
- i. Formalise its contractual arrangements with all its suppliers, in accordance with the provisions set out in the preceding paragraphs and the other conditions established in this Compliance Programme.
 - ii. At the time of formalising contracts with all its suppliers, Retail S.A. shall provide each supplier with a copy of the “Supplier Guide”, to be approved by the Merger Control Department of the Directorate for Investigations. Receipt of the Guide by the supplier shall be recorded in the relevant contract.
28. Monitoring of the condition established in the preceding section shall be carried out for a period of five (5) years from the date on which this decision becomes final at the administrative level.
- Make payments in a timely manner and in accordance with the agreed terms, explicitly specifying the amounts and reasons for any discounts applied, and refrain from imposing charges or issuing debit notes unilaterally.

²⁴ Annex to Resolution D/AL No. 75/2022, dated 21 September 2022, pp. 85 et seq.

²⁵ Central Bank of Paraguay (BCP), Historical Reference Exchange Rates. Annual historical reference exchange rate of the United States dollar against the Paraguayan guaraní. Available at: <https://www.bcp.gov.py/webapps/web/cotizacion/monedas-historica>.

- Avoid excessive and unjustified delays in the onboarding process for suppliers or new products once the supplier has complied with all requirements established by Retail S.A., as well as in the administrative processing of invoices, credit notes, and the receipt and acceptance of goods.
- Prohibition on requiring or compelling suppliers to maintain a current account or savings account with a specific financial institution for the purpose of receiving payments by bank transfer. In this regard, suppliers must be given the option of receiving payments by that method through transfers to the savings or current accounts they maintain with the financial institutions of their choice, provided that those institutions operate within the SIPAP system.²⁶

6.2. With respect to Kennedy & Cía S.A.’s suppliers

- For a period of one (1) year from the date on which this decision becomes final at the administrative level, Retail S.A. may not charge fees or withhold any sums of money for the opening of a new store, refurbishment, reopening, or any similar concept, as a result of acquiring control of those establishments through the present transaction, from suppliers that already had a commercial relationship with the previous owner and whose products were already being sold in the “Nuevo Super” stores, even where such a condition has been included in the supply agreement entered into between Retail S.A. and the supplier.
- Where any charge or deduction prohibited under the preceding paragraph has already been applied, Retail S.A. shall reimburse the relevant amount in the next payment made to the respective supplier.
- For the purpose of complying with the conditions set out in the preceding paragraphs, Retail S.A. shall, within thirty (30) working days from the date on which this decision becomes final at the administrative level, submit a list of Retail S.A.’s suppliers that were active during the first month following approval of the transaction and that had also been suppliers of the establishments operated by the previous owner.

7. Grounds for the Conditions Imposed

29. The conditions imposed were justified by the risks arising from the market power and structure of the Vierci Group:

Substantial buyer power (monopsony): Retail S.A. was the undisputed leader of the modern retail channel in Paraguay, with a national market share of between 25% and 30%, rising to almost 40% when considering only the main retail chains. Its purchasing volume exceeded that of its closest competitor by more than threefold.²⁷

High economic dependency of suppliers: For a significant number of the country's largest suppliers, the Vierci Group represented their most important customer, in some cases accounting for well over 20% or 25% of their total sales.²⁸

²⁶ The Paraguayan Payment System (SIPAP).

²⁷ Resolution D/AL No. 75/2022, dated 21 September 2022, pp. 49–50.

²⁸ Resolution D/AL No. 75/2022, dated 21 September 2022, pp. 52–53.

Risk of imposing abusive conditions: Given that the Vierci Group was not subject to effective competitive constraints in the upstream market, it could have both the incentive and the ability to transfer business risks to suppliers through unjustified charges, abusive payment terms, or product returns.²⁹

Vulnerability of MSMEs: Smaller-scale suppliers lacked the financial capacity to withstand lengthy delays in the payment chain or unexpected deductions. A delay in payment, or non-payment, by a customer such as Retail S.A. could cause serious cash-flow imbalances and force such suppliers out of the market, thereby reducing productive diversity to the detriment of consumers.³⁰

Anticompetitive effects of “best price” clauses: It was considered highly likely that the Vierci Group, from its dominant upstream position, could impose abusive conditions on its suppliers. Such clauses homogenise prices, restrict retail competition, prevent rival supermarkets, even those that are more efficient, from offering more aggressive promotions, and ultimately require final consumers to pay higher prices.³¹

Vertical integration (private-label brands): The Vierci Group was not only the leading retail distributor, but also a manufacturer and importer of food and beverage products, including brands such as Pastas Anita, Café Belén, Franz processed meats, Campesino yerba mate, and the distribution of Pepsi products.³²

Requirement to use specific bank accounts: It was identified that Retail S.A. required suppliers to open accounts with a specific banking institution in order to receive payment. This practice was considered unnecessary, given that interbank transfers can be made free of charge and securely through the SIPAP payment system.³³

²⁹ Resolution D/AL No. 75/2022, dated 21 September 2022, pp. 73–74.

³⁰ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 63.

³¹ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 74.

³² Resolution D/AL No. 75/2022, dated 21 September 2022, p. 67.

³³ Resolution D/AL No. 75/2022, dated 21 September 2022, p. 78.