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LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM

Session III: Addressing Competition Challenges in Financial Markets

-- Contribution de Argentina --

4-5 April 2017, Managua, Nicaragua

The attached document from Argentina is circulated to the Latin American and Caribbean Competition Forum FOR DISCUSSION under Session III at its forthcoming meeting to be held on 4-5 April 2017 in Nicaragua.

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LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM



15th Latin American and Caribbean Competition Forum
4-5 APRIL 2017, Managua, Nicaragua

Session III: Addressing Competition Challenges in Financial Markets

DEALING WITH COMPETITION CHALLENGES IN FINANCIAL MARKETS

-- CONTRIBUTION FROM ARGENTINA* --

1. Introduction

1. Competition policy in Argentina has acquired fresh impetus since the new government took office in December 2015. As part of this process, the CNDC (National Commission for the Defence of Competition) has conducted a series of market studies in various sectors. One of the sectors examined, and the first to yield concrete results, was the financial market, and in particular the market for credit and debit cards and electronic means of payment.

2. This investigation took place in response to the concern expressed by the Central Bank of the Argentine Republic (BCRA) and associations representing e-commerce businesses with respect to competition conditions in the market. The CNDC had the collaboration and the support of the BCRA during all stages of the investigation.

3. This contribution explains the progress of the study, including the bodies that collaborated with the BCRA, its main conclusions, the recommendations that were prepared by the CNDC and subsequent developments in the market.

2. Study of the market for credit and debit cards and electronic means of payment

4. On 20 May, 2016, the CNDC opened a market investigation with the objective of analysing the conditions of competition in the market for credit and debit cards and electronic means of payment.¹ The investigation was undertaken in response to the concern expressed by the BCRA as to a possible position of dominance in the market. As their starting point, the CNDC and the BCRA jointly commissioned an external consultant to produce a report with an initial diagnostic assessment of competition conditions in the market.

* Contribution from the National Commission for the Defence of Competition (CNDC), Argentina.

¹ Case No. S01: 0204600/2016, entitled: "TARJETAS DE CRÉDITO, DÉBITO Y MEDIOS DE PAGO ELECTRÓNICOS S/INVESTIGACIÓN DE MERCADO (C. 1596)".

5. A system of electronic means of payment entails a series of activities, often pursued by different players. The first step in evaluating competition conditions in this market is to understand how it functions. The electronic payment systems market is one that is known in economic literature as a "two-sided market" that functions as a platform with two kinds of users: cardholders and merchants.² The electronic payments platform generates network externalities, as the value of the platform for a user on one side of the market depends on how many users there are on the other side.³

6. An electronic payment system functions as follows: the owner of the platform (for example, Visa or MasterCard) grants a license to issue cards and/or sign (or acquire) businesses to the network. When a cardholder makes a purchase with a card, he pays the price of the product plus a fee to the issuer of the card.⁴ The issuer transfers the price of the product to the acquirer, subtracting the interchange fee. Lastly, the acquirer transfers the price of the product to the merchant, subtracting the discount fee. To complete the transaction, a processor is responsible for sending the information on the transaction to the owner of the platform and the issuer.

7. An electronic payment system is formed by the interaction of various activities. Consequently, the CNDC defined four relevant markets: a) issuance of electronic means of payment, b) acquisition, c) processing, and d) provision of terminals or interfaces for electronic payments.

8. In Argentina, the payment cards market is regulated by Law No. 25.065, as amended by Law No. 26,010 (LTC). The law provides that the enforcement authorities are the BCRA and the Ministry of Commerce (SC). Article 15 of the LTC sets a ceiling on the fee that the acquirer can charge merchants. That ceiling is 3% for credit cards and 1.5% for debit cards. It also prohibits the charging of "differentiated fees by way of commissions or other charges, among merchants belonging to the same line of business or in relation to equal or similar products or services".

2.1 Main problems encountered in the market

9. The initial assessment prepared by the external consultant showed that there was a high degree of concentration in the acquisition and processing markets, with a single firm per trademark offering these services. In the case of Visa, the sole acquirer and processor is PRISMA MEDIOS DE PAGO S.A. (Prisma), which moreover participates in all markets through associated companies. Prisma is owned by 14 national banks (including 9 of the 10 biggest banks in terms of volume of deposits) which together issued 80% of credit cards and 72% of debit cards in 2015. Prisma is also the owner (a) of Lapos, which offers terminals for processing face-to-face payments by card; (b) of SPS Decidir, which offers gateway services for processing online payments; and (c) of Todo Pago, which offers an interface for online payments. In the case of MasterCard, the only acquirer is FIRST DATA CONO SUR S.R.L. (First Data). First Data also acts as processor of transactions with MasterCard, although it is not the only processor. The essential difference between Prisma and First Data has to do with the market share of the brands they represent. In Argentina, Visa is the leading name in the credit card market. In 2015, 58% of credit card transactions were carried out using Visa cards, followed by MasterCard, with 11%. For this reason, the CNDC concluded that Prisma held a dominant position in the acquisition and processing markets. To evaluate the scope of the effect of that dominant position, the CNDC held a series of hearings with various market

² Credit and debit cards are currently the most widely used electronic means of payment.

³ The more businesses that accept Visa, the greater is the value of holding a Visa card. Similarly, the more individuals who hold a Visa card, the greater is the value to a merchant of accepting Visa.

⁴ Generally speaking, issuers charge a fixed amount for holding a card, plus a fee associated with the amount of the transaction. This can be negative if the issuer grants benefits for use of the card.

players, including Prisma, First Data and some of their clients, as well as other providers of electronic means of payment.

10. As a result of the analysis, the CNDC concluded that the issuance and acquisition markets had high barriers to entry and that the configuration of the market had restrictive effects on competition in the acquisition and consumer financing markets.⁵ These restrictions were reflected in three aspects:

1. **Restraints on competition in acquisition:** the fees charged to merchants had remained within the limits established by the law since it was promulgated in 2005, indicating that any efficiency gain in the market had not been reflected in lower prices to merchants. This was also favoured by the clause in the law banning price discrimination.
2. **Restraints on competition in the consumer finance market:** the implementation of the "interest-free instalments" system for credit card purchases has restrained competition by other consumer finance mechanisms, as interest on the financing of these instalments is integrated into the product's cash price. This is facilitated by the corporate structure of Prisma, whose shareholders are the country's biggest banks.⁶
3. **Restraints on competition in related markets:** Prisma's dominant position in the acquisition market extends to other, downstream markets in which Prisma also participates. This is reflected in conditions that allegedly discriminate against competitors in the market for provision of interfaces for online payments.⁷

2.2 *Recommendations of the CNDC*

11. As a result of this investigation, the CNDC issued a series of recommendations for improving the conditions of competition in the sector. Those recommendations were drafted in close collaboration with the authorities of the BCRA and the SC, which are the authorities responsible for enforcing the credit card law (LTC).

12. The CNDC recommended:

⁵ See "Tarjetas de crédito, débito y medios de pago electrónicos s/investigación de mercado", CNDC Resolution No. 17/2016, available at: https://www.argentina.gob.ar/sites/default/files/cndc_resol_invmerc_tarjetas_2.pdf.

⁶ The practice of interest-free instalments was widespread in Argentina, especially for the purchase of electric appliances and other durable goods. The system functioned as follows. The merchant offered the product at a certain price, which could be paid by the purchaser with a credit card in a number of predetermined, interest-free instalments. 48 hours after the sale, the acquirer (Prisma or First Data) would transfer the amount of the sale to the merchant (net of the fee), with a discount corresponding to the interest rate for advance payment of the amount of the instalments. To cover this cost, the merchant included in the cash price a component corresponding to the interest that would have to be paid if the sale were made in instalments. As a result, if a purchaser wished to use any means other than the credit card to finance his purchases, he would be paying the interest twice: a) the explicit interest rate charged by the lender, and b) the implicit interest rate built into the price, to finance the credit card instalment payments.

⁷ Todo Pago (by Prisma) competes with Mercado Pago, Pay U and other companies in this market.

1. That the BCRA, as the market regulator, should a) create the conditions needed for the entry of new acquirers into the market in order to promote multi-brand acquisition, b) establish regulatory conditions to guarantee non-discriminatory treatment for new entrants; b) encourage the reduction of barriers to entry by other electronic means of payment; and d) foster competition in consumer finance by enabling merchants and consumers to choose between different providers;;
2. That the SC, as the enforcement authority for Law No. 25.156 on the defence of competition, should open an investigation against Prisma and its shareholders (the banks) for alleged anticompetitive conduct; and
3. That the BCRA and the SC, as the enforcement authorities for Law No. 25.065, should a) promote the repeal of the restriction on fee discrimination established in article 15; b) promote regulation of the interchange fees in accordance with international best practices; and c) establish conditions to guarantee the transparency of financing costs in transactions financed with credit cards.

3. Impact of the market investigation: implementation of the CNDC recommendations

13. The recommendations issued by the CNDC were the starting point for a number of changes in the credit and debit card market, at the instigation of the BCRA and the SC.

14. First, the SC requested the opening of an ex-officio investigation into Prisma and its shareholders, which the CNDC is currently conducting. Since that time, the CNDC has received nine complaints against Prisma.

15. Second, competition on the market for electronic means of payment increased under the influence of two basic factors: a) the emergence of new payment mechanisms, such as mobile apps for electronic payments facilitated by regulatory changes implemented by the BCRA, and b) the beginning of a process of structural change in the vertical and horizontal relationships of the main market players.

16. Third, the National Chamber of Deputies gave preliminary approval to a new draft law regulating the payment card market. This draft, which was initiated by the executive branch and was drafted jointly by the CNDC, the SC and the BCRA, incorporates many of the CNDC recommendations, such as promoting multi-brand acquisition, prohibiting exclusivity of acquisition by brand, and regulating the interchange fee rate.

17. Fourth, the SC issued a resolution obliging merchants, as of 1 February 2017, to separate the cash price of products from the cost of financing by instalment payments, in order to promote competition on the consumer finance market. The hope is that this measure will reduce product prices paid in cash, and there is some evidence that this is already happening.⁸

18. Lastly, the CNDC recommendations had a noticeable impact in the mass communications media. As a result, the general public was made aware of competition policy and the activities of the CNDC, as the first step in creating a culture of competition in Argentina. This is particularly important in this country, where competition policy has been abandoned for the last 10 years.

⁸ According to information from the Elypsis consulting firm, cash prices for domestic appliances have dropped by around 8% since 1 February 2017, the date the resolution came into force.

4. Conclusions

19. The outcome of the market study and investigation into credit and debit cards and electronic means of payment has had a concrete impact in the sector, and the project is considered successful.

20. One of the reasons for the success of this undertaking is that it was conducted in close and steady collaboration between the CNDC and the BCRA. In fact, the CNDC has benefited from constant interaction with the sector regulator, primarily in two aspects. First, the BCRA contribution has been essential for understanding the financing details of an extremely complex market where there are a great number of interrelated activities. Second, as a result of the ongoing discussion of the competition problems observed and the proposals for improvement, the CNDC issued recommendations that were accepted and shared by the BCRA, and were moreover capable of implementation.

21. In conclusion, while in some cases the objectives of the Competition Authority and the Regulatory Authority can be contradictory, dialogue and collaboration between these two bodies results in a fundamental platform for ensuring that investigations are successful and that the Competition Authority's recommendations are taken into account.