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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session III: Early
resolution of cartel cases in Latin America and the Caribbean**

- Contribution from Argentina -

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Session III: Early resolution of cartel cases in Latin America and the Caribbean

- Contribution from Argentina –

This paper seeks to contribute to the discussion on the institutional design, implementation and effects of early resolution mechanisms for cartel cases in the field of competition enforcement in Argentina.

The paper first describes the commitment mechanism under Competition Law No. 27.442 (LDC) and its application over the last ten years. It then examines other tools provided for in the legal framework, such as interim relief measures and the Leniency Programme, which, under certain circumstances, allow the authority to achieve outcomes that restore competitive conditions in a market. Finally, it presents the conclusions.

1. Early resolution of cartel cases under law No. 27.442

1.1. Regulatory Framework

1. An early resolution of a cartel case is understood as an agreement between the competition authority and the investigated parties that brings the investigation to an end before a final decision on the merits is issued. In theory, such an agreement offers advantages for both sides. The authority obtains the cessation of the conduct and, potentially, other remedial measures, without exhausting a lengthy and costly procedure, and can allocate those resources to other investigations. The investigated parties reduce or avoid sanctions, limit uncertainty and litigation costs and, under some frameworks, avoid a finding of liability that could be invoked against them in damages actions.
2. Depending on the legal framework, the agreement may take different forms. In general, it involves reciprocal concessions: in exchange for the reduction or elimination of the financial penalty, the investigated parties undertake structural or behavioural measures, modify contractual clauses, or accept other conditions. The agreement may or may not require the investigated parties to acknowledge their liability.
3. Article 45 of the Competition Law establishes that, up to the issuance of the final decision by the Competition Tribunal (TDC), following the statement of objections and the evidentiary phase for the prosecution, the alleged offender may undertake to cease immediately or gradually the conduct under investigation, or to make the “... modification of aspects related thereto”. The provision further states that such commitment shall be subject to the approval of the TDC, in order to produce the suspension of the proceedings. Finally, it provides that, once three years have elapsed since compliance with the commitment, provided there has been no recurrence of the alleged conduct, the case shall be closed and archived.
4. The regulations implementing the Competition Law (LDC) through Executive Decree No. 480/2018 provide that the alleged offender may submit a commitment proposal either individually or jointly with the complainant. In the former case, the complainant must be informed of the proposal so that it may express any observations it considers appropriate.

5. In this way, the commitment mechanism makes it possible to close the case without a sanctioning decision.
6. Argentine legislation does not provide for a specific mechanism for the early resolution of cartel cases in the manner described above. The offering of commitments may arise both in cases involving coordinated practices and in investigations concerning abuse of a dominant position.
7. The legislation provides that the commitment must be submitted and accepted by the authority prior to the final decision in the case. Two consequences arise from this. First, the proposed commitment does not imply acceptance by the authority. Its approval depends on whether its content is deemed appropriate to bring the investigated conduct to an end, while also taking into account the deterrent effect of the decision on future conduct.
8. On the other hand, the Competition Law (LDC) only allows an infringement to be established and a sanction to be imposed through the final decision. Since a commitment must be accepted before that decision is issued, the act accepting the commitment cannot, at the same time, rule on the conduct or impose a sanction for it.
9. Beyond the procedural stage and the point in time at which a commitment may be proposed and decided upon, the legislation does not require an admission of liability by the party offering the commitment.
10. In summary, and in contrast to the theoretical model described above, there are two significant differences. The first is that there would be no scope for a reduction in the financial penalty (fine); rather, the application of this mechanism in Argentina would only lead to its elimination, that is, the non-imposition of any sanction. The second is the absence of a finding of liability for the alleged conduct under investigation. As noted above, on the one hand, the law does not require an admission of liability; on the other hand, acceptance of the commitment by the authority would result in the suspension of the proceedings and, after three years and verification of compliance, the closing of the case file.
11. The speed with which a commitment can restore competition also depends on the institutional design of the Competition Law (LDC). The enforcement bodies that have been in operation since 17 November 2025 are those of the National Competition Authority (ANC), composed of the Competition Tribunal (TDC), the Secretariat for Economic Concentrations (SCE) and the Secretariat for the Investigation of Anticompetitive Conduct (SICA).
12. Among the functions of the SICA is the conduct of investigations aimed at gathering evidence capable of establishing the existence of the practice under investigation. Where sufficient evidence is obtained to substantiate the existence of a conduct, the SICA proposes to the Competition Tribunal (TDC) the charges that may be appropriate as the conclusion of the investigation (Article 30(d) of the Competition Law). In other words, the TDC would only become aware of the case at the stage at which the SICA considers that the investigated parties should be formally charged in relation to the conduct under investigation. This is the case unless, in the specific matter, there is a procedural stage requiring the involvement of the TDC prior to the charging phase; for example, through a decision on an interim relief measure under Article 44 of the Competition Law.
13. An early resolution offers tangible benefits. It reduces the time and resources required for an investigation and allows the conduct to cease, or the restrictive conditions to be modified, before the harm is prolonged, thereby providing more effective protection of the legal interest safeguarded by the law. These benefits are greater the earlier the agreement is reached.

14. Thus, although the Competition Tribunal (TDC) could, where appropriate, seek the opinion of the Secretariat for the Investigation of Anticompetitive Conduct (SICA) when a commitment proposal has been submitted by the investigated parties, for the purpose of analysing and supporting its decision, the examination and acceptance of the commitment fall within the competence of the TDC, which only receives the case once the investigation has been completed, together with SICA's request for charges to be brought. Indeed, when rejecting proposed commitments, administrative case law has taken the view that a promise not to repeat the conduct at an advanced stage of the proceedings may be insufficient from a deterrence standpoint, as illustrated by the cases discussed in the following section.

15. In conclusion, the early resolution mechanism provided for in the Competition Law (LDC), understood as the submission of commitments, has a broader scope of application than cartel cases alone. On the one hand, it does not require an admission of liability, nor may the authority make such a finding, since that can only occur through the final decision in the case. Consequently, a commitment proposal does not allow for a reduction of sanctions, but rather for their complete elimination. Finally, an analysis of the procedure reveals a lack of incentives for investigated parties to submit a commitment at an early stage of the proceedings, since the law allows such proposals to be submitted up until the final resolution of the case.

2. ACCEPTANCE OF COMMITMENTS BY THE AUTHORITY DURING THE LAST DECADE

16. The following section briefly reviews, in chronological order, two cases in which the former National Commission for the Defence of Competition (former CNDC) accepted commitments offered by the investigated parties as a mechanism for the early resolution of proceedings during the last decade. The first concerned an investigation into possible abusive practices and other restrictions on competition in the payments market, linked to the position and ownership structure of Prisma, whose shareholders were fourteen commercial banks. The second concerned a possible concerted practice in which an industrial association of undertakings allegedly played a co-ordinating role.

2.1. The Prisma Commitment: Structural and Behavioural Measures

17. The *Prisma* case (C. 1613)¹ began in May 2016 as a market study on credit cards and electronic payment methods, commissioned by the Secretary of Commerce. The report, published in August 2016, recommended measures to improve competition to both the Central Bank of the Argentine Republic and the Secretary of Commerce, as well as the initiation of an ex officio investigation against PRISMA MEDIOS DE PAGO S.A. (PRISMA).

18. PRISMA was owned by fourteen of the country's leading commercial banks and was the exclusive *Visa* operator in Argentina, accounting for approximately 60% of all

¹ *Prisma* (Case No. 1613) concerned an ex officio investigation against PRISMA MEDIOS DE PAGO S.A. and its fourteen shareholder banks. The proceedings were conducted under File No. EX-2019-71987879--APN-DGD#MPYT, entitled "Ex Officio Investigation against Prisma Medios de Pago S.A. and its Shareholders pursuant to Articles 1 and 2(a), (f), (g), (h), (j), (k) and (l) of Law No. 25,156." Within that framework, former Ministry of Production Resolution No. 493/2017 (RESOL-2017-493-APN-MP) of 26 September 2017 was issued, through which the enforcement authority accepted the commitment offered by the investigated parties.

credit card transactions. The ex officio investigation was directed against PRISMA and its fourteen shareholder banks.

19. After submitting its explanations regarding the facts under investigation, PRISMA filed a commitment proposal on 17 March 2017 pursuant to Article 36 of Competition Law No. 25,156, then in force and the predecessor of Law No. 27,442. The wording of that provision does not differ substantially from that of the current Article 45 of the Competition Law (LDC). The commitment required PRISMA's shareholders to divest, in two stages, 100% of the company's share capital and prohibited more than one bank operating in Argentina from holding shares in the company, in order to eliminate the vertical integration that existed at the time. Likewise, it prohibited PRISMA from commercialising any other credit card brand until another company in the market was commercialising the Visa brand and required it to provide its services (including credit card processing and related services) to potential competitors on a non-discriminatory basis. In addition, the commitment required PRISMA to discontinue its immediate transfers service, thereby allowing that service to be provided by an independent operator capable of ensuring that alternative and competing payment methods could develop on a non-discriminatory basis. Finally, the commitment provided for the appointment of an independent auditor, selected by the former CNDC, to monitor and verify compliance with the commitments.

20. After submitting the proposal for consultation with various market participants, the former CNDC made several observations and introduced additional conditions into the commitment proposed by PRISMA and endorsed by its shareholder banks. In September 2017, it recommended that the Secretary of Commerce accept the commitment, which marked the starting point for dismantling PRISMA's dominant position in the electronic payments market and for increasing competition. Finally, in January 2019, PRISMA reported the sale of 51% of its share capital to Advent, thereby completing the first of the two stages of the divestiture schedule.

2.2. The Commitment Offered by the Argentine Pasta Manufacturers' Union: Promoting Competition

21. In 2021, the former CNDC, predecessor of the National Competition Authority (ANC), recommended that the enforcement authority of the Competition Law (LDC) accept a commitment in UIFRA (C. 1611)², a complaint filed against the Argentine Pasta Manufacturers' Union (UIFRA), an association representing companies in the sector, concerning alleged price coordination, resale price maintenance and exchanges of competitively sensitive information.

22. In this case, the former National Commission for the Defence of Competition (CNDC) examined the conduct of UIFRA, which, through letters addressed to wholesale supermarkets, sought to influence the setting of resale prices for dried pasta products. UIFRA prepared a cost study based on information provided by its member manufacturing companies and indicated that the resale prices of certain products were predatory. A supermarket lodged the complaint in 2016 after receiving a formal notice from UIFRA.

² UIFRA (Case No. 1611), "*MAXICONSUMO S.A. c/ UNIÓN DE INDUSTRIALES FIDEEROS DE LA REPÚBLICA ARGENTINA*", File No. EX-2018-48615778--APN-DGD#MPYT, opinion of the former National Commission for the Defence of Competition (CNDC) (IF-2021-31948906-APN-CNDC#MDP) dated 13 April 2021. In that opinion, the former CNDC recommended acceptance of the commitment offered by the respondent association, a recommendation that was subsequently adopted by the enforcement authority.

23. The commitment offered consisted of refraining from conducting reference cost studies for the purpose of documenting or providing evidence in proceedings relating to infringements of the Competition Law (LDC); improving its practices in accordance with the recommendations set out in the former CNDC's Guide on Competition Law for Business Associations and Chambers; refraining from notifying its members of possible conduct that could violate the Competition Law (LDC); and channeling complaints concerning conduct that may infringe the Competition Law (LDC) directly through the competition authority, thereby avoiding other forms of protection, defence, or action.

24. When accepting the commitment, the former CNDC considered that the alleged conduct had not produced effects in the market, because the absence of key participants necessary for the implementation of the agreement deprived it of any real possibility of achieving its intended effects. In particular, it was established that the leading firms in the sector had not participated in the activities carried out by UIFRA and that market prices remained below the reference price that had been communicated. In addition, the information exchanged among certain affiliated companies was limited to the specific episode concerning the estimation of the so-called "minimum reference cost" and did not operate as a monitoring mechanism sustained over time.

25. In accepting the commitment, the former CNDC relied on the absence of market effects, thereby undertaking, at the commitment stage, a substantive assessment that would ordinarily be associated with the final decision on the merits. As a result, acceptance of the commitment became linked to the low likelihood that the investigation would ultimately lead to a sanction. This approach appears to replace the inquiry contemplated by Article 45. What should be assessed is not whether the conduct warrants a sanction, but rather whether the commitment offered is suitable to bring the investigated conduct to an end and restore competitive conditions in the market.

26. Ultimately, the former CNDC considered that the cost-benefit analysis of accepting the proposed commitment, rather than continuing the investigation and potentially imposing a sanction, justified its acceptance. The former CNDC determined that no anticompetitive effects had been established and that no real harm to competitive market conditions could arise, given the absence of the key elements required for the attempted conduct to be effective. Consequently, it gave priority to the competition advocacy and prevention functions of competition law enforcement.

3. General reflections on the application of article 45 of the competition law (LDC)

27. The description of *Prisma* (C. 1613) and *UIFRA* (C. 1611) shows that early resolution through commitments was used by the former CNDC as a flexible instrument, although with different scopes depending on the characteristics and competitive risks of each case. While in *Prisma* the commitment sought to modify, through structural and behavioural measures, the conditions that could affect competition, including the divestiture of the shareholder banks and various obligations relating to openness and non-discrimination, in *UIFRA* the former CNDC placed particular emphasis on the fact that the investigated conduct, which was linked to the promotion of minimum resale prices and the exchange of competitively sensitive information, had not produced anticompetitive effects and did not meet the conditions necessary to cause actual harm to the competitive process.

28. In addition to the nature of the commitment and the likelihood that the investigated conduct would result in a sanction, another substantial difference lies in the procedural stage at which the commitment was offered. In *Prisma*, the commitment was proposed at an early stage of the investigation, after the investigated parties had submitted their

explanations and before the formal investigation had been opened and evidence had been gathered to determine whether an infringement had occurred. In *UIFRA*, by contrast, the commitment was submitted after the case had already been formally charged.

29. Nevertheless, with the exception of a few isolated cases, the mechanism provided by the Competition Law (LDC) for what has been referred to as the “early resolution of cases”, which in this context encompasses both cartel cases and abuses of dominance, has not been used frequently by the competition authority. This is particularly true in cartel cases, where there appears to be a tendency on the part of the authority to reject the commitments offered by the investigated parties.

30. Recent experience shows a cautious use of Article 45 in cartel investigations. In *Industria Molinera* (C. 1637)³, the authority rejected commitments submitted after the statement of objections had been issued, and the investigation ultimately concluded with a sanctioning decision against three entities and a milling company. In its final decision, the authority found that they had engaged in a concerted horizontal practice involving the fixing of minimum prices and the exchange of competitively sensitive information in the wheat milling and wheat flour marketing markets. Likewise, in *Discos de Bariloche* (C. 1670)⁴, certain companies operating nightclubs in that city were charged with implementing a collusive agreement to fix prices and allocate the market among themselves; the companies were also sanctioned for tying the sale of admission tickets. In that case, one of the investigated companies offered a commitment, which was likewise rejected by the authority, and the investigation continued through to the imposition of sanctions.

31. Finally, in *Areneras del Chaco* (C. 1732)⁵, a recent case concerning the cartelisation of the sand supply in the Province of Chaco by a co-operative and its members, both the Secretariat for the Investigation of Anticompetitive Conduct and the Competition Tribunal advocated rejecting the commitment offered, which had been submitted on 20 December 2024, after the statement of objections had been issued, although they relied on different grounds. The decision is currently under judicial appeal.

32. The Tribunal expressly departed from the findings of the investigation in three respects. First, it held that Article 45 does not characterise a commitment as an exceptional instrument or one subordinate to the continuation of sanctioning proceedings; rather, it is an ordinary tool of competition policy, whose specific function is to avoid the expenditure of resources involved in pursuing proceedings when there is a more efficient means of restoring competition. Second, it considered that the fact that the conduct had already been completed and established is a relevant consideration, but not a categorical threshold that, by itself, precludes the use of the mechanism. It reduces the preventive effect that a commitment may offer, and that effect must be weighed together with the other

³ *Industria Molinera* (Milling Industry) (C. 1637), “IMPULSAR c/ MOLINO CAÑUELAS y FEDERACIÓN ARGENTINA DE LA INDUSTRIA MOLINERA”, File No. EX-2018-38894741--APN-DGD#MP, former Secretariat of Domestic Trade Resolution No. 332/2022 (RESOL-2022-332-APN-SCI#MDP) of 1 April 2022.

⁴ *Discos de Bariloche* (Bariloche Records) (Case No. 1670), “POWERLINK S.R.L. v. ALLIANCE S.A.S. and GRISÚ S.A.”, File No. EX-2018-04238603--APN-CME#MP, former Secretariat of Commerce Resolution No. 115/2022 (RESOL-2022-115-APN-SC#MEC) of 25 November 2022.

⁵ *Areneras del Chaco* (Chaco Sand Producers) (Case No. 1732), “JEREZ c/ COOPERATIVA MINERA DE PRODUCTORES DE ARENA Y PIEDRA DEL NORESTE LTDA. y otros.”, File No. EX-2019-57480721--APN-DGD#MPYT, Competition Tribunal Resolution No. 47/2026 (RS-2026-73319650-APN-TDC#ANC) of 29 July 2026.

circumstances of the case. Third, it found that the timing of the offer does not constitute an independent ground for rejection, since Article 45 imposes no temporal limitation other than the issuance of the decision referred to in Article 43.

33. Nevertheless, the Competition Tribunal rejected the commitment based on the specific circumstances of the case. The proposal was entirely prospective in nature, consisting of amendments to the association's by-laws, the elimination of sand-compensation operations among member companies, a prohibition on intervening in prices and output volumes, and the adoption of commercial confidentiality measures subject to auditing. It was also offered subject to the express reservation that neither the facts nor the alleged liability were being acknowledged, and it contained no provision whatsoever for remedying the overcharge imposed by the cartel over a period of more than five years. Faced with conduct that had already been completed, had been fully established through the evidence, and had resulted in an identified harm, the potential savings in enforcement resources were considered marginal, given that the investigative stage was virtually complete. By contrast, the cost in terms of general deterrence was regarded as significant. The commitment offer was, however, taken into account as a mitigating factor in the determination of the fine.

34. In the same decision, the Competition Tribunal supported its interpretation of Article 45 through a review of comparative law. In Chile, Decree Law No. 211 empowers the National Economic Prosecutor's Office (Fiscalía Nacional Económica) to enter into extrajudicial agreements with investigated parties without excluding any type of conduct, including collusion. In the European Union, the commitments procedure under Article 9 of Council Regulation (EC) No. 1/2003 is generally intended for infringements other than cartel agreements; for hard-core cartels, the applicable mechanism is the settlement procedure under Commission Regulation (EC) No. 622/2008, which requires the investigated party to acknowledge both its participation and the relevant facts, rather than merely undertaking to cease the conduct. A similar approach exists in the United States: cartels are typically resolved through plea agreements, which preserve the imposition of sanctions, whereas consent decrees, which only require behavioural changes, are reserved for the civil sphere.

35. From this context, the Tribunal did not derive a single formula, but rather a discernible trend. Commitments constitute a common, rather than an exceptional, means of bringing an investigation to an end more efficiently than by pursuing sanctions proceedings to their conclusion. Moreover, the closer the conduct comes to a fully implemented cartel agreement, the greater the weight attached, alongside the commitment to cease the conduct going forward to some form of acknowledgement of responsibility or reparation for the harm caused.

36. These precedents show that the commitment mechanism under Law No. 27,442 is a tool whose application is subject to a series of assessments by the authority on a case-by-case basis, and that, where there is evidence of the commission of conduct of the utmost seriousness, such as a cartel, together with strong evidence demonstrating the existence of the practice, a mere promise not to repeat the conduct may be insufficient from the perspective of deterrence.

37. These limitations of Article 45 have already been the subject of a proposed reform. In April 2024, the National Executive Branch introduced a new version of the "Bases and Starting Points for the Freedom of Argentines Bill" (Ley de Bases y Puntos de Partida para la Libertad de los Argentinos), whose Title VII contained a new Competition Law repealing Law No. 27,442 (Article 141). That title reproduced Annex III of the bill submitted in December 2023 and was ultimately excluded from the committee report, meaning that it did not become part of the law that was eventually enacted. Nevertheless, the design of the

settlement mechanism contained in that proposal addressed several of the issues described in this paper.

38. Article 119 of the bill replaced the commitment mechanism with a settlement agreement for the termination of sanctioning proceedings. The agreement would be negotiated by the investigative body and approved by the Tribunal. In this way, the agreement could be reached while the investigation was still ongoing, when the savings in enforcement resources remained significant, while the Tribunal retained the final decision-making authority.

39. The agreement could include behavioural and structural commitments, as well as financial commitments in favour of third parties and the National Treasury. Through this mechanism, an agreement in a cartel case could combine the cessation of the conduct with compensation for the harm caused, an element that the comparative-law approaches discussed above regard as particularly relevant in cases involving hard-core cartels.

40. The approval of the commitment brought the investigation to an end and resulted in the definitive closure and archiving of the proceedings, without the three-year suspension period provided for under the current law. Nor did it amount to a final decision for the purposes of damages actions, meaning that entering into the agreement did not expose the parties to a finding of liability.

4. OTHER TOOLS UNDER THE COMPETITION LAW (LDC)

4.1. Interim Measures and the Leniency Programme

41. Article 44 of the Competition Law (LDC) provides that, at any stage of the proceedings, the Competition Tribunal (TDC) may impose compliance with conditions it establishes, or order the cessation of, or abstention from, restrictive and hardcore restrictive conduct, for the purpose of preventing harm from occurring or reducing its magnitude, continuation, or aggravation. It further provides that, where there is a risk of serious harm to the competitive regime, the TDC may order whatever measures are most appropriate under the circumstances to prevent such harm and, where appropriate, to eliminate its effects. This provision reflects the preventive function of the law.

42. The Leniency Programme, introduced into Argentina's competition law framework in 2018 under Chapter VIII of the Competition Law (LDC), applies specifically to the hardcore anticompetitive practices set out in Article 2 of the LDC. The design of the programme incorporates a series of conditions that encourage applications at an early stage of the proceedings, while requiring applicants to disclose and acknowledge the conduct and to co-operate fully, continuously, and diligently with the authority. In particular, and unlike the commitment mechanism, an application for leniency must be submitted before the notification of the statement of objections, thereby establishing a procedural cut-off point that occurs earlier than the deadline for submitting commitments under Article 45. Furthermore, the programme provides for the possibility of granting full immunity to the first applicant, or fine reductions ranging from 50% to 20% for subsequent applicants who provide additional evidence of probative value. The LDC also provides for a supplementary benefit for an applicant who discloses a second cartel distinct from the one being investigated in the relevant proceedings.

43. Interim relief measures, as well as the Leniency Programme, do not constitute early resolution mechanisms, insofar as they are not alternative means of bringing proceedings to an end. On the one hand, interim relief measures, as their name suggests, are usually adopted at an early stage of the proceedings and therefore have the effect of preventing

harm and restoring competitive conditions in a given market. However, the granting of such measures does not prevent the investigation from continuing and progressing through all procedural stages.

44. For its part, the Leniency Programme under Argentine competition law constitutes a tool that enables the detection of hardcore anticompetitive practices (Article 2 of the Competition Law (LDC)), both in cases where the authority has not yet opened an investigation and in those where it lacks sufficient evidence regarding the existence of the conduct. However, the design of the programme requires the investigated party to go through all stages of the sanctioning procedure, since the Competition Tribunal (TDC) grants the benefit on a final basis only when it issues the final decision in the case (Article 31 of the Regulations for the Implementation of the Leniency Programme).

45. Both instruments, although pursuing different objectives, do not dispense with the need for a final decision by the Competition Tribunal (TDC) in respect of the case. However, both produce effects during the investigative stage: interim relief results in the cessation of the conduct under investigation; leniency entails the applicant's co-operation in exchange for immunity from, or a reduction of, the sanction, which the Tribunal confirms in its final decision.

46. In particular, interim relief makes it possible to prevent the occurrence of harm, its continuation or its aggravation where there is an imminent risk that the harm can no longer be remedied at a later stage, or that the final decision to be adopted would become moot. Specifically, the authority is empowered to impose such conditions as it may determine, order the cessation of and abstention from conduct, adopt the measures most appropriate in the circumstances to prevent the harm, and order the removal of its effects (Mariño, T.; 2018)⁶. In this regard, the effect on competition of a commitment containing a cease-and-desist obligation may be comparable to that ordered through an interim relief measure.

47. For its part, the Leniency Programme limits the temporal scope of an application in comparison with a commitment and requires co-operation with the authority, something that the legal framework does not require for the acceptance of a commitment. From the perspective of procedural efficiency and resource allocation, participation in the Leniency Programme may enable the authority to operate more efficiently than through the early resolution mechanism provided for under the Competition Act (LDC). Information provided by the applicant may help direct the investigation towards the relevant markets, undertakings, individuals and periods, identify coordination mechanisms, and obtain evidence that would otherwise require lengthy and costly investigations, with a clear incentive for applications to be submitted at an early stage of the proceedings where an investigation has already been initiated.

⁶ Mariño y Busquet, T. M. (2018), "*La tutela anticipada en Derecho de Defensa de la Competencia*", in Trevisán, P., del Pino, M. and Chamatropulos, D. A. (eds.), *Commentary on the Competition Law*, chapter "Conductas Anticompetitivas", Special Edition, Buenos Aires, Thomson Reuters-La Ley, pp. 215-229, ISBN 978-987-03-3676-1.

4.2. The Prepaid Health Insurance Case

48. In January 2024, a group of legislators filed a complaint alleging the concerted fixing of prepaid health insurance premiums under Article 2(a) of the Competition Act (LDC) (Prepaid Health Insurance, Case No. 1848).⁷ The respondents included the principal undertakings in the sector as well as their industry association. The complaint alleged that, following the deregulation of those prices by Presidential Decree No. 70/2023, the price increases implemented by competing firms followed a uniform pattern. The former National Commission for the Defence of Competition (CNDC) recommended the adoption of an interim relief measure under Article 44 of the LDC.

49. On 17 April 2024, the enforcement authority adopted the recommendation. It ordered that any adjustment of premiums be limited to the variation in the Consumer Price Index since December 2023 and required the cessation of exchanges of commercially sensitive information, including prices, services and costs, within the industry association or any other forum. The measure operated on two levels: it neutralised the outcome of the conduct, as premium increases were tied to an objective benchmark and any potential overcharge ceased to be passed on immediately to consumers; and it also targeted the mechanism that made the conduct possible, namely the exchange of information within a common forum.

50. At this point, interim relief comes close to early case resolution, although the analogy has its limits. Its effect on the market is comparable to that of a commitment containing a cease-and-desist obligation: the conduct ceases to produce effects long before the final decision is adopted. However, interim relief does not bring the proceedings to an end. It does not arise from an agreement but rather from a unilateral decision of the authority; it requires neither an offer nor the consent of any party; and the proceedings continue towards the decision provided for in Article 43. It is a preventive tool, not a mechanism for resolving the case.

5. Conclusions

51. The Competition Act does not provide for a specific mechanism for the early resolution of cartel cases. The commitment procedure under Article 45 applies to any type of conduct, does not require an admission of liability and, if accepted, eliminates the sanction rather than reducing it. In cartel cases, that combination is at odds with the deterrent function of competition policy.

52. The authority accepted commitments in *Prisma* (Case No. 1613), which was offered at an early stage of the proceedings and included structural remedies, and in *UIFRA* (Case No. 1611), where it took into account the absence of effects resulting from the conduct. In cartel cases, by contrast, it has generally tended to reject such commitments and continue the investigation through to the imposition of sanctions, on the basis that, where a cartel has been implemented and proven, a mere promise not to repeat the conduct is insufficient.

53. Interim relief and the Leniency Programme cover part of that space, but neither brings the proceedings to an end. Interim relief achieves the early cessation of the conduct, as in *Medicina Prepara* (Case C. 1848), without any party being required to offer anything

⁷ *Medicina Prepara* (Prepaid Health Insurance) (Case No. 1848), File No. EX-2024-05378512--APN-DGDMDP#MEC, former Secretariat of Industry and Trade Resolution No. 1/2024 (RESOL-2024-1-APN-SIYC#MEC) of 17 April 2024.

in return. Leniency rewards early co-operation but requires the proceedings to continue through to a final decision.

54. The 2024 reform proposal incorporated these lessons: negotiations would be conducted by the investigative body, the agreement would be subject to approval by the Tribunal, and it would be possible to include pecuniary commitments in favour of third parties. This framework broadens both what the parties may offer and what the authority may take into account in a cartel case, without altering the requirement that the agreement be appropriate in light of the gravity of the conduct.