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**LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM - Session I:
Informal Economy in Latin America and the Caribbean: Implications for
Competition Policy**

- Contribution from Argentina -

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Session I: Informal Economy in Latin America and the Caribbean: Implications for Competition Policy

– Contribution from Argentina¹ –

1. Introduction

1. The concept of the informal economy is usually associated with economic activities that are not compatible with the applicable law and are therefore, by their very nature, fall outside the scope of regulations.
2. Although this multi-faceted concept has so far eluded unanimous, clear definition in specialist literature, there is nonetheless agreement as to its impact on countries' economic growth and social development, chiefly in developing countries where the informal economy has greater weight.

2. The informal economy in Argentina

3. The essential feature of activities that form part of the informal economy is that they are pursued outside the formal structures and regulatory frameworks created to regulate their operation. Informality can also come about through a failure to comply with the provisions of those structures.
4. Generally speaking, informality can be divided into three strands.²
 - Undeclared, lawful economic activities related to activities which are regulated in legislation and that agents choose not to comply with, for example businesses that trade on the market but are not registered with the Federal Public Revenues Administration (AFIP), or those that choose to under-declare the number of employees and consequently evade payment of social contributions (informal employment).
 - Activities that are inherently unlawful including those involving counterfeit goods and the marketing of unlawful goods (including the sale of products carrying counterfeit or fraudulently imitated trade marks) or goods obtained through unlawful means, which can often “compete” with goods in the formal market.³

¹ This contribution was drawn up by Martina Barragán and Martín Gerschenfeld under the guidance of Lucía Quesada and Federico Volujewicz, with comments by Esteban Greco and Marina Bidart.

² Latin American Economic Research Foundation (FIEL). *La Economía Oculta en la Argentina* [The Shadow Economy in Argentina]. Buenos Aires, Talleres Gráficos Leograf, 2000.

³ In Argentina, the counterfeiting and improper use of trademarks and designations is governed by Article 31 of Law 22,362 on Trademarks and Patents which lays down the applicable penalties.

- Domestic economic activities, comprising lawful activities performed in a household setting on a scale that means, in practice, that they are not within the scope of the regulatory controls, such as the production of home-based goods and services.
5. Another typical feature of informality is the scale on which these types of activities are performed. One of the factors that generally points towards the informality of a given activity is that the people involved in it do not handle large volumes of output or resources.
6. In some cases, the dividing line between the formal and informal economy is not so clear-cut. On occasion, many firms whose chief activity is performed within the framework of the formal economy either obtain a share of their resources or are engaged in secondary activities in a different, informal market.
7. That is the case for businesses producing products in accordance with the formalities required by the regulatory framework for the activity in question but who market a share of their output outside the tax regulations; or businesses who keep a certain activity associated with their production chain in-house but outsource others that are performed informally.

2.1. The importance of measuring the informal economy

8. As referred to above, there is currently no unanimously agreed definition of the concept of the informal economy; neither is there any agreement on how it should be measured. Nonetheless, there is no doubt that there is a direct relationship between the informal economy and the levels of tax evasion within an economy. The development of this type of economy is also associated with lower levels of productivity, poorer working conditions, higher rates of corruption, etc.⁴
9. Many studies have shown that the size of the informal economy in developing countries often represents as much as 50% of GDP.⁵ In Argentina, estimates put the informal economy at an average of 24.14% of GDP between 1991 and 2015, and at 24.99% of GDP in 2015.⁶ Additionally, the estimated average rate of informal employment in the period 1992-2017 was 36.99%.⁷

3. Recently adopted measures to combat informality

10. In recent years, Argentina has introduced a series of regulatory amendments aimed at generating sufficient incentives to make it more attractive for businesses to be part of the formal system than to remain outside it.

⁴ M. Bakhom, “The informal economy and its interference with competition law and policy”, in Gal, M. S., M. Bakhom, J. Drexl, E. M. Fox and D. J. Gerber (eds.), *The Economic Characteristics of Developing Jurisdictions: Their Implications for Competition Law*, Edward Edgar Publishing, 2015.

⁵ Medina, L. and F. Schneider, “Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?”, *IMF Working Paper* No. WP/18/17, 2018.

⁶ *Ibid.*, Tables 18 and A.1.

⁷ Source: Center for Distributive, Labor and Social Studies (CEDLAS-UNLP) <http://www.cedlas.econo.unlp.edu.ar/wp/estadisticas>. These figures are from various statistical surveys that have been modified over time.

11. One of the chief changes to that end was the approval of Law 27,349 in March 2017 establishing a new kind of simplified company, the Simplified Joint Stock Company (SAS) and introducing a new scheme to support venture capital, sharply reducing the cost of doing business in Argentina.

12. Law 27,264, enacted in August 2016, makes the Production Recovery Programme that was established in 2002 part of the institutional fabric and grants certain advantages to strengthen micro, small and medium-sized enterprises. The advantages range from special tax treatment to the launch of a system of subsidised credit and the simplification of credit access requirements. The Programme also includes a large number of policies in the same vein, such as the opening of a line of credit to promote agricultural machinery, and the introduction of certain amendments to the Law on Marketable Bonds to make it easier for SMEs to issue them. All these measures represent clear progress towards different treatment for these types of businesses, which are the type most likely to resort to the informal system

13. Two further measures that have recently been promoted are a requirement to accept payment by debit card and to issue electronic invoices. The first of those requirements entered into force on 31 March 2018 following the approval of Law 27,253, which provides that taxpayers that habitually sell movable objects for final consumption, provide mass consumer services, perform works or lease moveable property must accept transfers by debit card, non-banking pre-payment card or other electronic payment methods as methods of payment. The Law also provided for a refund of VAT at 15% for small purchases.⁸ The Law seeks to promote financial inclusion, reduce intrinsic payment system costs, formalise the economy and promote mechanisms to prevent both money laundering and terrorist financing.

14. Additionally, the AFIP issued two general resolutions (RG), RG No. 4290/2018 and RG No. 4291/2018, regulating the issuance and printing of electronic invoices and laying down time limits for gradual implementation of the requirement to issue them.⁹ The aims of the measure are to simplify and improve the invoicing process and reduce the associated costs (paperwork, filing, checking, etc.).

15. Finally, the provisions established by the AFIP in the Regulations under Law 27,260 on Voluntary Tax Disclosure and the provisions in the regulations requiring taxpayers registered under the simplified regime (*monotributistas*) to pay their tax liabilities using a debit or credit card, or by direct debit or bank transfer,¹⁰ are clear incentives aimed at reducing levels of informality.

3.1. The informal economy and anti-trust measures in Argentina

16. The matter of evaluating informality in the market has been raised in Argentina by the notifying parties in a large number of case files concerning mergers. In these cases, the parties argued that, in order to evaluate the relevant market accurately, it was necessary to take into consideration the impact of the informal sector.

⁸ In retail outlets for up to ARS 2,000.

⁹ The issuer must provide a printed invoice unless the customer agrees to receive it electronically.

¹⁰ *Monotributo* is a simplified regime that merges tax and social security payments together into a single tax. In order to be eligible to join the scheme, taxpayers must meet certain requirements relating to annual turnover, area of premises, power consumption and rental charges.

17. However, hitherto, the case law of the National Anti-Trust Commission (the “CNDC”) has not incorporated the informal sector into its substantive case analysis, either when evaluating merger transactions or in the investigation of potential anti-competitive practices. Although there have been references to the existence of “informal” suppliers and the consequent effects of rising elasticity of demand,¹¹ informality has not been a determining factor in decisions on cases concerning the enforcement of the Anti-Trust Law.

18. Accordingly, in an operation involving the purchase by Adidas-Salomon AG of 100% of the shares of Reebok International Ltd, the CNDC held that the illegal products did not belong to the same relevant market as the businesses involved in the transaction because each product’s specific technology resulted in product differentiation, as evidenced in the product prices.¹² A similar decision was reached in a matter concerning informality in the case concerning the acquisition of 100% of the shares of the firm Vulcabras Azaleia Argentina SA by Dass Nordeste Calçados E V E Artigos Esportivos SA.¹³

19. Additionally, as part of the evaluation of the acquisition of 69.23% of the ordinary Class B shares of the firm Correo Argentino SA by International Mail Corporation, the CNDC performed an evaluation of the informal market. In this case, the CNDC took what may have been overestimated information submitted by the parties about the participation of informal competitors and concluded that the inclusion of the informal sector did not alter the fact that the merger that resulted from the transaction was a cause for concern, and recommended that it should be blocked.¹⁴

20. Finally, the CNDC has also recently given a ruling on the impact and level of development of the informal economy on some markets in particular and on the market in general as part of certain market investigations.

21. This is true, for example, of the market in yerba mate, in which the levels of informality were high among the primary producers.¹⁵ Among other things, this led to serious breaches of the deadlines and prices laid down under the regulations governing the sector.

¹¹ Conversely, the existence of informal demand-side parties and the consequent rise in the elasticity of supply.

¹² CNDC Opinion No. 542, Decision No. 57/2006 of the Technical Coordination Secretariat in the case “ADIDAS-SALOMON AG, RUBY MERGER CORPORATION AND REEBOK INTERNATIONAL LTD RE NOTIFICATION ARTICLE 8 LAW 25,156 (Conc. No. 542)”.

¹³ Opinion IF-2018-28708426-APN-CNDC#MP, Decision SC: RESOL-2018-461-APN-SECC#MP in the case “DASS NORDESTE CALÇADOS E V E ARTIGOS ESPORTIVOS SA, VULCABRAS AZALEIA SA RE NOTIFICATION ARTICLE 8 LAW 25,156 (Conc. No. 1289)”.

¹⁴ CNDC Opinion No. 226, Decision No. 226/2001 of the Anti-Trust and Consumer Protection Secretariat in case No. 064-010116/2000 (C.C. 170).

¹⁵ CNDC, “Análisis de las condiciones de competencia en el sector yerbatero argentino” [Analysis of the conditions of competition in the Argentine yerba mate sector]. Report of the National Office for the Promotion of Competition, 2017.

22. Moreover, where the market in beef is concerned, it also reached the conclusion that the high degree of informality in the various stages of the meat production chain and the retail sector gave rise to such severe asymmetry between suppliers that it could result in a serious distortion of competition.¹⁶

4. Conclusions

23. The informal sector represents a significant share of the Argentine economy. However, the CNDC has not so far examined cases in which it has been an important factor in the final decision. Although, in some cases, it has made reference to informal suppliers, informality has not been a determining factor in the cases analysed by the CNDC. In some cases, the CNDC took the view that the informal suppliers were not part of the same market as the formal suppliers, whereas, in others, it considered that the weight of the informal economy was not sufficiently large as to have an impact on the decision.

24. Although various measures have been implemented in recent years to reduce informality, the challenge of promoting and implementing the Anti-Trust Law in the presence of the informal sector continues.

¹⁶ CNDC, “Mercado argentino de la carne vacuna” [Argentine market in beef]. *Summary by the National Office for the Promotion of Competition*, 2016. Based on the study conducted by Dr. Guillermo Sabbioni.